

**SOAH DOCKET NO. 453-03-3595.M2
MDR TRACKING NO. M2-03-0771-01**

**NEUROMUSCULAR INSTITUTE
OF TEXAS, P.A.,**
Petitioner

VS.

**AMERISURE INSURANCE
COMPANY,**
Respondent.

**§ BEFORE THE STATE OFFICE
§
§ OF
§
§ ADMINISTRATIVE HEARINGS
§**

DECISION AND ORDER

Neuromuscular Institute of Texas, P.A. (Provider), appealed the decision of an Independent Review Organization (IRO) upholding the denial of preauthorization for ten additional chronic pain management (CPM) sessions for an injured worker (Claimant). In this decision, the Administrative Law Judge (ALJ) finds that Provider met its burden of showing that the requested CPM sessions were reasonable and necessary medical care that should have been preauthorized by Amerisure Insurance Company (Carrier). Therefore, Carrier is ordered to preauthorize ten additional CPM sessions.

The hearing convened and closed on July 21, 2003, before Steven M. Rivas, ALJ. Provider was represented by David Duncan, attorney. Carrier was represented by Robert Graves, attorney.

I. DISCUSSION

A. Background Facts

Claimant sustained a compensable work-related injury on____, when he slipped on a wet surface while carrying a door. Claimant underwent extensive treatment following his injury and eventually came under the care of several treating doctors at the Provider's facility. Throughout his treatment, Claimant continually complained of back pain and found no relief from any of the treatment rendered in the years following his injury. The various treatment rendered to Claimant included physical therapy, work conditioning, medication, and psychological counseling. On December 4, 2002, Claimant began a course of CPM at Provider's facility. Claimant completed 20 CPM sessions and requested authorization for ten more, which Carrier denied as not medically necessary.

The parties agreed that Claimant had undergone a great deal of conservative treatment to relieve the pain resulting from his compensable injury. The parties also agreed that, despite his unceasing complaints of pain, Claimant, he is not a suitable candidate for surgery at this time. The parties did, however, disagree on whether Claimant is entitled to participate in any further CPM sessions.

B. Applicable Law

Under the TEX. LAB. CODE ANN. § 408.021 (a), an employee who sustains a compensable injury is entitled to all 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.

Under TEX. LAB. CODE ANN. §401.011(19) health care “includes all reasonable and necessary medical aid, medical examinations, medical treatment, medical diagnoses, medical evaluations, and medical services.”

C. Evidence and Analysis

1. Chronic Pain Management

Anthony M. Hicks, M.D., an occupational medicine specialist, testified for Carrier and asserted he routinely treats patients with the same type of injuries as Claimant, and occasionally prescribes CPM for some of his patients.

According to Dr. Hicks, CPM is a multi-disciplinary program designed as a “capping off” or final treatment for a patient just prior to being released from an established treatment plan. Classic CPM activities include psychological services like counseling; medication; behavioral therapy like breathing exercises; distraction therapy like playing games and other activities that allow patients to focus on things other than pain; and limited physical therapy. In Claimant’s case, the CPM activities included stretching exercises, distraction activities like playing Jenga and Uno!, hypnotism, and counseling sessions about relaxation techniques and budget issues.

Dr. Hicks testified he usually prescribes CPM for patients that have exhausted all other forms of treatment but continue to complain of pain for more than six months. Finally, Dr. Hicks asserted, the overall objective of CPM is to prepare patients to exist “on their own” by showing patients how to live and function with the pain they experience.

2. The IRO Decision

The IRO’s rationale for denying the requested sessions was that there was “no evidence that (Claimant’s) condition can not be treated with home exercises and/or standard chiropractic therapy at this time.” The ALJ is not persuaded by the IRO reviewer’s rationale because the standard for authorizing medical treatment is not based on a showing that the requested treatment cannot be performed at home. Rather, the standard to preauthorize medical treatment is contained under provision of § 408.021, *et. seq.* In this case, the record indicates the requested treatment should be preauthorized because it enhances Claimant’s ability to obtain employment by showing him how to live with the chronic pain from which he suffers. As to the assertion that there is no evidence that Claimant’s condition cannot be treated with standard chiropractic care, the parties both agree that Claimant has already undergone physical therapy to alleviate his pain, to no avail.

3. Visual Analog Scale Results

Based on his review of the record, Dr. Hicks testified Claimant derived no benefit from the first twenty CPM sessions because of his results on the Visual Analog Scale (VAS) drafted at each CPM session. The results of a VAS were based on the Claimant's subjective responses to questions regarding his level of pain. Pursuant to the VAS results taken at every CPM session, Claimant had a pain level of four or five on a scale of one-to-ten with one being the least amount of pain and ten being the greatest amount of pain. Dr. Hicks testified it was unlikely Claimant would derive any benefit from ten additional CPM sessions because his pain level was constant and showed no improvement during the first twenty sessions.

Dr. Hicks' recommendation is not persuasive because, as Provider pointed out, the basis of prescribing CPM to a patient is due to the patient's condition of *chronic pain*. The fact that Claimant's pain remained constant during the first twenty sessions merely establishes it as being "chronic."

Provider's argument was more persuasive in that the results of the VAS should not be a significant consideration in denying further sessions because the requested sessions will not be designed to lower Claimant's pain level, but rather to prepare and condition Claimant to exist with the pain resulting from his injury.

4. Classic CPM Activities and Additional Modalities

In addition to the classic CPM activities, Dr. Hicks testified he sends his patients to CPM to introduce them to "additional ways to manage pain that are outside the traditional methodologies." For instance, Dr. Hicks asserted, he prescribes biofeedback, distraction exercises, and medication for psychological issues. In further support of his recommendation that 10 additional CPM sessions should not be authorized, Dr. Hicks asserted Claimant's current CPM course was not effective because it did not introduce Claimant to the above mentioned "additional methodologies" of CPM.

Again, Dr. Hicks' recommendation was not persuasive. First, he testified that the classic CPM program is multi-disciplinary in nature and included behavioral therapy, distraction exercises, and psychological services. Then, he testified that he sends his patients to a CPM program that introduces them to "additional modalities" of CPM like biofeedback. Dr. Hicks' recommendation of denial was based on his opinion that Claimant was not being exposed to additional modalities like biofeedback, but he is incorrect because the record clearly indicates Claimant participates in biofeedback sessions.¹

In fact, Claimant's current CPM program includes classic CPM activities that Dr. Hicks mentioned such as behavioral and distraction exercises,² in addition to the additional modality of biofeedback of which Dr. Hicks testified. Therefore, based on Dr. Hicks' testimony, it would seem Claimant is receiving the best of both CPM approaches – classic and the introduction of additional modalities.

¹ See pages 194 and 215 of Carrier's exhibit #2.

² See Carrier's exhibit #2.

D. Conclusion

Provider did not call a witness to testify on its behalf. However, Carrier's witness, while attempting to discredit the CPM program, provided testimony that supported the medical necessity for the requested sessions.

The parties generally agreed that CPM is usually prescribed to a patient when all other treatment has been exhausted. There was no evidence that Claimant should be participating in any other treatment at this time. Additionally, the record indicates Claimant has already undergone extensive treatment for his injuries, which leads the ALJ to believe CPM was properly prescribed, especially since no evidence to the contrary was presented.

Under § 408.021(a), an employee is entitled to all health care that will cure, relieve, or assist the employee in obtaining employment. The requested CPM sessions will not cure or even relieve Claimant of the pain he suffers from as a result of his compensable injury. However, the evidence does indicate that the CPM sessions will enhance Claimant's ability to obtain employment because they are designed to remove patients from constant medical care. The ALJ believes the additional CPM sessions would enhance Claimant's ability to obtain employment. Therefore, the ALJ concludes Carrier should preauthorize the additional ten CPM sessions.

II. FINDINGS OF FACTS

1. Claimant sustained a compensable injury on ____.
2. Claimant underwent extensive treatment for his injury, but found no relief.
3. On December 4, 2002, Claimant began a chronic pain management (CPM) program at the Neuromuscular Institute of Texas, P.A. (Provider).
4. Claimant completed twenty CPM sessions and sought preauthorization for ten additional sessions from Amerisure Insurance Company (Carrier) and was denied.
5. Carrier denied preauthorization, maintaining that the requested treatment was not medically necessary.
6. Claimant sought medical dispute resolution and an Independent Review Organization (IRO) affirmed the denial of preauthorization for the ten additional CPM sessions.
7. Provider timely requested a hearing before the State Office of Administrative Hearings (SOAH).
8. Notice of the hearing in this case was mailed to the parties on June 23, 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 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.

9. The hearing convened and closed on July 21, 2003, before Steven M. Rivas, Administrative Law Judge (ALJ). Provider was represented by David Duncan, attorney. Carrier was represented by Robert Graves, attorney.
10. Claimant has exhausted all types of treatment for his injury, yet continues to suffer from back pain.
11. A classic CPM program is designed to prepare patients to live on their own with the pain they suffer as a result of their injury.
12. Classic CPM activities include psychological services, behavioral therapy, and distraction therapy. Additional methodologies to traditional CPM activities include biofeedback.
13. Claimant is participating in classic CPM activities, as well as additional methodologies, including biofeedback.

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(d) 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. Provider 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 TEX. LABOR CODE § 408.021(a), an employee who sustains a compensable injury is entitled to all health care that cures, relieves, or enhances the employee's ability to obtain employment.
6. The CPM program in which Claimant has participated will enhance his ability to obtain employment because it will prepare Claimant to live on his own with the pain.
7. Based on the above Findings of Fact and Conclusions of Law, Provider's request for preauthorization should be granted.

ORDER

IT IS ORDERED THAT ten additional CPM sessions be preauthorized.

Signed this 20th day of August, 2003.

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