

**DOCKET NO. 453-03-3618.M2
MDR TRACKING NO. M2-03-1005-01**

**AMERICAN HOME ASSURANCE
COMPANY,
Petitioner**

VS.

**TEXAS WORKERS COMPENSATION
COMMISSION AND ____,
Respondents**

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BEFORE THE STATE OFFICE

OF

ADMINISTRATIVE HEARINGS

DECISION AND ORDER

American Home Assurance Company (AHAC or Carrier) appealed the decision by an Independent Review Organization (IRO) to grant preauthorization for Claimant ____ to receive 30 sessions of chronic pain management services. AHAC disputes the IRO's conclusion that these services are medically necessary. This decision agrees with the IRO and finds that the chronic pain management services are medically reasonable and necessary. Therefore, AHAC's appeal is denied.

I. JURISDICTION & HEARING

There were no challenges to notice or jurisdiction, and those matters are set forth in the findings of fact and conclusions of law without further discussion here.

Administrative Law Judge (ALJ) Thomas H. Walston conducted a hearing in this case on July 23, 2003, at the State Office of Administrative Hearings (SOAH), William P. Clements State Office Building, 300 West 15th Street, Austin, Texas. Attorney Dan C. Kelly appeared on behalf of AHAC. Claimant ____ appeared by telephone and was assisted by TWCC Ombudsman Luz Loza. In addition, Mr. Tomas Leon interpreted the proceedings for ____, who does not speak English. The hearing concluded and the record closed the same day.

II. DISCUSSION

Background

Claimant ____ is a Spanish-speaking ____-year-old female who moved from Honduras to the United States around 1997. ____ obtained a high school and university education in Honduras and worked there as a teacher before moving to the United States. On ____, ____ injured herself at work at ____ store in _____. She worked as a produce stocker and injured her back when she lifted a 40-pound box of bananas. ____ has not returned to work since the date of the accident.

____ has generally been diagnosed with lumbosacral and coccyx sprains, with some minor disc abnormalities. She has seen many doctors and has undergone a long course of conservative treatment, but she has not had surgery and is not a surgical candidate. The available medical records show the following:

- _____ received numerous chiropractic treatments from Dr. Ted Krejci between July 17 and October 28, 2002, and from Dr. Jose J. Caballero between November 2002 and January 2003.
- Dr. Krejci referred _____ to Dr. Crawford Sloan, M.D., for evaluation on July 19 and 31, September 23, and October 28, 2002. Dr. Sloan observed decreased lumbar range of motion during all of these visits. He also observed positive straight leg raising at 45 degrees during the July visits and at 90 degrees during the September exam. He diagnosed _____'s condition as lumbar strain with radiculitis and lumbar disc disease.
- A Sensory Nerve Conduction Threshold test was performed on _____ on July 23, 2002, although the record does not indicate who performed this test. The test report stated that S.C. had "severe hypoesthetic condition" on the left and right for L4; "very mild hypoesthetic condition" on the right at L5; and "mild hypoesthetic condition" on the left at S1.¹
- On August 1, 2002, Dr. Krejci referred _____ to Dr. Ketan Patel, M.D., for a CT scan of her lumbar spine. Based on the scan, Dr. Patel reported that _____ had normal paraspinal soft tissues and normal results for T12-L1, L1-2, L2-3, and L3-4. However, L4-5 showed a 1-2mm diffuse disc bulge, but without focal protrusion, central canal stenosis, or neural foraminal encroachment; and L5-S1 had a central disc protrusion slightly to the left, but also without significant central canal stenosis or evidence of nerve root impingement. _____ also had mildly prominent facet joints at L4-5 and L5-S1.
- James Laughlin, D.O., examined _____ on September 23 and 30, 2002. He noted decreased range of motion, muscle spasms, and tenderness to palpation over the paravertebral muscles. All other aspects of the examinations were normal. Dr. Laughlin recommended trigger point injections, which were performed September 30, 2002. These temporarily relieved symptoms in the area of the injections.
- Dr. Charles Tuen, M.D. performed EMG of the _____'s lower extremities on October 8, 2002. All results were within normal limits.
- On December 18, 2002, Dr. Caballero referred _____ for an evaluation by Dr. John Townsend of Metroplex Orthopedics. _____ complained of persistent, severe low back pain, primarily in the lumbar and sacroiliac areas on the right side. She also reported shooting, radiating pains and numbness down the right leg. On examination, Dr. Townsend noted tenderness to palpation and paravertebral muscle spasm from L3-4 to S1. _____ also had tenderness over the sacroiliac area and positive straight leg raising bilaterally at 45-60 degrees, with symptoms related to the back instead of the legs. The remainder of the examination was essentially normal. Based on the examination and the CT scan mentioned previously, Dr. Townsend diagnosed _____'s condition as "lumbar strain/sprain/posttraumatic myositis

¹ Hypoesthesia refers to "a state of abnormally decreased sensitivity to stimuli." Dorland's Medical Dictionary (22nd Edition 1977).

[inflamed muscles], severe, persistent”; multilevel herniated nucleus pulposus; and sacrococcygeal spine strain. At that visit, Dr. Townsend also administered a corticosteroid injection to the right sacroiliac joint area, prescribed pain and anti-inflammatory medication, and stated that he would seek pre-certification for a series of three lumbar spine epidural steroid injections. It is unclear from the record whether ____ actually received these additional steroid injections.

- Dr. Caballero also referred ____ to Functional Performance Analysts for a two-hour evaluation on December 30, 2002. Several tests were performed. Although some tests indicated symptom magnification, the evaluator believed that ____ did experience pain. Also, psychological testing suggested that ____ might have clinical depression. Based on this evaluation, Dr. Caballero decided that a chronic pain program would be appropriate for ____.
- ____ saw Dr. Peter Polatin on February 6, 2003, upon referral by Dr. Caballero. Dr. Polatin noted ____’s history, prior treatment, and prior X-ray and CT Scan results. On physical examination, ____ reported pain in the right lumbar and sacroiliac areas; lumbar flexion was limited to 70 degrees and extension 10 degrees; straight leg raising was positive bilaterally at 80 degrees with negative Lasegue’s; and neurological exam of the lower extremities was entirely within normal limits. Dr. Polatin diagnosed ____’s condition as chronic pain syndrome with medical and psychological features. Therefore, he referred her for an intake evaluation for the PRIDE Clinic for chronic pain management.
- On February 6, 2003, Lisa Collingswood, Ph.D., a Licensed Psychologist, performed a mental health evaluation upon referral by Dr. Polatin. Dr. Collingswood concluded, among other things, that ____ suffered from depression, hopelessness, and worrying about the future; possible symptom magnification; physical deconditioning; and “habituation to disability and possible primary and/or secondary gain.” She recommended behavioral therapy in both individual and group sessions through the PRIDE program in order to resolve the psychological problems and return ____ to a functional and productive lifestyle.

On February 20, 2003, Dr. Polatin recommended ____ for a full PRIDE program, with 28-30 treatment visits and maximum utilization of 188 hours of care. He believed this would bring ____ to MMI and return to work thereafter.

On March 4, 2003, Genex (acting on behalf of AHAC) denied the request for preauthorization. The denial stated:

The request is excessive and unsupported. Records reflect no objective evidence of physical injury or pathology. There is no objective evidence of actual functional deficits. There is extended lost time with no justifiable basis. There is no supporting information relating prior documentation of behavioral health factors as impacting ability to seek or respond to appropriate medical care.

Genex issued a second denial letter dated March 10, 2003, which added the following:

. . . The review process clarified that the proposed services are focused on issues of “chronic pain syndrome.” As such, the proposed services could not be justified as necessary or appropriate for the claimed occupational injury. This lack of necessity or appropriateness for any injury is indicated by the AMA’s literature, which clarifies that in “chronic pain syndrome,” there is no clear causal link between an index injury and an individual’s symptoms and findings. The review process actually revealed evidence that indicates that the proposed treatment lacks credibility for this patient (according to scientific research). Such issues include the documented mental illness diagnosis, the documented depression-related difficulties, the indication of additional psychological issues that have not yet been worked up diagnostically, the documented complaints of shoulder pain, the claims context of presentation, the indications that family members are making contributions to the presentation of disability, and pain severity ratings that are more consistent with the proposed service failing, rather than being consistent with a successful outcome.

Dr. Polatin requested reconsideration by Genex, but it continued to deny the request, so he then appealed to the IRO (Ziroc). The IRO reviewed the clinical history and approved preauthorization with the following basis for decision:

This patient has had 28 weeks of therapeutic exercise activity, yet she has failed to progress. Her current treating doctor has requested referral to a Chronic Pain Management Program x 30 sessions. The carrier has denied the request due to documented lack of objective evidence of any injury. . . .

While this patient has had extended therapeutic exercise, she has had little treatment aimed at helping her to deal with the physical and emotional pain she has incurred. A chronic pain management program generally employs biofeedback, along with psychological counseling to help the patient deal with the emotional/psychological components of the injury and the impact it has made on their life. This, in conjunction with a rehabilitation program that also teaches safe lifting techniques and ergonomics, would in all likelihood benefit her. She does have documented disc insult, and it is entirely reasonable to allow her this chance to return to productive employment. The reviewer, therefore, recommends allowance of the requested Chronic Pain Management Program x 30 sessions.

This appeal by AHAC followed.

B. Medical Necessity of Chronic Pain Management Services

1. Carrier

The Carrier did not call any witnesses to testify but instead introduced into evidence several articles from various journals. These articles were:

- *Multidisciplinary Biopsychosocial Rehabilitation for Neck and Shoulder Pain Among Working Age Adults*, 26 Spine 174 (2001).

- *Outcomes of Pain Center Treatment in Washington State Workers' Compensation*, 39 American Journal of Industrial Medicine 227 (2001).
- *Association Between Workers' Compensation and Outcome Following Multidisciplinary Treatment for Chronic Pain: Roles of Mediators and Moderators*, 11 The Clinical Journal of Pain 94 (1995).
- *Relative Cost-Effectiveness of Extensive and Light Multidisciplinary Treatment as Usual for Patients With Chronic Low Back Pain on Long-Term Sick Leave*, 27 Spine 901 (2002).
- *Status of patients with chronic pain 13 years after treatment in a pain management center*, Pain 74, 199 (1998).
- *The Dissatisfied Patient With Chronic Pain*, Pain 4, 367 (1978).
- *Assessing Benefits of the Pain Center: Why Some Patients Regress*, Pain 8, 101 (1980).
- *Prediction of Success From a Multidisciplinary Treatment Program for Chronic Low Back Pain*, 22 Spine 990 (1997).
- *Predicting treatment outcome of chronic back pain patients in a multidisciplinary pain clinic: methodological issues and treatment implications*, Pain 33, 41 (1988).
- *Behavioral Treatment of Chronic Low Back Pain: Clinical Outcome and Individual Differences in Pain Relief*, Pain 11, 221 (1981).

Carrier argues that these articles demonstrate that chronic pain management programs lack credibility because the reported studies generally showed no improvement from such programs. And some of the articles further reported a negative relationship between workers' compensation patients and pain management programs. Carrier also cited portions _____'s medical records, stating that she had depression and possibly other psychological issues that had not been worked up diagnostically. In Carrier's view, these conditions contraindicate a chronic pain management program. Carrier also complained that Dr. Polatin testified he had no idea of the cost for the pain management program, yet his request for preauthorization stated that the program would be cost-effective. Thus, Carrier argues, Dr. Polatin's opinions lack credibility.

Carrier states that 30 chronic pain management sessions totaling approximately 180 hours will be very expensive, but there is no evidence that the treatments will be effective. Therefore, it argues that the proposed chronic pain management program is not medically reasonable or necessary and should not be preauthorized.

2. Claimant.

___ testified briefly by telephone. She explained that she injured her back while picking up a box of bananas that weighed between 40-46 pounds. She felt pain in her lower back and immediately reported it to her store manager. The manager referred her to a company doctor, but she now considers Dr. Polatin to be her treating doctor. ___ has not worked since the day of the accident. Her treatments have included massages, adjustments, pills, and injections. She currently takes a sleep aid and medication for pain and swelling. However, she continues to suffer from back pain. On cross examination, ___ stated that she previously had gall bladder surgery, but she has never had back surgery.

Dr. Polatin also testified for ___ by telephone. He is a medical doctor in Dallas who specializes in rehabilitation and pain management. He attended medical school at Columbia University in New York and received further training at UCLA. Dr. Polatin diagnosed ___'s condition as chronic lumbar pain syndrome with both medical and psychological features. He pointed out that ___ has received medication, chiropractic treatments, and physical therapy, but these have not worked, and she continues to have back pain and has not reached Maximum Medical Improvement (MMI).

Dr. Polatin stated that ___ is not a surgical candidate, but she does have disc problems at L5-S1. He believes that a chronic pain management program will reduce ___'s pain, make her more functional, and allow her to return to work. Dr. Polatin explained that pain management is an interdisciplinary treatment approach that has physical, psychological, and educational aspects. The purpose of the program is to enable ___ to return to work.

On cross examination, Dr. Polatin stated that he did not know the cost of the chronic pain management program, and he confirmed that he had no financial interest in PRIDE, which would provide the services.

In argument, ___ (through Ms. Loza) notes that an injured worker is entitled to all medical care that cures or relieves the injury or enhances the ability of the employee to return to work. She also states that TWCC rules allow interdisciplinary chronic pain management programs, notwithstanding the articles cited by Carrier that criticize such programs. ___ also emphasizes that three doctors have recommended chronic pain management – Dr. Caballero, Dr. Polatin, and the IRO doctor. In ___'s view, the requested services are medically reasonable and necessary and should be approved.

3. Analysis

This is a difficult case. ___ appears to have sustained a relatively minor back sprain, but she has received extensive treatment that seems disproportionate to the seriousness of her injury. She has minor disc abnormalities at L4-5 and L5-S1, but there is no evidence of nerve compression or nerve root impingement, and all of the doctors agree she is not a surgical candidate. Further, ___ has made inconsistent complaints and appears to exaggerate her symptoms. For example, the disc at L5-S1 protrudes slightly to the *left*, but ___ has made subjective complaints of sciatica on the *right*.

Likewise, ____ has made subjective complaints of pain on the straight leg raising test, which suggests sciatica, but the Lasegue's sign was negative, which tends to rule out sciatica. Indeed, the doctors agree that ____ primarily has psychological problems, rather than physical problems, that prevent her from recovering and returning to work.

Carrier stresses ____'s lack of physical injury to argue that a chronic pain management program is not reasonable or necessary. But ____'s doctors contend that the program's purpose is largely to address ____'s psychological problems, so she can return to work. Under the workers' compensation system, an employee who sustains a compensable injury is entitled to all health care reasonably required by the nature of the injury. The employee is specifically entitled to health care that: (1) cures or relieves the effects naturally resulting from the injury; (2) promotes recovery; or (3) enhances the ability to return to or retain employment. TEX. LABOR CODE ANN. § 408.021. "Health care" includes "all reasonable and necessary medical . . . services." TEX. LABOR CODE § 401.011(19). Under this standard, ____ is entitled to treatment for both her physical and psychological problems, if it will enhance her ability to return to work.

Carrier further contends that chronic pain management programs are not effective and will not enhance ____'s ability to return to work. Thus, it states, the requested program for ____ is not medically reasonable or necessary. Carrier relies on the articles discussed previously to argue that such programs simply do not work in resolving chronic pain problems or in helping injured workers return to work. Carrier states that mental health problems like ____'s further reduce the effectiveness of these programs, and one study found that workers' compensation claimants may even have reduced recovery prospects with chronic pain management programs.

The ALJ has reviewed the articles introduced into evidence by Carrier. While these articles discuss problems that the authors believe exist with chronic pain management programs, none of them advocates a wholesale abandonment of such programs. Instead, they recommend further study or suggest better patient screening and other improvements to the programs. Even the article that concludes a negative correlation exists for workers compensation patients in these programs does not contend that such programs should be discontinued. Further, most of these articles examine groups of patients of varying sizes and whether the programs reduce the patients' pain levels or improve their ability to return to work when compared to patients who have not gone through these programs. However, the articles do not contend that none of the patients in the programs receive any benefits. Instead, they simply use a statistical analysis to evaluate whether the programs as a whole are beneficial. Therefore, these articles do not support an argument that a pain management program is not beneficial for any individual patient, such as ____ Indeed, the articles show that some individual patients apparently are helped by the programs, even though the articles questions whether the programs are beneficial overall when compared to other treatment options.

As noted previously, the ALJ finds this case troubling because ____ seems to have received excessive treatment for the nature of her physical injury. But Dr. Caballero, Dr. Polatin, and the IRO doctor have stated that a pain management program is reasonable and necessary for ____ to help her deal with both the physical and psychological problems related to her compensable injury. While the Carrier has offered evidence questioning the benefits of chronic pain management programs

generally, Carrier has not offered any evidence that such a program is not appropriate for ____ Therefore, the ALJ upholds the IRO decision to preauthorize the chronic pain management services for ____ and denies Carrier's appeal.

III. FINDINGS OF FACT

1. Claimant ____ suffered a compensable injury on ____, when she lifted a box of bananas that weighed approximately 40 pounds.
2. ____ received extensive conservative treatment, diagnostic studies, and evaluation from several doctors before she presented to Peter B. Polatin, M.D. on February 6, 2003.
3. Dr. Polatin referred ____ to the PRIDE Clinic for an intake evaluation for chronic pain management.
4. After the intake evaluation, Dr. Polatin requested preauthorization for ____ to attend 28-30 sessions of chronic pain management, with a maximum utilization of 188 hours.
5. American Home Assurance Company, the Carrier, denied Dr. Polatin's request.
6. Dr. Polatin requested medical dispute resolution.
7. The Independent Review Organization (IRO) granted Dr. Polatin's request for preauthorization.
8. Carrier requested a contested case hearing before the State Office of Administrative Hearings and requested denial of preauthorization for the chronic pain management program.
9. A CT scan of ____'s lumbar spine showed normal paraspinal soft tissues and normal results for T12-L1, L1-2, L2-3, and L3-4. The CT scan also showed a 1-2mm diffuse disc bulge at L4-5, but without focal protrusion, central canal stenosis, or neural foraminal encroachment, and L5-S1 had a central disc protrusion slightly to the left, but without significant central canal stenosis or evidence of nerve root impingement. ____ also had mildly prominent facet joints at L4-5 and L5-S1.
10. A Sensory Nerve Conduction Threshold test (CPT) performed on ____ on July 23, 2002, showed severe hypoesthetic condition on the left and right for L4; very mild hypoesthetic condition on the right at L5; and mild hypoesthetic condition on the left at S1. Hypoesthesia refers to "a state of abnormally decreased sensitivity to stimuli."
11. An EMG of the ____'s lower extremities performed on October 8, 2002, showed all results within normal limits.

12. ___ has depression and other psychological problems, has reduced range of motion in her lumbar spine, and continues to complain of low back pain. These problems have prevented her from returning to work.
13. ___ has not had back surgery and she is not a surgical candidate. Conservative treatment has not resolved ___'s complaints of back pain.
14. A chronic pain management program for ___ is medically reasonable and necessary.
15. ALJ Thomas H. Walston conducted a hearing in this case on July 23, 2003.
16. Claimant ___ and the Carrier attended the hearing.
17. All parties received not less than 10 days notice of the time, place, and nature of the hearing; 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.
18. All parties were allowed to respond and present evidence and argument on each issue involved in the case.

IV. CONCLUSIONS OF LAW

1. The State Office of Administrative Hearings has jurisdiction over matters related to the hearing, including the authority to issue a decision and order. TEX. LABOR CODE ANN. § 413.031(k).
2. All parties received proper and timely notice of the hearing. TEX. GOV'T CODE ANN. §§ 2001.051 and 2001.052.
3. Carrier has the burden of proof by a preponderance of the evidence.
4. Carrier did not establish by a preponderance of the evidence that a chronic pain management program is not medically reasonable or necessary for the proper treatment of S.C. TEX. LABOR CODE ANN. §§401.011(19) and 408.021.
5. Carrier's appeal is denied and Carrier is required to pay for 28 to 30 sessions of chronic pain management for ___ with a maximum utilization of 188 hours.

ORDER

IT IS, THEREFORE, ORDERED that preauthorization is hereby GRANTED for 28 to 30 sessions of chronic pain management for _____ with a maximum utilization of 188 hours, as requested by Peter B. Polatin, M.D. on behalf of the Claimant _____.

SIGNED August 21, 2003.

**THOMAS H. WALSTON
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS**