

\_\_\_\_\_, § BEFORE THE STATE OFFICE  
*Petitioner* §  
§  
VS. § OF  
§  
AMERICAN HOME ASSURANCE CO., § ADMINISTRATIVE HEARINGS  
*Respondent.* §

### DECISION AND ORDER

Claimant \_\_\_\_ appealed the decision of an Independent Review Organization (IRO) denying preauthorization for the reasonable and necessary costs of a lumbar paravertebral nerve block. In this decision, the Administrative Law Judge (ALJ) finds that Claimant did not meet its burden of showing the requested procedure was medically necessary. Therefore, American Home Assurance Company (Carrier) is not ordered to preauthorize the requested treatment.

The hearing convened and closed on August 6, 2003, before the State Office of Administrative Hearings (SAOH) with ALJ Steven M. Rivas presiding. Claimant was assisted by Luz Loza, ombudsman. Carrier was represented by Dan Kelley, attorney.

### I. DISCUSSION

#### A. Background Facts

Claimant was an employee of \_\_\_\_, and sustained a compensable back injury on \_\_\_\_, when she fell down, while working in the deli. Claimant was treated for her injuries and subsequently came under the care of Luis Duarte, M.D. Dr. Duarte recommended that Claimant undergo a paravertebral nerve block to treat her lower back pain. Dr. Duarte sought preauthorization from Carrier, which was denied as not medically necessary.

#### 1. Discovery Issue

Before the commencement of this hearing, Carrier propounded discovery requests to Claimant, which Claimant received on June 13, 2003.<sup>1</sup> The discovery requests consisted of one request for admission, one interrogatory, and one request for production. The request for admission instructed Claimant to admit the lumbar paravertebral nerve block was not medically necessary. Claimant did not respond to this, or any other discovery request. Under Rule 198.2(c) of the Texas Rules of Civil Procedure (TRCP), if a response is not timely served, the request is considered admitted.

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<sup>1</sup> Respondent's First Set of Request for Admissions, Interrogatories and Request for Production is attached to this Decision and Order.

Under TRCP 198.3, a party is allowed to withdraw an admission if the party (Claimant, in this case) can show good cause for the withdrawal. The discovery requests were sent by certified mail, and the return receipt was signed by\_\_\_.<sup>2</sup> Claimant admitted she knew\_\_\_, because he is engaged to marry her daughter. Claimant also recollected discussing the discovery requests with other people, but offered no reason as to why she had not responded to the discovery requests. There being no good cause to withdraw the admission, the ALJ must consider Claimant's admission that the lumbar paravertebral nerve block is not medically necessary.

Furthermore, under the SOAH rules governing discovery found at 1 TEX. ADMIN. CODE § 155.31, parties are entitled to obtain discovery under the provisions of the TRCP.

## **2. Analysis and Conclusion**

Because the requested procedure was denied by the Carrier, Claimant had the burden of showing it was medically necessary in order to receive preauthorization from the Carrier. Claimant presented evidence regarding the possible medical benefits of the requested procedure. However, the evidence could not overcome her discovery admission that the requested procedure was not medically necessary.

The ALJ must take into consideration Claimant's own admission even though it came about through Claimant's failure to act, rather than an assertive statement. Therefore, because Claimant has "admitted" the requested procedure is not medically necessary, it should not be preauthorized by the Carrier.

## **II. FINDINGS OF FACTS**

1. Claimant was an employee of\_\_\_, and sustained a low back injury on\_\_\_.
2. As a result Claimant's injury, she came under the care of Luis Duarte, M.D.
3. Dr. Duarte recommended Claimant undergo a lumbar paravertebral nerve block and sought preauthorization from American Home Assurance Company (Carrier), which was denied as not medically necessary.
4. Claimant sought medical dispute resolution with an Independent Review Organization (IRO), which upheld the denial of preauthorization.
5. Carrier timely appealed the IRO decision to the State Office of Administrative Hearings.
6. Notice of the hearing in this case was mailed to the parties on July 1, 2003. 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 to be held; a reference to the

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<sup>2</sup> See last page of Respondent's Exhibit No. 1, attached.

particular sections of the statutes and rules involved; and a short, plain statement of the matters asserted. In the notice, the Commission's staff indicated that it would not participate in the hearing.

7. The hearing convened and closed on August 6, 2003, before Steven M. Rivas, Administrative Law Judge. Claimant appeared and was assisted by Luz Loza, ombudsman. Carrier was represented by Dan Kelley, attorney.
8. During the discovery phase of this matter, Claimant admitted the requested procedure was not medically necessary.

### **III. CONCLUSIONS OF LAW**

1. The Commission has jurisdiction over this matter pursuant to TEX. LAB. CODE ANN. § 413.031.
2. SOAH has jurisdiction over 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. Proper and timely notice of the hearing was effected upon the parties according to TEX. GOV'T CODE ANN. § 2001.052 and 28 TEX. ADMIN. CODE § 148.4.
4. Claimant had the burden of proof on its appeal by a preponderance of the evidence, pursuant to TEX. LAB. CODE ANN. § 413.031 and 28 TEX. ADMIN. CODE §148.21(h).
5. Under Rule 198.2(c) of the Texas Rules of Civil Procedure, if a response to a request for admission is not timely served, the request is considered admitted.
6. Claimant did not prove the lumbar paravertebral nerve block was medically necessary.
7. Based on the above Findings of Fact and Conclusions of Law, Claimant's appeal should not be granted, and the request for preauthorization should be denied.

### **ORDER**

IT IS ORDERED THAT the requested procedure not be preauthorized.

**Signed this 9<sup>th</sup> day of September, 2003.**

**STATE OFFICE OF ADMINISTRATIVE HEARINGS**

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**STEVEN M. RIVAS**  
**ADMINISTRATIVE LAW JUDGE**  
**STATE OFFICE OF ADMINISTRATIVE HEARINGS**