

**DOCKET NO. 453-03-1100.M2**  
**[MDR TRACKING NO. M2-03-0006-01]**

**AMERICAN HOME  
ASSURANCE COMPANY,**  
*Petitioner*

**BEFORE THE STATE OFFICE**

**VS.**

**OF**

**BEHAVIORAL HEALTHCARE  
ASSOCIATES,**  
*Respondent*

**ADMINISTRATIVE HEARINGS**

**DECISION AND ORDER**

American Home Assurance Company (AHAC or the Carrier), the Petitioner in this case, seeks reversal of an Independent Review Organization (IRO) decision. The IRO decision preauthorized individual psychotherapy and biofeedback for a workers' compensation claimant, as requested by the Respondent, Behavioral Healthcare Associates (BHA). The Administrative Law Judge (ALJ) concludes the IRO decision was correct, and preauthorizes the services.

**I. Discussion**

The Claimant sustained a compensable back injury on \_\_\_\_\_. After various unsuccessful treatments, she was referred to BHA by her treating doctor to determine if she was an appropriate candidate for an interdisciplinary, chronic pain management program. BHA conducted a behavioral medicine assessment, then requested preauthorization for the chronic pain management program. The Carrier denied the request. According to BHA, the Carrier's reviewing physician suggested the Claimant would benefit from individual psychotherapy and biofeedback instead. BHA requested preauthorization for those services, once a week for eight weeks. The Carrier denied that request as well.

On review, the IRO granted the request for preauthorization of the individual psychotherapy and biofeedback. The IRO reviewer observed that the Carrier had denied the request on the basis of relatedness to the injury, which is not a valid criterion under the Texas Worker's Compensation Commission's (the Commission's) preauthorization rule. The reviewer further observed that the role of psychological symptoms in this case was well-documented and that the individual psychotherapy and biofeedback would further the treatment goals for the Claimant.

Generally, the documents provided by the Carrier focus on the absence of physical causes for the Claimant's continuing back pain and on her history of depression. The theme of those reviews is that her symptoms are not related to the compensable injury. Under 28 TEX. ADMIN. CODE (TAC §

'134.600, that issue is not to be considered in determining whether preauthorization will be granted. Section 134.600(f) states:

- (6) The carrier shall:
  - (1) approve or deny requests for preauthorization or concurrent review based solely upon the reasonable and necessary medical health care required to treat the injury, regardless of:
    - (1) unresolved issued of compensability, extent of or relatedness to the compensable injury;
    - (2) the carrier's liability for the injury; or
    - (3) the fact that the employee has reached maximum medical improvement.

The review of the Claimant's file by Robert J. Barth, Ph.D., stated that the Claimant is likely to be malingering, and that the best course for her would be to cease treatment and return her to the work force. Petitioner's Ex. 1. In that respect, Dr. Barth's review did address the issue of whether the requested psychotherapy and biofeedback treatments were reasonable and necessary.

Because the IRO found in favor of BHA, the Carrier has the burden of proof in this proceeding. 28 TAC §148.21(h). Despite Dr. Barth's report, AHAC did not meet that burden. Its denial of the chronic pain management request, the Carrier suggested some psychological treatment is appropriate for the Claimant. That review, on June 28, 2002, stated the Claimant "may benefit from psychological interventions." Respondent's Ex. 1. Even more persuasive was the behavioral medicine assessment of the Claimant conducted May 30, 2002. That assessment concluded the Claimant was suffering from depression and that her behaviors were likely to significantly hinder her rehabilitation. Although the assessment recommended the chronic pain management program, it also justified the more conservative course of treatment at issue in this case. Unlike Dr. Barth's file review, the behavioral medicine assessment was based on an actual examination of the Claimant. It was the most comprehensive and credible evaluation of the Claimant in the record. The evidence presented by the Carrier did not refute that assessment and did not prove the requested treatments should be denied.

## **II. Findings of Fact**

1. The Claimant sustained a compensable back injury on \_\_\_\_\_.

2. After various unsuccessful treatments, the Claimant was referred to BHA by her treating doctor to determine if she was an appropriate candidate for an interdisciplinary, chronic pain management program.
3. BHA conducted a behavioral medicine assessment, then requested preauthorization for the chronic pain management program. The Carrier denied the request.
4. BHA then requested preauthorization for individual psychotherapy and biofeedback, once a week for eight weeks. The Carrier denied that request as well.
5. On review, the IRO granted the request for preauthorization of the individual psychotherapy and biofeedback.
6. AHAC filed a timely request for a hearing before the State Office of Administrative Hearings (SOAH).
7. Notice of the hearing was sent to all parties November 19, 2002.
8. The notice contained a statement of the time, place, and nature of the hearing; a statement of the legal authority and jurisdiction under which the hearing was to be held; a reference to the particular sections of the statutes and rules involved; and a short, plain statement of the matters asserted.
9. The hearing was held December 17, 2002, at SOAH's hearing rooms on the fourth floor of the William P. Clements Building, 300 West 15<sup>th</sup> Street, Austin, Texas 78701. ALJ Henry D. Card presided and representatives of AHAC and BHA participated. The hearing was adjourned the same day.
10. Generally, the documents provided by the Carrier focus on the absence of physical causes for the Claimant's continuing back pain and on her history of depression.
11. The Carrier's denial of the chronic pain management request suggested some psychological treatment is appropriate for the Claimant.
12. The behavioral medicine assessment of the Claimant conducted May 30, 2002, concluded the Claimant was suffering from depression and that her behaviors were likely to significantly hinder her rehabilitation.
13. Although the behavioral medicine assessment recommended the chronic pain management program, it also justified the more conservative course of treatment at issue in this case.

14. Unlike Dr. Barth's file review, the behavioral medicine assessment was based on an actual examination of the Claimant.
15. The behavioral medicine assessment was the most comprehensive and credible evaluation of the Claimant in the record.

### **III. Conclusions of Law**

16. SOAH has jurisdiction over this proceeding, including the authority to issue a decision and order, pursuant to TEX. LAB. CODE ANN. §413.031(d) and TEX. GOV'T CODE ANN. ch. 2003.
17. Adequate and timely notice of the hearing was provided in accordance with TEX. GOV'T CODE ANN. §2001.052.
18. AHAC has the burden of proof in this matter. 28 TEX. ADMIN. CODE (TAC) §148.21(h).
19. Under 28 TEX. ADMIN. CODE (TAC) §134.600, the issue of relatedness to the compensable injury is not to be considered in determining whether preauthorization will be granted.
20. The evidence presented by the Carrier did not prove the requested treatments should be denied.
21. The requested treatments should be preauthorized.

### **ORDER**

**IT IS, THEREFORE, ORDERED** that the Respondent, Behavioral Healthcare Associates, is entitled to preauthorization to provide the Claimant with individual psychotherapy and biofeedback once a week for eight weeks.

**Signed this 23<sup>rd</sup> day of January, 2003.**

**STATE OFFICE OF ADMINISTRATIVE HEARINGS**

---

**Henry D. Card**  
**Administrative Law Judge**