DOCKET NO. 453-03-2032.M2

BEHAVIORAL HEALTHCARE ASSOCIATES, *Petitioner*	:	**BEFORE THE STATE OFFICE**
V.	:	**OF**
AMERICAN CASUALTY COMPANY OF READING, PA., *Respondents*	:	**ADMINISTRATIVE HEARINGS**

DECISION AND ORDER

This case involves the appeal by Behavioral Healthcare Associates (Petitioner) from the decision of an Independent Review Organization (IRO) that denied a request for preauthorization for four hours of psychological evaluation and testing. The decision disagrees with the IRO, finding the tests will produce objective data that will better enable the treating doctor to develop a treatment plan for ____(Claimant), whose painful neck and back condition is complex. Thus, the testing is medically necessary to relieve the effects naturally resulting from her work-related back injury and should be preauthorized.

I.
PROCEDURAL HISTORY, NOTICE & JURISDICTION

There are no contested issues of notice or jurisdiction in this proceeding. Therefore, these matters are set out in the findings of fact and conclusions of law without further discussion here.

On April 23, 2003, Barbara C. Marquardt, Administrative Law Judge (ALJ), convened the hearing on the 4th floor of the William P. Clements Building, 300 West 15th Street, Austin, Texas. Michael Ghormley, Ph.D., a licensed psychologist, appeared and represented the Petitioner. American Casualty Company of Reading, PA. (Carrier) was represented by Phong Phan, attorney. The record closed on the same day.

II.
LEGAL STANDARDS

A. Entitlement to Medical Benefits

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. The employee is specifically entitled to health care that: (1) cures or relieves the effects naturally resulting from the injury; (2) promotes recovery; or (3) enhances the ability to return to or retain employment.[1] "Health care" includes "all reasonable and necessary medical . . . services."[2]

B. Preauthorization

Certain categories of health care identified by the Texas Workers' Compensation Commission require preauthorization, which is dependent upon a prospective showing of medical necessity.[3] Psychological testing requires preauthorization.[4]

III.
EVIDENCE

A. Basic Facts

On_____, the injured worker (Claimant), who was 54 years old at the time, stepped on a broken wood piece when walking, which caused her to turn her ankle and fall forward on her right side onto a concrete floor. She sustained a work-related injury to her cervical and lumbar spine. On January 7, 2002, the company physician put her on light duty, which she worked for two or three weeks, while taking Vicodin and Skelaxin with little, if any, pain relief. Since then, she has not been able to work at all.

The Claimant was employed as a proof reader for_____, which required a Below Sedentary physical demand level (pdl). She began to see her treating physician, Troy Van Biezen, D.C., in January 2002, who treated her with physical therapy, hot packs, massage, and TENS. An MRI of the lumbar spine on March 18, 2002, found moderate left L5 foraminal narrowing secondary to posteriolateral bulging disc degeneration and anterolisthesis of L5. It also revealed postsurgical changes at the L4-5 and L5-S1 levels and mild-to-moderate, multi-level disc desiccation.

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[1] TEX. LAB. CODE ANN. '408.021.

[2] TEX. LAB. CODE ANN. '401.011(19).

[3] TEX. LAB. CODE ANN. '413.014.

[4] 28 TEX. ADMIN. CODE '134.600(h)(4).

On June 2, 2002, the Claimant completed a Functional Capacity Evaluation (FCE), which found she could handle a Below Sedentary pdl, but that she was not yet able to work due to issues of pain, her physical deconditioning, and her poor tolerance to functional activities. The FCE examiner stated that a premature return of the Claimant to the work force would result in failure and increase the risk of re-injury. Additionally, the examiner noted that the Claimant suffered from other non-work related conditions (fibromyalgia, COPD, arthritis, myelodisplasia, cardiac disease, and an enlarged spleen[5]), which negatively affect her potential for rehabilitation. The evaluation concluded that the Claimant should be referred to a chronic pain program.

Dr. Van Biezen also referred the Claimant to a clinical psychologist, who interviewed her. The psychologist identified depressive and anxious tendencies that could be affecting her physical status. At issue in the case is whether the four-hour follow-up using psychological assessment tools recommended by the psychologist should be preauthorized for the Claimant. The requested tests include all of the following: MMPI-2, Beck Depression Inventory (BDI), McGill Pain Inventory, State-Trait Anxiety Inventory, Pain and Impairment Relationship Scale (PAIRS), and the Coping Strategies Questionnaire (CSQ).

The Independent Review Organization (IRO) issued an opinion written by a licensed chiropractor, who found the additional tests were not medically necessary because:

$ No documentation indicates what additional information would be gained that the psychologist did not find in the clinical interview.

$ Information gleaned from psychological inventories and profiles tends to be subjective.

$ The appropriate treatment plan can be determined with the psychological information already obtained plus past responses to similar care.[6]

B. Petitioner's Evidence

Treating Doctors

[5]Her spleen was removed prior to this hearing.

[6]This last reason does not appear to recognize that until the psychologist=s clinical interview that led to the request for four hours of testing, the Claimant had not had psychological intervention following this injury. Ex. 3.

As previously mentioned, Troy Van Biezen, D.C., was the original treating doctor to request the psychological testing, based on the recommendation of Karin Curtiss, Ph.D., the psychologist who interviewed the Claimant. Dr. Van Biezen wrote that he referred the Claimant to Petitioner on June 12, 2002, for a "comprehensive mental health evaluation, . . . to determine whether her high reported pain levels, poor ability to manage her pain, and her deconditioned physical state were being impacted by a secondary medical health problem, and to clarify the extent to which these symptoms are injury-related."[7] The doctor felt the FCE documented the Claimant's poor pain management skills and indicated the need to treat her depression and teach her coping skills in order to allow her to achieve successful rehabilitation.

Some time after the preauthorization dispute began, the Claimant moved to Rusk, Texas and, therefore, she changed to Michael Goad, D.C., as her treating doctor. When the Carrier challenged whether her current doctor supported this preauthorization request, Dr. Goad wrote a letter in March 2003, explaining that on his initial examination of the Claimant, he felt she had received a good course of conservative care "without improvement." He has referred her to a Dr. Pasad, who will be doing selective nerve block treatments. Additionally, he concurs with the need for psychological testing and possible interventional treatment, because she exhibits significant signs of depression and anxiety; as well as hostility related to her ongoing pain, lack of improvement with treatment, the carrier's denial of injured areas, and the financial difficulties the injury has imposed on her life.[8] She also expressed to him the feeling that her other health problems have worsened due to the work-related injuries, which have added stress to her body.[9]

Psychologists

During the initial preauthorization request period, Patricia McBride, Ph.D., conferred with Dr. Marcus J. Goldman, a board certified psychiatrist who did a peer review analysis for the Carrier. She explained to him that she had spoken with the physical therapist who performed the FCE on the Claimant regarding the possibility of her entering a work conditioning program; he had expressed concern that the Claimant's depression might interfere with *any* rehabilitation efforts. Dr. McBride felt she had answered all of Dr. Goldman's questions, and she and Dr. Van Biezen were surprised when Dr. Goldman turned down the request because it did not contain Aenough information.@

[7]Ex. 10.

[8]She had to give up her house due to financial problems stemming from the injury.

[9]Ex. 1.

Karin Curtiss, Ph.D., the clinical psychologist who interviewed the Claimant on July 18, 2002, indicated her goal was to determine an appropriate diagnosis, to establish the degree to which the Claimant's symptoms were compensable, and to design an effective treatment plan. During the one-hour session, the Claimant had to shift her position and stand frequently; grimaced, moaned and expressed her discomfort several times. At that point in time, the Claimant was taking Effexor (for depression), Vicodin (for another condition),[10] Plaquenil, Prednisone, Prevacid, and medication for her COPD condition. She reported her primary location of pain as in the low back and around her waistline; it also radiates down the right side of her body and down her right shoulder and hand. It is constant, burning, and dull, and she rated it as a 5 (on a 0-9 scale, with 9 being the worst).

The Claimant reported the injuries have very seriously restricted her life, making her unable to work or even do housework and sewing. Apparently, her mother and sister both have histories of significant depression. The Claimant has attended two outpatient treatment programs in the past for depression related to previous health problems, and they were helpful and enabled her to return to work. Her symptoms from the depression and anxiety include: decreased energy, irregular sleep patterns, boredom, restlessness, frustration, tension, worrying, and fearfulness. She currently has to rely on her two sisters to help her cope with her injury. Dr. Curtiss did not reach a diagnosis after her thorough interview. Instead, she found that given the Claimant's current level of distress, she should be evaluated for appropriateness for individual counseling, which would require four hours of psychological testing.

Another licensed psychologist, Jonnalee Barta, Ph.D., wrote a letter supporting the need to administer the tests to the Claimant. She identified the following parts of the Claimant's history as justifying the need for the tests: pain persisting beyond the expected tissue-healing time, potential permanent loss of functioning that will require major psychological assessment, her acute distress as well as her history of depression, and the expectation that her pain level will improve with effective treatment of her emotional distress. Dr. Barta's objective reasons[11] for supporting the use of the tests on Claimant can be summarized as follows:

$ The American Medical Association has established guidelines, which describe psychological testing as an integral part of evaluating pain, and for patients utilizing multiple medical services.

$ Such tests increase the likelihood of appropriate diagnosis, treatment, and prognosis.

$ Research over a 30-year span has found that clinicians who rely solely on clinical judgment for psychological treatment considerations are significantly less successful than those who use formalized, actuarial-based tests.

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[10]The Claimant had been taking Vicodin for four years, had increased her intake over time, but stated she tried to keep it down. Ex. 3.

[11]Dr. Barta supported her reasons with citations to the medical literature, and she attached some of the literature to her letter. *See* Ex. 3.

- $ The tests refine clinical judgments, so that a precise, appropriate diagnosis and treatment plan can be implemented.

- $ Most experts view the use of psychological tests as the standard of care for providing effective intervention to patients like the Claimant.

- $ In particular, the MMPI-2 has been proven to detect conditions like longstanding maladaptive personality traits and pervasive difficulties, which are correlated with decreased pain treatment outcomes. In fact, it is a better evaluative tool than physical examinations and radiological studies. The MMPI-2 can also identify other psychological conditions such as heightened somatization of pain, or whether the patient has a malingering/factitious disorder.

- $ The MMPI-2 and other proposed tools (BDI, McGill Pain Inventory, State-Trait Anxiety Inventory, PAIRS, and the CSQ) are approved by the AMA as essential tools to assess patients with functional limitations and pain. They provide data to determine a patient's ability to cope with pain, so that an objective treatment plan and a prognosis for cost-effective, yet high quality, treatment can be determined

Dr. Barta concluded that with a patient like the Claimant, clinical judgment would be merely speculative. It will require psychological testing to construct an objectified, behaviorally oriented and measurable treatment plan.

Dr. Ghormley (Petitioner's representative at the hearing), clarified several points in his testimony at the hearing. In addition to supporting and reiterating the points described above, he noted that trained psychologists, not psychiatrists and certainly not chiropractors, are the specialists trained in psychometric measurement. Thus, he testified that the IRO opinion by a chiropractor, and the decisions by Carrier's peer review psychiatrists, should be given little, if any, weight in this case. Dr. Ghormley testified that psychologists are generally able to develop accurate treatment plans for approximately 25% of patients based on clinical interviews only B 75% of patients are given both clinical interviews and psychological testing.

Dr. Ghormley also noted that the chronic pain management program recommended by the therapist who conducted the FCE is complex and very expensive. If the testing reveals that the Claimant has a personality disorder, is a drug-seeker, or a malingerer, it would be to the Carrier's benefit to determine that from the relatively inexpensive four hours of testing and perhaps avoid such a program, or individual counseling sessions, altogether.

While they are no longer in effect, Dr. Ghormley noted that one of the learned treatises cited in Dr. Barta's letter was referenced in the Commission's Mental Health Treatment Guidelines. The guidelines are, in Dr. Ghormley's opinion, the Commission's Alast word@ on this subject.[12]

[12]AA Guide for Psychological Testing and Evaluation for Chronic Pain,@ EVALUATION AND TREATMENT OF CHRONIC PAIN (3rd Ed. 1998).

Finally, Dr. Ghormley testified that the DSM-IV diagnostic criteria (discussed below)[13] were simply not the answer here, because DSM-IV diagnoses can only be based on reportable criteria found during an interview. In this case, he concurred with Dr. Curtiss, the psychologist who conducted that interview, that the Claimant's clinical picture was too complex to form a diagnosis without additional testing.

3. Carrier's Evidence

As previously mentioned, psychiatrist Marcus Goldman did a peer review analysis for the Carrier on June 18, 2002, which appears to have been a record review plus a telephone conversation with Dr. McBride. His report is very uninformative; it merely describes a lack of data to support the request and opines that the testing is not medically necessary.

On June 26th, clinical psychologist Peter Mosbach, Ph.D., did another peer review analysis of the Claimant's medical records and had a telephone conversation with Dr. McBride. He stated that psychological testing is rarely used to diagnose a patient, and that only clinical signs and symptoms are used to review the DSM-IV criteria for determining a diagnosis. Furthermore, he opined that research supports his opinion, but he gave no specific citations to the medical or psychological literature. Interestingly, he did state: "Psychological testing can be useful if a clinical interview determines that there is a significant problem in determining a patient's diagnosis, or if the diagnostic picture is confusing or contradictory."[14]

Another board certified psychiatrist, Dr. Helen Sanders, turned down the requested testing as not medically necessary on August 1st. She reviewed the medical records and also had a telephone conversation with Dr. McBride. Dr. Sanders found an adequate diagnostic assessment could be done without testing, and that there were no specific questions the testing could answer that the clinical psychologist's interview could not. However, Dr. Sanders did recommend that the Claimant be given a Psychophysiologic Profile Assessment (PPA), which has in fact been done, because it would determine whether the Claimant would benefit from biofeedback, which is a standard treatment for this type of pain.

IV.
ANALYSIS & CONCLUSION

The Petitioner proved its case well beyond a preponderance of the evidence. Without belaboring the point, none of the Carrier's peer reviewers ever met the patient. They did not back up any of their opinions with citations to the medical literature, as Petitioner did. In fact, Dr. Mosbach's statement quoted above *supports* Petitioner's case, because the Claimant's diagnostic picture is complex and confusing. Perhaps the least convincing part of the Carrier's case was the IRO opinion by a chiropractor, who would have received no training whatsoever on the subject, that psychological inventories and profiles tend to be subjective.

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[13]The common name for the Diagnostic and Statistical Manual of Mental Disorders, published by the American Psychiatric Association in the early 1990's.

[14]Ex. 4 at 127.

The record reveals that the Claimant was a sick woman prior to the injury, and that she also had a history of depression and anxiety prior to the injury. As Dr. Ghormley noted, she has been taking Vicodin for at least four years, which could raise the specter of drug-seeking behavior. Coupled with the Claimant's lingering, and seemingly severe pain, it seems only logical that four hours of testing in order to determine what treatment, if any, would benefit her would be the most cost effective method of either pinpointing what she needs, or determining that she cannot be helped in the psychological realm. Therefore, preauthorization for four hours of psychological testing is approved.

At the hearing, the Carrier introduced proof that on April 17, 2003, it filed a dispute as to whether the Claimant's psychological condition is related to her compensable injury. Therefore, the ALJ will make the order in this case conditional until the outcome in that proceeding has been decided.

V.
FINDINGS OF FACT

1. On_____ the injured worker (Claimant), who was 54 years old at the time, stepped on a broken wood piece when walking, which caused her to turn her ankle and fall forward on her right side onto a concrete floor. She sustained a work-related injury to her cervical and lumbar spine.

2. She began to see her treating physician, Troy Van Biezen, D.C., in January 2002, and she received chiropractic care including physical therapy, hot packs, massage, and TENS.

3. An MRI of the lumbar spine on March 18, 2002, found moderate left L5 foraminal narrowing secondary to posteriolateral bulging disc degeneration and anterolisthesis of L5. It also revealed postsurgical changes at the L4-5 and L5-S1 levels and mild-to-moderate, multi-level disc desiccation.

4. The Claimant also suffers from other health problems, which are non-work related conditions (fibromyalgia, COPD, arthritis, myelodisplasia, and cardiac disease).

5. On June 2, 2002, the Claimant completed a Functional Capacity Evaluation (FCE).

    1. It found she was not yet able to work due to issues of pain, her physical deconditioning, and her poor tolerance to functional activities.

    2. A premature return of the Claimant to the work force would result in failure and increase the risk of re-injury.

    3. The evaluation concluded that the Claimant should be referred to a chronic pain program.

6. Dr. Van Biezen referred the Claimant to a clinical psychologist, who interviewed her.

1. The psychologist identified depressive and anxious tendencies that could be affecting her physical status.

2. In addition, preauthorization was requested for the Claimant to have a four-hour follow-up using the following psychological assessment tools: MMPI-2, Beck Depression Inventory (BDI), McGill Pain Inventory, State-Trait Anxiety Inventory, Pain and Impairment Relationship Scale (PAIRS), and the Coping Strategies Questionnaire (CSQ).

3. Following the Carrier's denial, the Independent Review Organization issued an opinion affirming that denial.

7. The Claimant exhibits significant signs of depression, anxiety, and hostility related to her ongoing pain, lack of improvement with treatment, the carrier's denial of injured areas, and the financial difficulties the injury has imposed on her life.

8. Karin Curtiss, Ph.D., interviewed the Claimant on July 18, 2002, but she was unable to reach a diagnosis. Instead, she found that given the Claimant's current level of distress she should be evaluated for appropriateness for individual counseling, which would require four hours of psychological testing.

   a. During the one-hour session, the Claimant expressed her discomfort several times.
   b. At that point in time, the Claimant was taking Effexor (for depression), Vicodin (for another condition), Plaquinil, Prednisone, Prevacid, and medication for her COPD condition.

   c. Her primary location of pain was in the low back and around her waistline; it also radiated down the right side of her body and down her right shoulder and hand. It was constant, burning, and dull, and she rated it as a 5 (on a 0-9 scale, with 9 being the worst).

   d. Her symptoms from the depression and anxiety included: decreased energy, irregular sleep patterns, boredom, restlessness, frustration, tension, worrying, and fearfulness.
   e. She has a family history of significant depression, and she has attended two outpatient treatment programs in the past for depression related to previous health problems that were helpful and enabled her to return to work.

   f. The Claimant cannot work or even do housework and sewing, and she has to rely on her two sisters to help her cope with her injury.

9. All of the following parts of the Claimant's case justify the need for the tests: pain persisting beyond the expected tissue-healing time, potential permanent loss of functioning that will require major psychological assessment, her acute distress as well as her history of

depression, and the expectation that her pain level will improve with effective treatment of her emotional distress.

10. Guidelines established by the American Medical Association describe psychological testing as an integral part of evaluating pain, and for patients utilizing multiple medical services.

11. Such tests increase the likelihood of appropriate diagnosis, treatment, and prognosis.

12. Research over a 30-year span has found that clinicians who rely solely on clinical judgment for psychological treatment considerations are significantly less successful than those who use formalized, actuarial-based tests.

13. The tests refine clinical judgments, so that a precise, appropriate diagnosis and treatment plan can be implemented.

14. The use of psychological tests are the standard of care for providing effective intervention to patients like the Claimant.

    a. In particular, the MMPI-2 has been proven to detect conditions like longstanding maladaptive personality traits and pervasive difficulties, which are correlated with decreased pain treatment outcomes.

    b. The MMPI-2 can also identify other psychological conditions such as heightened somatization of pain, or whether the patient has a malingering/factitious disorder.

15. For a patient like the Claimant, who has a past history of depression/anxiety and a very complex group of medical conditions, clinical judgment from a psychological interview alone would merely derive a speculative diagnosis. It will require psychological testing to construct an objectified, behaviorally oriented and measurable treatment plan.

    a. Psychologists are generally able to develop accurate treatment plans for approximately 25% of patients based on clinical interviews only B 75% of patients are given both clinical interviews and psychological testing.

    b. The chronic pain management program recommended by the therapist who conducted the FCE is complex and very expensive. If the testing reveals that the Claimant has a personality disorder, is a drug-seeker, or a malingerer, it would be to the Carrier's benefit to determine that from the relatively inexpensive four hours of testing and perhaps avoid such a program, or individual counseling sessions, altogether.

VI.
CONCLUSIONS OF LAW

1 The Texas Workers' Compensation Commission (the Commission) has jurisdiction to decide the issue presented pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. '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 ANN. §413.031(k) and TEX. GOV'T CODE ANN., Ch. 2003.

3. As referenced in the Findings, the Claimant is entitled to have the four hours of psychological testing, because they are medically necessary to relieve the effects naturally resulting from her compensable injury and to aid her in returning to the workforce. TEX. LAB. CODE ANN. §408.021.

4. Psychological testing requires preauthorization. TEX. LAB. CODE ANN. §413.014; 28 TEX. ADMIN. CODE §134.600 (h)(4).

ORDER

IT IS, THEREFORE, ORDERED that the Claimant, ___is entitled to preauthorization for four hours of psychological testing. This order is conditioned upon a final resolution favorable to the Claimant in the Carrier's dispute as to whether her psychological condition is related to her compensable injury.

SIGNED this 6th day of May 2003.

BARBARA C. MARQUARDT
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS