

**DOCKET NO. 453-03-1902.M4  
MDR TRACKING NO. M4-02-4596-01**

**AMERICAN TELEPHONE &  
TELEGRAPH & SUBSIDIARIES,  
PETITIONER**

**V.**

**POSITIVE PAIN MANAGEMENT,  
RESPONDENT**

§ **BEFORE THE STATE OFFICE**  
§  
§  
§ **OF**  
§  
§  
§ **ADMINISTRATIVE HEARINGS**

**DECISION AND ORDER**

American Telephone & Telegraph & Subsidiaries (AT&T), appeals from a decision by the Texas Workers' Compensation Commission's Medical Review Division (MRD) that ordered AT&T to pay reimbursement of \$11,124.00 to Positive Pain Management (PPM) for pain management services provided to Claimant \_\_\_\_\_ between July 18, 2001, and August 16, 2001. AT&T argues that the services were not medically reasonable or necessary, while Respondent argues that medical necessity is not subject to retrospective review because AT&T preauthorized the services. This Decision and Order denies AT&T's appeal because the services were preauthorized and are not subject to retrospective review for medical necessity.

**I. JURISDICTION, NOTICE, AND VENUE**

There were no contested issues of jurisdiction, notice, or venue. Therefore, those issues are addressed in the Findings of Fact and Conclusions of Law without further discussion here.

**III. APPLICABLE LEGAL STANDARDS**

The Labor Code requires the Texas Workers' Compensation Commission to establish medical policies and guidelines relating to fees charged or paid for medical services. TEX. LAB. CODE §413.011(a)(1). The rules applicable in this case include the Commission's Rule 133.301, which provides: "The insurance carrier shall not retrospectively review the medical necessity of a medical bill for treatment(s) and/or service(s) for which the health care provider has obtained preauthorization. . . ."

## **IV. Discussion**

### **Introduction**

\_\_\_\_\_ suffered a compensable injury on \_\_\_\_, when the rolling chair she was sitting on caught on some carpet and pushed her forward and onto the ground. \_\_\_\_\_ ended up on her hands and knees with the chair on top of her. The next day \_\_\_\_ went to Dr. Dean Allen, a chiropractor in Dallas. He started \_\_\_\_ on a treatment program of chiropractic manipulation and other physical modalities. Over the following months, \_\_\_\_ had numerous diagnostic tests and saw several doctors. The tests were generally normal and the doctors suspected \_\_\_\_ of malingering and exaggerating her symptoms. These include the following:

- On October 24, 2000, \_\_\_\_\_ obtained MRIs of her left knee, cervical spine, and left wrist. The knee and wrist were normal. The cervical spine showed upper/mid cervical hypolordosis and C5-6 mild disc spondylosis with no stenosis.
- On November 28, 2000, \_\_\_\_\_ had a normal EMG of her lower extremities, and on January 15, 2001, \_\_\_\_\_ had a normal arthrogram of her left wrist.
- Dr. Phil Elizondo, a medical doctor and orthopedic surgeon, saw \_\_\_\_\_ on April 24, 2001. He strongly suspected that \_\_\_\_\_ was malingering. She had a normal examination but made exaggerated complaints of pain and impairment. Dr. Elizondo dismissed \_\_\_\_\_ as a patient because there was nothing he could do for her. He recommended a psychological evaluation.
- On May 31, 2001, \_\_\_\_\_. obtained an MRI of her lumbar spine. This revealed some minor abnormalities, but no nerve root encroachment and no spinal stenosis.
- Respondent PPM performed a psychological evaluation of \_\_\_\_\_ on June 15, 2001. This showed complaints of chronic pain, atypical depression, and “psychological disorder associated with the medical condition.”
- On June 26, 2001, Kelley Timberlake, D.C., saw \_\_\_\_\_ for an impairment rating at the request of AT&T. Dr. Timberlake determined that \_\_\_\_\_ reached maximum medical improvement (MMI) on November 11, 2000, and assigned \_\_\_\_\_ a 0% Whole Person Impairment Rating. Throughout the evaluation, Dr. Timberlake felt that \_\_\_\_\_ did not give full effort.

- Finally, on August 8, 2001, Michael Shippy, D.C., performed a designated doctor evaluation on \_\_\_\_\_. Dr. Shippy observed \_\_\_\_\_'s movements and behavior before and after the actual examination, and he also concluded that \_\_\_\_\_ did not give full effort and exaggerated her symptoms. His final conclusion stated: “. . . I can find no objective evidence of a significant pathology in this patient's case. The pain level that this patient appears to be grossly exaggerated in my opinion.” Dr. Shippy assessed a 0% impairment.

In the meantime, \_\_\_\_\_ received pain management services from PPM between July 11 and August 16, 2001.<sup>1</sup> AT&T preauthorized these services on July 5, 2001. The preauthorization stated:

. . . Based on Physical Medicine review, this reconsideration determination is being overturned and is now recommended for pre-Authorization for 10 days (80 hours) as of 7/5/01 and to be completed by 7/27/01. . . . Reviewed updated clinical documentation dated 6/29/01 which clearly stated that (Claimant) did undergo an Arthrogram of her hand which surgery will not help, has participated in work hardening program and injections. Conservative care has been exhausted and continues with pain. This additional information substantiates the appropriateness for this request. Upon completion of the 10 days, will review the progress report to substantiate the appropriateness for continued treatment.

AT&T issued a second preauthorization on July 26, 2001, which stated:

. . . Based on Physician peer, Recommend Pre Authorization for the requested program of 10 days (80 hours) . . . Clinical documentation in medication and progress with pain issues substantiate the continued program.

AT&T paid for the services rendered by PPM between July 30-August 3, 2003, but denied payment for the remaining services with the notation “unnecessary treatment with peer review.” PPM appealed the denial, and on December 18, 2002, the MRD ordered reimbursement of \$11,124.00, plus accrued interest. MRD noted that under TWCC Rule 133.310, retrospective review of medical necessity was not allowed because AT&T had preauthorized the services. This appeal followed.

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<sup>1</sup> PPM's services began July 11, 2001, but MRD only awarded reimbursement beginning July 18, 2001, because the deadline to appeal had expired for the serviced rendered before July 18. PPM does not dispute the MRD's decision on those services. Therefore, the only dates of service at issue are July 18B August 16, 2001.

### **Parties' Arguments**

Dr. Kelley Timberlake testified for AT&T. As noted previously, she saw Claimant \_\_\_ on June 26, 2001. During that visit, \_\_\_ had braces on her knee, back, and wrist, and she displayed exaggerated pain behavior with grimaces, crying, and movements that were deliberate, slow, and guarded. However, Dr. Timberlake found no pathology or objective reason for \_\_\_'s alleged pain, and certain tests that showed that \_\_\_ gave less than full effort and faked many of her symptoms.

She also noted that other doctors who examined \_\_\_ found no objective evidence of pathology. Therefore, because \_\_\_ had no objective evidence of any physical injury, Dr. Timberlake testified that a pain management program was not appropriate. In her opinion, the purpose of a pain management program is to address physical injuries, but without evidence of a physical injury, such a program was not medically necessary. She added that \_\_\_'s lack of improvement in the program also showed that it was not appropriate.

On cross-examination, Dr. Timberlake agreed that an MRI of \_\_\_'s spine showed mild disc spondylosis, but she stated that this was a pre-existing degenerative process that did not result from the accident.

Dr. Arash Sarabi, D.C., testified for PPM. He reviewed the records on \_\_\_ but does not recall actually seeing her. Dr. Sarabi explained that chronic pain management includes vocational, psychological, physical, and medication management components to treat pain that has existed for more than six months. In a case such as \_\_\_, the psychological component is important to determine the cause for lack of effort and symptom exaggeration. Dr. Sarabi testified that \_\_\_ was an appropriate candidate for a chronic pain management program because she overused medical care, took excessive drugs, displayed excessive pain behavior, and was afraid to move body parts. He agreed that \_\_\_'s injury was basically a sprain/strain and that she had no objective findings of physical injury. But, in his view, one of the purposes of the program is to treat patients with psychological problems. Dr. Sarabi also stated that the program was successful because when it started \_\_\_ could not work, do household chores, or care for her children, but when it concluded she was released to return to work.

On cross examination Dr. Sarabi stated that when PPM provided services to \_\_\_, she made complaints about her low back and leg rather than her wrist and arm. He agreed that \_\_\_'s problems were primarily psychological rather than physical and that there were no objective findings of back injury. As a result, PPM emphasized the psychological component of her treatment, although it also provided some acupuncture, range-of-motion, and repetitive-activity therapy.

In argument, AT&T states that the preauthorization was for the left knee, wrist, and hand, but that the services provided included \_\_\_\_'s back and shoulder. It also notes that originally PPM billed the services only as depressive disorder and psychological factors, and PPM only added "knee and wrist strain" after AT&T objected. AT&T also argues that preauthorized services may be subjected to retrospective review if a provider misrepresents the facts justifying the services. In AT&T's view, PPM misrepresented that \_\_\_\_ had a physical injury, when in fact she did not.

In other words, to justify chronic pain management, the pain must originate with an actual tissue injury, which did not exist here.

PPM argues that the only issue on appeal is whether the chronic pain management services were medically reasonable and necessary because this is only reason given by AT&T for non-payment in its EOB. However, because AT&T preauthorized the services, TWCC Rule 133.301 prohibits AT&T from retrospectively reviewing whether the services were reasonable and necessary. PPM further argues that chronic pain management does not have to address any particular body part as argued by AT&T. Instead, chronic pain is frequently associated with emotional or behavioral problems such as \_\_\_\_ experienced.

## **V. ALJ'S ANALYSIS AND DECISION**

Because AT&T preauthorized chronic pain management services for \_\_\_\_, the ALJ finds that AT&T may not now challenge whether those services were medically reasonable and necessary. Therefore, the ALJ denies AT&T's appeal and affirms the MRD decision requiring AT&T to reimburse PPM in the amount of \$11,124.00.

As PPM has pointed out, TWCC Rule 133.301 provides:

The insurance carrier shall not retrospectively review the medical necessity of a medical bill for treatment(s) and/or service(s) for which the health care provider has obtained preauthorization. . . ."

In this case, AT&T preauthorized the chronic pain management services on July 5, 2001, and it extended the preauthorization on July 26, 2001. Further, AT&T issued these preauthorizations after initially denying preauthorization. Thus, it is clear that AT&T carefully considered the request before approving it. Likewise, the record is clear that lack of medical necessity was the only reason given by AT&T for denial of payment in its EOB.

AT&T argued that PPM misrepresented facts in order to obtain preauthorization. However, there is no evidence to support this argument. The ALJ has reviewed the request for preauthorization cited by AT&T and finds that PPM made no misrepresentations. In particular, AT&T argued that PPM stated that \_\_\_'s chronic pain resulted from a specific tissue injury. In fact, however, the request makes clear that \_\_\_ was making subjective complaints of pain that appeared to be psychological and emotional in origin. Thus, the ALJ finds that PPM did not make any misrepresentations of fact in order to obtain preauthorization.

In this case, AT&T preauthorized the services at issue and is precluded from denying payment based on lack of medical necessity or reasonableness. Further, the ALJ finds that PPM did not misrepresent facts in seeking preauthorization. Therefore, AT&T's appeal is denied and AT&T is ordered to reimburse PPM for the chronic pain management services provided to \_\_\_.

## **VI. FINDINGS OF FACT**

1. On \_\_\_, \_\_\_, the Claimant, sustained a compensable injury during the course and scope of her employment with AT&T.
2. At the time \_\_\_ sustained the compensable injury, AT&T was self insured for workers' compensation insurance.
3. Between July 18, 2001, and August 16, 2001, Positive Pain Management (PPM) provided chronic pain management services to \_\_\_.
4. On July 5, 2001, and July 26, 2001, AT&T preauthorized the pain management services provided to \_\_\_ by PPM.
5. PPM did not make any misrepresentations in order to obtain the preauthorizations described in Finding of Fact No. 4.
6. AT&T refused to pay for a portion of the services described in Finding of Fact No. 3.
7. The only reason given by AT&T for denying payment for the disputed services was lack of medical reasonableness and necessity.
8. The amount in dispute is \$11,124.00.
9. PPM appealed the AT&T's denial of payment to the Texas Workers' Compensation Commission's Medical Review Division (MRD).

10. On December 18, 2002, MRD granted PPM's appeal and ordered AT&T to pay PPM \$11,124.00 plus interest.
11. AT&T filed a timely request for hearing to appeal the decision of the MRD.

## **VII. CONCLUSIONS OF LAW**

1. The Texas Workers' Compensation Commission has jurisdiction to decide the issue presented pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE §413.031.
2. 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. LAB. CODE §§402.073(b) and 413.031(d) and TEX. GOV'T CODE, Ch. 2003.
3. AT&T timely requested a hearing pursuant to 28 TEX. ADMIN. CODE §§102.3, 102.5(h), 102.7, and 148.3.
4. The parties received adequate and timely notice of the hearing pursuant to TEX. GOV'T CODE §2001.051.
5. Venue was established pursuant to 28 TEX. ADMIN. CODE §148.6.
6. AT&T had the burden of proof in this matter by a preponderance of the evidence. 28 TEX. ADMIN. CODE §148.21(h) and (i).
7. Because AT&T preauthorized the services at issue, AT&T may not retrospectively review the medical reasonableness or necessity of the treatment and services.
8. The only reason given by AT&T for denying payment to PPM for the chronic pain management services at issue was lack of medical reasonableness and necessity.
9. Based on Conclusions of Law Nos. 7 and 8, AT&T's appeal is denied.

**ORDER**

**IT IS, THEREFORE, ORDERED** that AT&T's appeal of the MRD decision in Medical Dispute Resolution Docket No. M4-02-4596-01 is Denied, and that Petitioner AT&T shall reimburse Positive Pain Management (PPM) for chronic pain management services provided to Claimant \_\_\_\_\_ in the amount of \$11,124.00, plus interest for the time and at the rate provided by law.

SIGNED July 11, 2003.

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THOMAS H. WALSTON  
ADMINISTRATIVE LAW JUDGE  
STATE OFFICE OF ADMINISTRATIVE HEARINGS**