

**STATE OFFICE OF ADMINISTRATIVE HEARINGS**  
**300 West 15<sup>th</sup> Street, Ste. 502**  
**Austin, TX 78701**

**SOAH DOCKET NO. 452-03-1482.M2**  
**[MDR TRACKING NO. M2-02-1108-01]**

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

§  
§  
§  
§  
§  
§  
§  
§  
§  
§

**BEFORE THE STATE OFFICE  
OF  
ADMINISTRATIVE HEARINGS**

**V.**

**GEORGE J. MURILLO, M.D. AND  
TEXAS WORKERS' COMPENSATION  
COMMISSION,**  
**Respondent**

**DECISION AND ORDER**

**I. Introduction**

American Home Assurance Company (Carrier) disputes a decision of an independent review organization (IRO) regarding the request by George J. Murillo, M.D. (Treating Physician) for preauthorization of a repeat psychiatric interview (repeat interview) of \_\_\_\_\_ (Claimant). The IRO found that the Claimant reasonably needed a repeat interview to treat her post-traumatic stress disorder, including anxiety, and major depression stemming from her compensable head and shoulder injuries.

The Carrier previously paid for a psychiatric interview of the Claimant to address her compensable-injury-related symptoms. Accordingly, the Carrier disputes whether it is reasonable and necessary for the Claimant to receive a repeat interview with a second psychiatrist.

The evidence shows that the psychiatrist that the Claimant previously saw found that she suffered from depression and post-traumatic stress disorder, which included symptoms of high anxiety and low energy. It also shows that those same symptoms caused the Claimant to take over an hour to drive the 30 miles to the first psychiatrist's office and that the trip significantly exacerbated her anxiety. For that reason, the Treating Physician put the Claimant under a travel restriction of 20 miles from home and sought preauthorization for a repeat interview with another psychiatrist whose office lies within that radius. A new psychiatrist will need to interview the Claimant to determine if she needs treatment and, if so, what kind.

Based on the evidence and set out below, the Administrative Law Judge (ALJ) finds that the Claimant reasonably needs a repeat interview with a psychiatrist closer to her home and preauthorizes that repeat interview.

**II. Findings of Fact**

1. On \_\_\_\_\_, \_\_\_\_\_ (Claimant) sustained a work-related injury to her head.

2. On the date of injury, the Claimant's employer was \_\_\_\_\_ and its workers' compensation insurance carrier was American Home Assurance Company (Carrier).
3. As a direct result of the compensable injury, the Claimant suffers post-traumatic stress disorder—including high anxiety and low energy—and major depression.
4. On February 20, 2001, Dr. Lawrence D. Ginsberg, M.D. performed an initial psychiatric interview of the Claimant.
5. Dr. Ginsberg's office is approximately 30 miles from the Claimant's home.
6. Due to her high anxiety and low energy, it took the Claimant well over one hour to drive to Dr. Ginsberg's office for his evaluation of her.
7. Driving approximately 30 miles to Dr. Ginsberg's office significantly aggravated the Claimant's anxiety that stemmed from her compensable injury.
8. To minimize further aggravation of the Claimant's anxiety, George J. Murillo, M.D. (Treating Physician), on February 12, and March 4, 2002, limited the Claimant's travel to no more than 20 miles and requested preauthorization from the Carrier for a repeat psychiatric evaluation of the Claimant by a different psychiatrist whose office is within 20 miles of the Claimant's home.
9. A new psychiatrist will need to interview the Claimant to determine if she needs treatment and, if so, what kind.
10. On April 9, 2002, and repeatedly thereafter, the Carrier sent an explanation of benefit (EOB) to the Provider denying the requested preauthorization and maintaining the repeat interview was not medically necessary to treat the compensable injury.
11. The Treating Physician filed a request for medical dispute resolution with the TWCC.
12. On October 28, 2002, TWCC referred the dispute to an independent review organization (IRO).
13. The IRO reviewed the medical dispute and found that the repeat psychiatric evaluation by a second psychiatrist was reasonably medically necessary.
14. On November 21, 2002, after the IRO decision, the Carrier asked for a contested-case hearing by a State Office of Administrative Hearings (SOAH) Administrative Law Judge (ALJ) concerning this dispute.
15. On December 13, 2002, notice of a January 13, 2003 contested-case hearing concerning the dispute was mailed to the Carrier, the Treating Physician, and the Claimant.
16. On January 13, 2003, SOAH ALJ William G. Newchurch held a contested-case hearing on the dispute at the William P. Clements Office Building, Fourth Floor, 300 West 15th Street, Austin, Texas. The hearing concluded and the record closed on that same day.

17. The Carrier appeared at the hearing through its attorney, Dan Kelly.
18. The Treating Physician and his attorney, Bruce E. Dunham, appeared at the hearing by telephone.
19. The Claimant appeared at the hearing by telephone.

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

20. The State Office of Administrative Hearings has jurisdiction over matters related to the hearing in this proceeding, including the authority to issue a decision and order, pursuant to TEX. LABOR CODE ANN. (Labor Code) §§ 402.073(b) and 413.031(k) (West 2002) and TEX. GOV'T CODE ANN. (Gov't Code) ch. 2003 (West 2001).
21. Adequate and timely notice of the hearing was provided in accordance with Gov't Code §§ 2001.051 and 2001.052.
22. SOAH's Chief ALJ has jurisdiction to adopt procedural rules for SOAH hearings, and a referring agency's procedural rules govern a hearing only to the extent that SOAH's rules adopt them by reference. Gov't Code § 2003.050 (a) and (b).
23. Under TWCC's rules, the party seeking relief has the burden of proof. 28 TEX. ADMIN. CODE (TAC) §148.21(h) (2002).
24. Under TWCC's rules, the IRO's decision has presumptive weight in all appeals from reviews of medical necessity disputes. 28 TAC § 133.308(v).
25. The Chief ALJ has not adopted TWCC's burden-of-proof or IRO-decision-presumptive-weight rules, and no statute requires the use of those rules.
26. In determining the burden of proof, the referring agency's documented policy is to be considered, but it must be modified to consider the parties' access to and control over pertinent information and so that no party is required to prove a negative. 1 TAC § 155.41(b).
27. Based on the above Findings of Fact, Conclusions of Law, and TWCC's documented policy expressed in its rules, the Carrier should have the burden of proof in this matter.
28. An employee who sustains a compensable injury is entitled to all health care reasonably required by the nature of the injury as and when needed. Labor Code § 408.021 (a).
29. TWCC must specify by rule which health care treatments and services require express pre-authorization by a carrier. A carrier is not liable for those specified treatments and services unless pre-authorization is sought by the claimant or a health care provider and either obtained from the carrier or ordered by TWCC. Labor Code §413.014
30. Pre-authorization is required for a repeat psychiatric interview of the Claimant sought in this case. 28 TAC § 134.600(h)(4).

31. Based on the above Findings of Fact, traveling beyond 20 miles to meet with her psychiatrist would aggravate the Claimant's anxiety symptoms stemming from her compensable injury.
32. Based on the above Findings of Fact and Conclusions of Law, the repeat psychiatric interview of the Claimant sought in this case is reasonably medically necessary by the nature of the Claimant's injury to minimize the aggravation of her anxiety symptoms stemming from her compensable injury.
33. Based on the above Findings of Fact and Conclusions of Law, a repeat interview with a new psychiatrist whose office lies within 20 miles of the Claimant's home should be preauthorized.

### **ORDER**

**IT IS ORDERED THAT** a repeat interview with a new psychiatrist whose office lies within 20 miles of the Claimant's home is preauthorized.

Signed January 23, 2003.

---

**WILLIAM G. NEWCHURCH  
ADMINISTRATIVE LAW JUDGE  
STATE OFFICE OF ADMINISTRATIVE HEARINGS**