

AMERICAN HOME ASSURANCE COMPANY,	§	BEFORE THE STATE OFFICE
	§	
<i>Petitioner</i>	§	
V.	§	OF
	§	
WARREN PAUL ROQUET, M.D.,	§	
<i>Respondent</i>	§	ADMINISTRATIVE HEARINGS

### DECISION AND ORDER

American Home Assurance Company (Carrier) is appealing the decision of the Texas Workers' Compensation Commission's (Commission's) designee, an independent review organization (IRO), which found that a psychological evaluation and medications are medically necessary for the treatment of Claimant\_\_\_\_. This decision finds that the medications were medically necessary and that Claimant is entitled to four psychotherapy sessions and a psychophysiological profile assessment (PPA).

#### I. PROCEDURAL HISTORY, NOTICE, AND JURISDICTION

Administrative Law Judge (ALJ) Katherine L. Smith convened the hearing on July 23, 2003, at the William P. Clements Building, 300 West 15<sup>th</sup> Street, Austin, Texas. The Carrier was represented by Dan C. Kelley, an attorney. Warren Paul Roquet, M.D. represented himself. The Commission did not appear. The record closed the day of the hearing. The parties did not contest notice or jurisdiction.

#### II. BACKGROUND

Claimant sustained a work-related injury on\_\_\_\_. While pulling a cart with a 25" television on it, Claimant tripped on a piece of plywood, which caused her to fall backwards with the television landing on her. She continues to have neck and low back pain. Dr. Roquet has been treating Claimant with hydrocodone, carisoprodol, and amitriptyline. Dr. Roquet referred Claimant to Lois Hansen, a licensed professional counselor (LPC), for a psychosocial evaluation. Ms. Hansen evaluated Claimant and recommended four psychotherapy sessions at a frequency of once a week and a PPA. Carrier denied the treatments due to lack of medical necessity. The IRO found the medications and a psychological evaluation to be medically necessary.

#### III. DISCUSSION

There are two issues in this proceeding: (1) whether four psychotherapy sessions at a frequency of once a week and a PPA to be performed by an LPC are medically necessary; and (2) whether the medications, hydrocodone, carisoprodol, and amitriptyline, prescribed after January 3, 2003, were medically necessary.

Carrier does not dispute the medical necessity of a psychological evaluation. Relying on the testimony of its expert witness, John Gragnani, M.D., and its interpretation of various Texas statutes, Carrier asserts, however, that only a licensed psychologist or psychiatrist may perform such an evaluation. And relying on Dr. Gragnani's testimony and a required medical examination performed by William Gaines, Jr., M.D., Carrier asserts that the medications in question were not medically necessary because Claimant should have been weaned off them by December 2002.

Carrier argues more particularly that Texas Labor Code § 401.011(19), defines health care as including *psychological services* prescribed by a doctor. According to the Carrier, although the former Mental Health Treatment Guideline (MHTG)<sup>1</sup> allowed for an LPC to provide psychological services, with the abolition of the MHTG, effective January 1, 2002, one must turn to the Occupations Code for the definition of what qualifies as psychological services because the Labor Code does not define the term. According to § 501.003 of the Texas Occupations Code, *psychological services* are "acts or behaviors that are included within the purview of the practice of psychology." Carrier argues that because the LPC to whom Dr. Roquet wishes to refer Claimant is neither a licensed psychologist nor a psychiatrist, the evaluation would be inappropriate, and thus medically unnecessary.

The ALJ notes that § 501.003(a) of the Occupations Code reads as follows: "In this section, 'psychological services' means acts or behaviors that are included within the practice of psychology." The ALJ is reluctant to limit the mental health care available to injured workers based on a definition that applies only to one section of the Occupations Code, and which has not been adopted in the Labor Code. The ALJ is more inclined to rely on the past practice of the Commission to allow LPCs to provide mental health services. The MHTG made no particular reference to LPCs, but provided that a "Qualified Mental Health Provider is defined as someone who is independently licensed to provide mental health services, within the scope of practice defined by their applicable practice Act."<sup>2</sup> Furthermore, although Dr. Gragnani testified that it is appropriate that Claimant be assessed by a psychologist or psychiatrist, he did not state that an assessment by an LPC would be inappropriate. As the treating doctor, Dr. Roquet is best qualified to ascertain the care needed. He has confidence in Ms. Hansen, feels comfortable working with her, and believes that she provides good results because she brings an empathy and understanding to the practice of occupational medicine.

Dr. Roquet also testified that the medications in question were medically reasonable. Although he agreed that Claimant has required the medications, particularly hydrocodone and carisoprodol, longer than he would like, he is reluctant to wean her off of them until she receives further evaluation. He testified further that as long as she presents symptoms and findings of significant pain that affect her lifestyle, the medications are appropriate and medically necessary. He is aware that addiction is a concern and that staying on the medications is not a goal, but he asserted that the dosages were not excessively high and that he sees no signs of drug misuse or abuse in Claimant's behavior.

Based on the foregoing, the ALJ concludes that the medications in question were medically

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<sup>1</sup> Formerly 28 TEX. ADMIN. CODE § 134.1000.

<sup>2</sup> *Id.* at § 134.1000(e)(1)(A).

necessary and that four psychotherapy sessions and a PPA to be provided by Ms. Hansen, an LPC, are medically necessary.

#### **IV. FINDINGS OF FACT**

1. Claimant \_\_\_ sustained a work-related injury on \_\_\_, when she tripped on a piece of plywood, causing her to fall backwards with a television that she was pulling landing on her.
2. At the time of the injury, Claimant's employer, \_\_\_, had its workers' compensation insurance through American Home Assurance Company (Carrier).
3. Claimant continues to suffer from neck and lumbar pain.
4. Claimant's current treating doctor, Warren Paul Roquet, M.D., has been treating her with medications, including hydrocodone, carisoprodol, and amitriptyline.
5. Dr. Roquet prescribed the hydrocodone, carisoprodol, and amitriptyline after January 3, 2003.
6. Dr. Roquet requested preauthorization of treatment to be provided by Lois Hansen, an LPC.
7. Carrier denied the treatments based on lack of medical necessity.
8. Dr. Roquet requested medical dispute resolution before the Texas Workers' Compensation Commission (Commission).
9. On May 15, 2003, an independent review organization (IRO) found the medications and a psychological evaluation to be medically necessary.
10. Carrier filed a request for a hearing on May 30, 2003.
11. The Commission sent notice of the hearing to the parties on June 26, 2003. The hearing notice informed the parties of the time, place, and nature of the hearing; the legal authority and jurisdiction under which the hearing was to be held; the statutes and rules involved; and the matters asserted.
12. Four psychotherapy sessions at a frequency of once a week and a psychophysiological profile assessment (PPA) to be provided by Lois Hansen, an LPC, will promote Claimant's recovery.
13. The use of hydrocodone, carisoprodol, and amitriptyline to treat Claimant's symptoms and pain is appropriate while Claimant is awaiting further mental health evaluation.

#### **V. CONCLUSIONS OF LAW**

1. The 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. §§ 402.073 and 413.031(k) and TEX. GOV'T CODE ANN. ch. 2003.
3. The Carrier timely filed a notice of appeal of the IRO decision, as specified in 28 TEX. ADMIN. CODE (TAC) § 148.3.
4. Proper and timely notice of the hearing was effected upon the parties according to TEX. GOV'T CODE ANN. ch. 2001 and 28 TAC § 148.4(b).
5. The Carrier had the burden of proving the case by a preponderance of the evidence, pursuant to 28 TAC § 148.21(h) and (i).
6. An employee who sustains a compensable injury is entitled to all health care reasonably required by the nature of the compensable 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).
7. Workers' compensation insurance covers all medically necessary health care, which includes all reasonable and necessary medical aid, examinations, treatments, diagnoses, evaluations and services. TEX. LAB. CODE ANN. § 401.011 (19).
8. Based on Findings of Fact Nos. 12 and 13 and Conclusions of Law Nos. 6 and 7, Carrier failed to prove that the medications hydrocodone, carisoprodol, and amitriptyline, and the four psychotherapy sessions and a PPA proposed by Lois Hansen, an LPC, are medically unnecessary.

### **ORDER**

It is, therefore, ordered that Dr. Roquet's request for preauthorization of four psychotherapy sessions and a PPA to be provided to Claimant \_\_\_ by Lois Hansen is GRANTED.

**SIGNED this 21<sup>st</sup> day of August 2003.**

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**KATHERINE L. SMITH  
ADMINISTRATIVE LAW JUDGE  
STATE OFFICE OF ADMINISTRATIVE HEARING**