

AMERICAN HOME	§	BEFORE THE STATE OFFICE
ASSURANCE COMPANY,	§	
<i>Petitioner</i>	§	
	§	
V.	§	OF
	§	
VALLEY INTEGRATED,	§	
PAIN ASSESSMENT & CARE,	§	
<i>Respondent</i>	§	ADMINISTRATIVE HEARINGS

DECISION AND ORDER

American Home Assurance Company (Petitioner) is appealing the decision of Ziroc, an independent review organization (IRO) certified by the Texas Department of Insurance, in Texas Workers' Compensation Commission (Commission) Medical Review Division tracking number M2-03-0778-01 granting preauthorization for a 30-session chronic pain management program. The IRO determined from the medical documentation submitted for review that the requested medical procedure was medically necessary to treat the Claimant's condition. The Administrative Law Judge (ALJ) finds the request for preauthorization should be granted because the requested treatment is medically necessary.

I. PROCEDURAL HISTORY, JURISDICTION, AND NOTICE

On May 27, 2003, ALJ Michael J. Borkland convened the hearing at the William P. Clements Building, 300 West 15th Street, Austin, Texas. Petitioner was represented by Dan C. Kelley, attorney. Johnny Oliva, Director of Operations for Valley Integrated Pain Assessment & Care (Respondent), appeared *pro se* via telephone. Notice and jurisdiction were not contested and will be addressed in the findings of fact and conclusions of law. Following the presentation of evidence, the record was left open until June 20, 2003, to allow the parties to file post-hearing materials.

II. DISCUSSION

1. Background

Claimant, a 43-year old female, suffered an injury to her neck and head on _____, while working at _____. She was injured and briefly lost consciousness when she stood up and hit her head on a shelf. An MRI revealed a mild posterior disc bulge at the C3-4 level. Treatment for the injury, which has given Claimant only temporary relief, included physical therapy, medications, use of a TENS unit, and trigger point injections.

Claimant continues to experience constant pain, for which her treating physician recommended a chronic pain management program. A chronic pain management assessment determined that Claimant suffers from severe pain behaviors, functional limitations, and mental and emotional dysfunctions, which have been disruptive to her activities of daily living. It was concluded that Claimant is an excellent candidate for an outpatient chronic pain management program.

2. Evidence

The documentary evidence presented consisted of two exhibits, and several scientific articles filed post-hearing by Petitioner. Petitioner's Exhibit 1 contains 58 pages of medical records, and Respondent's Exhibit 3 contains 73 pages of medical records, many of which were also contained in Exhibit 1.

Robert J. Barth, PhD., testified for Petitioner. Dr. Barth holds a doctorate degree in clinical psychology and is a certified neuro-psychologist. He reviewed the medical records and testified that he could not endorse the requested treatment because it lacked scientific credibility, and that chronic pain management treatment does not work. Additionally, he stated that Claimant was a worse than average candidate for the program because her mental illness diagnosis, depression, and severe anxiety were predictive of a poor outcome. Dr. Barth also believed that Claimant would not have a positive outcome from the treatment because she was not working, had failed previous treatment, and reported high levels of pain.

3. Conclusion

The burden is on the Petitioner to show that the IRO's finding of medical necessity for the requested procedure was incorrect. Dr. Barth, who is a clinical psychologist, testified that chronic pain management treatment is ineffective. He provided several reasons and cited to a number of scientific articles that supported his viewpoint. However, Dr. Barth's testimony was not particularly convincing and did not outweigh the opinions of the medical doctors and other health professionals who have actually examined and treated Claimant. The documentation prepared by Claimant's treating doctors clearly showed that the requested treatment is medically necessary to treat the Claimant's compensable injury and it should be preauthorized.

III. FINDINGS OF FACT

1. On _____, Claimant sustained an on-the-job injury to her head and neck when she stood up and hit her head on a shelf.
2. At the time of Claimant's injury, American Home Assurance Company (Petitioner) provided workers' compensation insurance to the Claimant's employer.
3. An MRI revealed a mild posterior disc bulge at the C3-4 level.
4. Treatment for the injury, which has given Claimant only temporary relief, included physical therapy, medications, use of a TENS unit, and trigger point injections.
5. Claimant continues to experience constant pain, and her treating physician recommended her for a chronic pain management program.
6. Claimant suffers from severe pain behaviors, functional limitations, and mental and emotional dysfunctions, which have been disruptive to her activities of daily living.

7. Claimant is an excellent candidate for an outpatient chronic pain management program.
8. Valley Integrated Pain Assessment & Care (Respondent) requested preauthorization for a 30-session chronic pain management program.
9. On January 21, 2003, and January 31, 2003, Petitioner denied the Respondent's request for the services referred to in Finding of Fact No. 8.
10. The Respondent requested dispute resolution services from the Texas Workers' Compensation Commission's Medical Review Division.
11. On March 14, 2003, Ziroc, LLC, an independent review organization certified by the Texas Department of Insurance, issued its decision granting preauthorization because the medical records provided showed that the requested care was medically necessary.
12. On March 17, 2003, Petitioner filed a request for hearing to contest preauthorization of the requested services.
13. The Commission sent notice of the hearing to the parties on April 15, 2003. The hearing notice informed the parties of the matter to be determined, the right to appear and be represented by counsel, the time and place of the hearing, and the statutes and rules involved.
14. The hearing on the merits convened on May 27, 2003, before Michael J. Borkland, Administrative Law Judge. Petitioner was represented by Dan C. Kelley, attorney. Johnny Oliva, Director of Operations for Valley Integrated Pain Assessment & Care, appeared *pro se* via telephone. Following the filing of post-hearing materials, the record closed on June 20, 2003.

V. 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 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. §§402.073 and 413.031(k) and TEX. GOV'T CODE ANN. ch. 2003.
3. Petitioner timely filed notice of appeal, as specified in 28 TEX. ADMIN. CODE (TAC) § 148.3.
4. Proper and timely notice of the hearing was effected upon the parties according to TEX. GOV'T CODE ANN. ch. 2001 and 28 TAC §148.4(b).

5. Petitioner had the burden of proving the case by a preponderance of the evidence, pursuant to 28 TAC § 148.21(h) and (i), and 1 TAC 155.41.
6. As provided by TEX. LAB. CODE ANN. § 413.014 and 28 TAC §134.600(h)(10)(B), preauthorization is required for a chronic pain management treatment program.
7. Based on Findings of Fact Nos. 3 - 7, the requested medical procedures are medically necessary.
8. Based on Findings of Fact Nos. 3 - 7, and Conclusions of Law Nos. 5 - 7, Claimant is entitled to preauthorization for the medically necessary treatment.

ORDER

IT IS, THEREFORE, ORDERED that Petitioner, American Home Assurance Company, pay the reasonable and necessary cost of providing the Claimant the requested chronic pain management treatment program.

SIGNED this 14th day of July 2003.

MICHAEL J. BORKLAND
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS