

DOCKET NO. 453-03-1584.M2
[MDR TRACKING NO. M2-03-0292-01]

AMERICAN HOME ASSURANCE COMPANY, <i>PETITIONER</i>	§ § § § § § § § §	BEFORE THE STATE OFFICE OF ADMINISTRATIVE HEARINGS
V.		
AUSTIN NEUROLOGICAL CLINIC, <i>RESPONDENT</i>		

DECISION AND ORDER

American Home Assurance Company (Carrier) appealed the Independent Review Organization's (IRO's) decision to preauthorize neurocognitive rehabilitation and psychotherapy for _____. This decision finds the requested preauthorization should be granted.

I. JURISDICTION, NOTICE, AND PROCEDURAL HISTORY

There were no contested issues of jurisdiction or notice. Therefore, those matters are addressed in the findings of fact and conclusions of law without further discussion here.

The hearing in this matter was held January 21, 2003, at the State Office of Administrative Hearings (SOAH) before Administrative Law Judge (ALJ) Michael J. O'Malley. Carrier appeared through its attorney, Shane Thompson. Austin Neurological Clinic (Provider) did not appear at the hearing. After receipt of Carrier's evidence and argument, the record closed that day.

II. DISCUSSION

A. Background Facts

On _____, Claimant fell off a ladder while working as a stocker at _____. As a result of the fall, she suffered a compensable head injury. At the time of her injury, Carrier insured Claimant's employer for worker's compensation. Provider diagnosed Claimant with post-concussion syndrome. Provider seeks preauthorization for neurocognitive rehabilitation and psychotherapy to treat Claimant's condition. Carrier denied the preauthorization request, stating that Claimant's mild brain injury did not warrant neurocognitive rehabilitation and psychotherapy.¹

¹ Under 28 TEX. ADMIN. CODE § 134.600(h)(2), neurocognitive rehabilitation and psychotherapy require preauthorization.

B. Legal Standards

Petitioner has the burden of proof in this proceeding. 28 TEX. ADMIN. CODE § 148.21(h). Pursuant to the Texas Worker's Compensation Act (the Act), an employee who has sustained a compensable injury is entitled to all health care reasonably required by the nature of the injury as and when needed. The employee is specifically entitled to health care that cures or relieves the effects naturally resulting from the compensable injury, promotes recovery, or enhances the ability of the employee to return to or retain employment. TEX. LAB. CODE ANN. § 408.021(a).

3. Evidence

Because Provider did not appear at the hearing, no evidence was entered in the record on its behalf. In this case, Carrier had the burden of proof because the IRO decided that preauthorization was appropriate for a patient who has post-concussion syndrome. Carrier offered and the ALJ admitted in evidence the medical documents it submitted to the IRO.

For its case, Carrier relies on the file review of Robert J. Barth, Ph.D. Dr. Barth classified Claimant's injury as mild. He stated that a mild head injury would not have long-lasting impairment. He further found that Claimant's symptoms were more likely associated with stressful life events rather than her mild brain injury. In this case, Claimant had the stress of a new job, two young children, and a geographical move. Dr. Barth concluded that neither the neurocognitive rehabilitation nor psychotherapy were necessary for this patient because her diagnosis did not require these treatments. Carrier Ex. 1 at 39-46.

4. ALJ's Analysis

The ALJ finds that the preauthorization is warranted in this case. Although Provider did not appear at the scheduled hearing after receiving proper notice, the evidence, which included the neurological evaluations from Provider, indicates that neurocognitive rehabilitation and psychotherapy is appropriate for Claimant. The ALJ reviewed the report of Dr. Barth, relied on by Carrier, but concluded that it was not persuasive. Dr. Barth did not examine or talk to Claimant about her condition. He reviewed Provider's medical reports, but he did not personally evaluate Claimant. *Id.* at 39. Therefore, the ALJ assigned less weight to his report.

As early as April 3, 2002, Michael G. Hummer, M.D., a doctor for Provider, evaluated Claimant and determined that she suffered a concussion and, as a result, had post-concussion syndrome and post-traumatic headaches. After conducting numerous tests in April 2002, Dr. Hummer determined that Claimant needed neurocognitive rehabilitation. *Id.* at 19. On June 6, 2002, Provider performed a neurological follow-up and neurological evaluation on Claimant. Provider maintained that Claimant suffered from post-concussion syndrome, with the typical features of reduced processing speed, poor attention and concentration, and mild memory problems. Provider further concluded that, as result of the post-concussion syndrome, Claimant suffered from depression, anxiety, sleep disturbance, and chronic frequent headaches. Provider recommended psychotherapy and neurocognitive rehabilitation. *Id.* 20-25. On June 17, 2003, Provider conducted another neuropsychological evaluation and again recommended psychotherapy and neurocognitive rehabilitation. *Id.* at 26-29. Provider treated Claimant again on July 11, 2002, and August 14, 2002, as part of Claimant's neurological follow-up. On August 14, 2002, Dr. Hummer strongly recommended psychotherapy and neurocognitive rehabilitation. *Id.* at 30-33. On August 14, 2002,

Dr. Hummer stated that Claimant definitely needed psychotherapy to treat her anger and depression. He also attributed her anger and depression to her injury. He emphasized that the therapy was mandatory and should be provided to Claimant as soon as possible. *Id.* at 33. Dr. Hummer evaluated Claimant again on September 12, 2002, and recommended psychotherapy and neurocognitive rehabilitation. He stated that Carrier was not exercising ordinary care in its continued denial of these treatments for Claimant. He emphasized the urgency of the treatment, which would facilitate Claimant's recovery and allow her to return to work. *Id.* at 35-37.

Dr. Hummer treated and evaluated Claimant for six months and concluded that she needed psychotherapy and neurocognitive rehabilitation. Dr. Hummer's evaluations were comprehensive and consistent. After reviewing Dr. Hummer's evaluations, the ALJ determined that he knew Claimant's condition well. On the other hand, Dr. Barth made conclusions about Claimant's symptoms, condition, and life situation without having ever examined or talked to her. In addition, his report showed only a general knowledge of Claimant's condition and symptoms.² Finally, the Act mandates the employee receive all health care reasonably necessary to cure or relieve the effects of the compensable injury. Dr. Hummer's evaluations indicate that psychotherapy and neurocognitive rehabilitation are necessary to treat Claimant's condition. Carrier did not meet its burden to show that psychotherapy and neurocognitive rehabilitation are not the type of health care to which Claimant is entitled under the Act. For these reasons, the ALJ finds that the psychotherapy and neurocognitive rehabilitation should be preauthorized for Claimant.

III. FINDINGS OF FACT

1. On _____, ____ (Claimant) suffered a compensable head injury while working as a stocker at _____.
2. At the time of Claimant's compensable injury, American Home Assurance (Carrier) was the workers' compensation insurer for Claimant's employer.
3. Claimant was diagnosed with post-concussion syndrome.
4. Austin Neurological Clinic (Provider) seeks preauthorization for neurocognitive rehabilitation and psychotherapy to treat Claimant's post-concussion syndrome.
5. Claimant suffered a concussion, which resulted in post-concussion syndrome and post-

² Dr. Barth seems to have a very strong opinion on post-concussion syndrome in general but not necessarily as it relates to Claimant. Further, because he never examined Claimant, the ALJ was unable to assign much credibility to his report.

traumatic headaches.

6. Michael G. Hummer, M.D., a doctor for Provider, evaluated Claimant for six months.
7. Claimant suffered from post-concussion syndrome, which would require psychotherapy and neurocognitive rehabilitation.
8. As a result of the post-concussion syndrome, Claimant suffered from reduced processing speed, poor attention and concentration, mild memory problems, depression, anxiety, sleep disturbance, and chronic frequent headaches.
9. The preauthorization request was submitted, and Carrier denied the request, stating that Claimant's mild brain injury did not warrant psychotherapy and neurocognitive rehabilitation.
10. In a decision issued November 26, 2002, the Independent Review Organization (IRO) granted Provider's request for preauthorization psychotherapy and neurocognitive rehabilitation.
11. On December 5, 2002, Carrier appealed the IRO's decision and requested a hearing before the State Office of Administrative Hearings (SOAH).
12. On January 6, 2003, the Texas Worker's Compensation Commission (Commission) issued the notice of hearing.
13. 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 held; a reference to the particular sections of the statutes and rules involved; and a short, plain statement of the matters asserted.
14. On January 21, 2003, Administrative Law Judge (ALJ) Michael J. O'Malley convened the hearing on the merits. Carrier appeared through its attorney, Shane Thompson. Provider did not appear at the hearing.
15. Because Claimant suffered from post-concussion syndrome, preauthorization of psychotherapy and neurocognitive rehabilitation is warranted.

IV. CONCLUSIONS OF LAW

1. The Texas Workers' Compensation Commission (Commission) has jurisdiction related to this matter pursuant to the Texas Workers' Compensation Act (the Act), TEX. LABOR CODE ANN. § 413.031.
2. SOAH has jurisdiction over matters related to the hearing in this proceeding, including the authority to issue a decision and order, pursuant to § 413.031(d) of the Act and TEX. GOV'T CODE ANN. ch. 2003.
3. The hearing was conducted pursuant to the Administrative Procedure Act, TEX. GOV'T CODE

ANN. ch. 2001.

4. Adequate and timely notice of the hearing was provided in accordance with TEX. GOV'T CODE ANN. §§ 2001.051 and 2001.052.
5. Carrier had the burden of proof in this case pursuant to 28 TEX. ADMIN. CODE § 148.21(h).
6. Carrier failed to prove that the psychotherapy and neurocognitive rehabilitation should not be preauthorized.
7. Claimant, who sustained a compensable injury, is entitled to all health care reasonably required by the nature of the injury as and when needed. She is specifically entitled to health care that cures or relieves the effects naturally resulting from the compensable injury, promotes recovery, or enhances her ability to return to or retain employment, which would include psychotherapy and neurocognitive rehabilitation. The Act § 408.021(a).
8. Providers's request for preauthorization of psychotherapy and neurocognitive rehabilitation should be approved.

ORDER

IT IS ORDERED that preauthorization for psychotherapy and neurocognitive rehabilitation, requested by Provider for Claimant, is granted.

SIGNED this 31st day of January 2003.

MICHAEL J. O'MALLEY
Administrative Law Judge
State Office of Administrative Hearings