

AMERICAN HOME ASSURANCE, COMPANY, PETITIONER	§ § § § § § § § § § §	BEFORE THE STATE OFFICE
V.		OF
LAKE ARLINGTON CENTER FOR PAIN MANAGEMENT RESPONDENT		ADMINISTRATIVE HEARINGS

DECISION AND ORDER

I. DISCUSSION

American Home Assurance Company (Petitioner) appealed the Findings and Decision of the Texas Workers' Compensation Commission (Commission) acting through Maximus, an Independent Review Organization (IRO) granting the preauthorization request of ____ (Patient) for a chronic pain management program. The Commission determined that the chronic pain management program was medically necessary within the meaning of Sections 408.021 and 401.011(19) of the Texas Workers' Compensation Act, TEX. LABOR CODE ANN. § 401 *et. seq.* (the Act).

This decision grants the relief sought by Petitioner and denies the requested chronic pain management program as not medically necessary.

A one-day hearing convened on June 2, 2003, before Administrative Law Judge (ALJ) Howard S. Seitzman. Peter Macaulay represented Petitioner. Lake Arlington Center for Pain Management (Respondent) did not appear. There were no contested issues of notice or jurisdiction. The record closed following adjournment of the hearing on June 2, 2003.

Patient, a 30-year-old female, sustained a work related injury on or about ____, when she slipped on an oily floor, fell and injured her lower back and right hand. Diagnostic tests on Patient included an EMG, x-rays, an MRI, and a CT discogram. Diagnoses included lumbar radicular syndrome with right sciatica, left wrist pain with internal derangement and cervical sprain/strain. During rehabilitation, Patient injured her neck during "horseplay by other patients" and she failed to complete the rehabilitation program.

Multiple practitioners treated Patient. She received oral medications, physical therapy, work hardening, hot/cold therapy and electric pulse therapy. Patient sought a chronic pain management program when none of the treatment modalities totally relieved her pain.

By letter dated April 1, 2002, the IRO concluded a chronic pain management program was medically necessary for treatment of Patient's condition. Petitioner contends that a chronic pain management program is not medically necessary.

The evidence shows that a chronic pain management program is not medically necessary. Robert W. Bradley, Ph.D., although recommending consideration of a chronic pain management program, concludes in his September 4, 2002 evaluation that it will be a challenge for Patient to succeed because she desires to be free from pain without any effort on her part and because she perceives herself as disabled. Dr. Bradley also concluded Patient was "not a candidate for psychotherapy due to her very limited English proficiency." William E. Blair, Jr., M.D., noted in his November 21, 2002 evaluation that testing revealed marked symptom magnification by Patient. The objective diagnostic testing showed no treatable physical pathology. The evidence shows Patient failed to complete therapy. The evidence shows that Patient had significant psychological complications. Moreover, as noted by Dr. William Blair, Jr., and by Melissa Tonn, M.D., Patient's evaluations recommending a chronic pain management program were performed at entities affiliated with each other.

Petitioner had the burden of proof in this proceeding and Petitioner sustained its burden of proof that a chronic pain management program is not medically necessary.

II. FINDINGS OF FACT

1. ____ (Patient), a 30-year-old female, sustained a work related injury on or about ____, when she slipped on an oily floor, fell and injured her lower back and right hand.
2. Diagnostic tests on Patient included an EMG, x-rays, an MRI, and a CT discogram. Diagnoses included lumbar radicular syndrome with right sciatica, left wrist pain with internal derangement and cervical sprain/strain.
3. During rehabilitation, Patient injured her neck.
4. Multiple practitioners treated Patient. She received oral medications, physical therapy, work hardening, hot/cold therapy and electric pulse therapy.
5. Patient sought a chronic pain management program when none of the treatment modalities totally relieved her pain.
6. American Home Assurance Company (Petitioner) contended that a chronic pain management program is not medically necessary.
7. By letter dated April 1, 2002, Maximus, the Independent Review Organization, concluded a chronic pain management program was medically necessary for treatment of Patient's condition.
8. Patient has significant psychological complications.

9. Patient was not a candidate for psychotherapy and would have great difficulty succeeding in a chronic pain management program.
10. The objective diagnostic testing shows no treatable physical pathology.
11. Patient failed to complete therapy.
12. Patient's evaluations recommending a chronic pain management program were performed at entities affiliated with each other.
13. The IRO decision is deemed a Decision and Order of the Texas Workers' Compensation Commission (Commission).
14. Petitioner timely requested a hearing to contest the Commission's decision.
15. By letter dated May 1, 2003, the Commission issued a notice of hearing.
16. A one-day hearing was convened by Administrative Law Judge Howard S. Seitzman on June 2, 2003, in the hearing rooms of the State Office of Administrative Hearings.
17. Petitioner was represented by Peter Macaulay. Lake Arlington Center for Pain Management (Respondent) did not appear.
18. There were no contested issues of notice or jurisdiction.

III. 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. § 413.031(k) and TEX. GOV'T. CODE ANN. ch. 2003.
3. Petitioner timely requested a hearing in this matter pursuant to 28 TEX. ADMIN. CODE (TAC) §§ 102.7 and 148.3.
4. Notice of the hearing was proper and complied with the requirements of TEX. GOV'T. CODE ANN. ch. 2001.

5. 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).
6. Petitioner had the burden of proof in this matter, which was the preponderance of evidence standard. 28 TAC §§ 148.21(h) and (i); 1 TAC § 155.41(b).
7. Based upon the Findings of Fact, Petitioner proved by a preponderance of the evidence that a chronic pain management for Patient is not medically necessary.

ORDER

THEREFORE IT IS ORDERED that Petitioner American Home Assurance Company's request for relief is **GRANTED** and the preauthorization of a chronic pain management program for _____ is **DENIED**.

SIGNED this 26th day of June 2003.

HOWARD S. SEITZMAN
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS