

SAN ANTONIO I.S.D., § BEFORE THE STATE OFFICE
PETITIONER VS. §
v. § OF
POSITIVE PAIN MANAGEMENT, §
RESPONDENT § ADMINISTRATIVE HEARINGS

DECISION AND ORDER

After an Independent Review Organization (IRO) granted preauthorization for a chronic pain management (CPM) program, San Antonio I.S.D. (Carrier) appealed. This decision finds that the Carrier failed to sustain its burden of proving that the program was not medically necessary and preauthorizes the treatment.

I. Procedural History, Notice, And Jurisdiction

There are no contested issues of notice or jurisdiction in this proceeding, and these matters are addressed only in the findings of fact and conclusions of law. The appeal hearing was held July 21, 2003, before the undersigned administrative law judge (ALJ). Attorneys Jane L. Suchma and Peter N. Rogers represented the Carrier and the Provider, respectively. The record closed on August 1, 2003.

II. Discussion

1. Background

On, the claimant sustained work-related injuries to his low back and left knee. He underwent a left-knee meniscectomy and femoral chondroplasty in _____. At the end of May 2002, the claimant had a laminectomy and bilateral foraminotomies at L4-L5, a laminotomy and bilateral foraminotomies at L3-L4, and a lateral fusion at L4-L5 with posterior segmental instrumentation. Even after the surgeries, the claimant continued to report severe low back pain.¹

On March 5, 2003, the Provider sought preauthorization for the claimant to complete a CPM program at its facility. The Carrier timely denied the request, stating:

The patient has not had adequate post surgical rehabilitation prior to entering a CPM [Program]. At this point, it would be more beneficial for [the claimant] to begin with hydro-therapy and progress to land based rehabilitation then [be] reevaluated.²

¹Ex. 1, pp. 1 and 2.

²Ex. 2, p. 4.

The Provider appealed, and by decision issued May 12, 2003, the IRO determined that the claimant would likely benefit from an intensive multi-disciplinary, bio-psycho-social rehabilitation program with a goal of functional restoration.

After the IRO issued its decision, the claimant began the Provider's CPM program. The exact date he began treatment is not clear, but treatment notes for the following dates are in the record: May 19 through 22, May 28, and June 11, 2003.³ The claimant "graduated" from the program on July 15, 2003. By letter received at the Texas Workers' Compensation Commission on May 27, 2003, the Carrier appealed the IRO's decision.

2. Should Treatment Have Been Preauthorized?

1. Functional Capacity Evaluation (FCE)

The claimant had a FCE on February 11, 2003, which placed him in the light-to-medium work level.⁴ Because the claimant was deconditioned and easily fatigued, the FCE reviewer recommended post-operative therapeutic care, such as an aquatic program, followed by a brief land-based resistance regimen. The claimant was released to return to work at a sedentary level for four hours per day, beginning March 3, 2003.

2. Carrier's Witness

At the Carrier's request, Timothy J. Fahey, D.C., examined the claimant on January 29, 2002, and June 18, 2003.⁵ On the latter date, the claimant was participating in the CPM program. He told Dr. Fahey the program was increasing B not decreasing B his pain. On the other hand, the claimant said he was "almost out of his depression."⁶

Dr. Fahey noted that when the claimant goes to see potential employers, he wears a lumbar-sacral support on the outside of his clothes and uses a cane. However, once he was inside Dr. Fahey's office, the claimant did not use the cane for movement and was able to walk without it. The claimant told Dr. Fahey he had not been able to find work, and Dr. Fahey testified that no employer would hire someone who applied for work wearing a brace outside his clothes and carrying a cane.

On a zero-to-ten pain scale, with ten being excruciating pain, the claimant reported pain ranging from a level of five or six to seven or eight. As reflected in the range of motion and other functional capacity examination tests, the claimant could work at a light-to-medium work level. Dr. Fahey was "unable to document sufficient physical abnormalities that would limit his ability to

³Ex. 4.

⁴Ex. 2, pp. 11-28.

⁵Ex. 1, p. 8-14.

⁶Ex. 1, p. 12.

return to gainful employment” and found no disability with the claimant’s major life activities.⁷ Even so, Dr. Fahey advised, “[the claimant] should not engage in physical maneuvers beyond his individual tolerances or limits of function.”⁸

Dr. Fahey further testified that:

- C the claimant had received extensive physical therapy;
- C persons who have failed with surgery and work hardening can be predicated to fail with a CPM program;
- C the American Psychiatry Association does not support the use of biofeedback because it is totally unreliable for low back pain treatment; and
- C hypnosis made the claimant’s pain worse.

Concluding that CPM would provide no significant improvement, Dr. Fahey recommended four sessions of individual psychotherapy for the claimant.⁹

3. Psychological Evaluation

Laurie Bizzell, Ph.D., an employee of the Provider, performed a psychological evaluation of the claimant on January 12, 2003.¹⁰ At the time, the claimant had been assigned an 18% impairment rating. The claimant reported sleeping about four hours per night with interruptions due to pain and constant numbness in the low back and knee and also said he was bothered by neck and foot pain. He rated his pain as six on a zero-to-seven scale and said his current physical activity level was 72% below the level he had before he was injured.

As reflected in Dr. Bizzell’s report, the claimant had numerous beliefs about his pain, including thoughts of entitlement, thoughts that others did not believe his pain was real, concern about ever enjoying life again, and fear of re-injury. He reported increased pain when he engaged in activities, such as grocery shopping and walking or driving long distances.

On the Beck Depression Inventory II, the claimant’s responses rated at a severe depression level. He:

- C experienced severe sadness and unhappiness;
- C saw many failures in his life;
- C did not enjoy the activities he used to enjoy;
- C felt guilty, more discouraged about the future, and less worthwhile;
- C expected to be punished;
- C was more critical of himself, more restless or agitated than usual, and too tired or fatigued to do the things he used to do;

⁷Ex. 1, p. 11.

⁸Ex. 1, p. 14.

⁹Ex. 1, p. 14.

¹⁰Ex. 3, pp. 13-18.

- C blamed himself for everything bad that happened; and
- C had decreased energy, sleep difficulties, increased irritability, appetite changes, difficulty concentrating and making decisions, and reduced libido.

Also, his coping responses were deficient in several areas.

Dr. Bizzell diagnosed the claimant with atypical depression and psychological disorder associated with a medical condition and recommended a thirty-day CPM program with individual and group psychotherapy, biofeedback, hypnosis, and medication management. She did not think individual modalities of treatment would be effective.

4. Provider's Witness

Dr. Paul Wright, who is also associated with the Provider, said the claimant met the CPM-program criteria. He described CPM as a way to address psychological stressors, including financial and family problems, in order to facilitate healing. In addition, the claimant's program included four hours of physical activity each day.

As indicators of the CPM program's appropriateness for the claimant, Dr. Wright noted:

- C he had received surgery and physical therapy;
- C the claimant's pain lasted over six months and was enduring, subjective pain;
- C the pre- and post-injury physical activity level differed significantly;
- C his pain was six on a zero-to-seven scale;
- C pain interfered with the claimant's ability to return to work and to complete activities of daily living, such as personal care;
- C the claimant had reduced levels of social interaction;
- C he was at risk of developing a disabling lifestyle and remaining off work; and
- C nothing medically or psychologically prohibited him from participating in the program with anticipated success.

The claimant's global assessment of functioning (GAF) score was 50, and a score of 50-55 is an appropriate range for a CPM candidate. GAF scores of 51-55 indicate moderate symptoms.

III. Applicable Law

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 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.¹¹ "Health care" includes all reasonable and necessary medical services.¹²

¹¹TEX. LAB. CODE ANN. § 408.021.

¹²TEX. LAB. CODE ANN. § 401.011(19).

Certain categories of health care, require preauthorization before they can be provided within the strictures of the Workers' Compensation Act; preauthorization is granted if there is a prospective showing of medical necessity.¹³ Chronic pain management is one type of treatment for which preauthorization is required.¹⁴

IV. Analysis

As mentioned above, the claimant has already completed the CPM program. Nevertheless, this case should not be dismissed as moot because the IRO found the treatments were appropriate. Even though the Provider began treating the claimant a week or less after the IRO's decision and before the appeal deadline had passed, the Provider started the program at its own risk because the

IRO's decision was subject to appeal. Had the ALJ ruled for the Carrier in this appeal, the Provider would not be entitled to reimbursement for the treatments.

The issue in this case is whether the thirty CPM sessions should have been preauthorized as medically necessary and reasonably required to the claimant. As the party challenging the IRO's decision, the Carrier had the burden of proof.¹⁴ The Carrier challenged the requested treatment on three primary grounds: the claimant should have first undergone aquatic and "land-based" therapy and been evaluated after those therapies; the efficacy of biofeedback is not supported by medical studies and the claimant should have only four sessions of individual psychotherapy; and the program failed to provide any benefit to the claimant.

The Carrier's third argument is not pertinent to the ALJ's decision, since this is a preauthorization dispute. As for the first two issues, the Provider presented adequate proof of the claimant's need for CPM treatment. The claimant had received extensive physical therapy without apparent improvement. Moreover, the Provider's CPM program included at least four hours of physical activity each day, and there is no requirement for psychotherapy to be a prerequisite to CPM therapy. The Provider did not controvert Dr. Fahey's contentions about biofeedback, but through the psychological evaluation and Dr. Wright's testimony, the Provider demonstrated the claimant's need for a comprehensive program.

While raising some questions as to the possibility of other treatments being attempted first, the Carrier failed to carry its burden of proof; the greater weight of evidence supported the medical necessity of the CPM program. Therefore, the requested treatment is preauthorized.

V. Findings of Fact

1. On a workers' compensation claimant sustained work-related injuries to his low back and left knee when he was employed by San Antonio I.S.D., a self-insured employer (the Carrier).
2. The claimant underwent a left-knee meniscectomy and femoral chondroplasty in _____. At the end of May 2002, the claimant had a laminectomy and bilateral foraminotomies at L4-L5, a

¹³TEX. LAB. CODE ANN. § 413.014; 28 TAC § 134.600.

¹⁴28 TAC § 148.21(h).

laminotomy and bilateral foraminotomies at L3-L4, and a lateral fusion at L4-L5 with posterior segmental instrumentation.

3. Even after the surgeries, the claimant continued to report severe low back pain.
4. On March 5, 2003, Positive Pain Management (the Provider) requested preauthorization for a chronic pain management (CPM) program.
5. The Carrier timely denied the preauthorization request, and the Provider appealed.
6. In a decision issued May 12, 2003, the Independent Review Organization reviewer (IRO) determined that the claimant would likely benefit from an intensive multi-disciplinary, bio-psycho-social rehabilitation program with a goal of functional restoration.
7. By letter received at the Texas Workers' Compensation Commission (Commission) on May 27, 2003, the Carrier appealed the IRO's decision.
8. The Commission sent notice of the hearing on the appeal to all parties on June 25, 2003.
9. The notice of hearing 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 particular sections of the statutes and rules involved; and a short, plain statement of the matters asserted.
10. The hearing was held as scheduled on July 21, 2003, and both parties were represented.
11. On February 11, 2003, the claimant was at a light-to-medium work level, but he was deconditioned and easily fatigued.
12. The claimant was released to return to work at a sedentary level for four hours per day, beginning March 3, 2003.
13. The claimant was most recently assigned an 18% impairment rating.
14. On or about May 19, 2003, to July 15, 2003, the claimant participated in the Provider's CPM program.
15. Prior to beginning the CPM program, the claimant:
 - C was sleeping about four hours per night with interruptions due to pain and constant numbness in his low back and knee and was also bothered by neck and foot pain;
 - C for more than six months, the claimant had enduring, subjective pain that he rated as six on a scale of zero-to-seven;
 - C had numerous beliefs about his pain, including thoughts of entitlement, thoughts that others did not believe his pain was real, concern about ever enjoying life again, and fear of re-injury;

- C had a physical activity level 72% below the level he had before he was injured;
 - C had increased pain when he engaged in activities, such as grocery shopping and walking or driving long distances;
 - C had reduced levels of social interaction;
 - C was severely depressed, as reflected on components of the Beck Depression Inventory;
 - C was at risk of developing a disabling lifestyle and remaining off work;
 - C had received surgery and physical therapy without improvement in his pain; and
 - C had deficient coping responses.
16. Pain interfered with the claimant's ability to return to work and to complete activities of daily living, such as personal care.
 17. Considering the seriousness of the claimant's psychological condition, treatment with distinct, individual modalities would likely not have been effective.
 18. Nothing medically or psychologically prohibited the claimant from participating in the CPM program with anticipated success.
 19. The claimant's global assessment of functioning score was 50, and a score of 50-55 is an appropriate range for a CPM candidate.

VI. Conclusions of Law

1. The State Office of Administrative Hearings 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.
2. The Carrier timely requested a hearing, as specified in 28 TEX. ADMIN. CODE (TAC) § 148.3.
3. Proper and timely notice of the hearing was provided in accordance with TEX. GOV'T CODE ANN. § 2001.052 and 28 TAC § 148.4.
4. The Carrier had the burden of proof in this matter pursuant to 28 TAC § 148.21(h).
5. TEX. LAB. CODE ANN. § 413.014 and 28 TAC § 134.600 require that CPM programs be preauthorized, dependent on a showing of medical necessity.
6. The Carrier failed to establish that the chronic pain management sessions would not cure or relieve the effects naturally resulting from the claimant's injury, promote his recovery, or enhance his ability to return to or retain employment.
7. The Carrier did not establish that the 30 sessions of chronic pain management were not medically necessary to treat the claimant's injury.

8. Based on the foregoing Findings of Fact and Conclusions of Law, preauthorization for the requested 30 sessions of chronic pain management should be approved, pursuant to TEX. LAB. CODE ANN. § 413.014 and 28 TAC § 134.600.

ORDER

It is ORDERED that 30 CPM sessions with Positive Pain Management are preauthorized for the claimant whose self-insured employer is San Antonio I.S.D.

Signed September 18, 2003.

STATE OFFICE OF ADMINISTRATIVE HEARINGS

**SARAH G. RAMOS
ADMINISTRATIVE LAW JUDGE**