

**DOCKET NO. 453-03-3620.M2
MDR TRACKING NO. M2-03-0908-01**

_____,
Petitioner

v.

**TEXAS WORKERS' COMPENSATION
COMMISSION and GENERAL MOTOR
CORPORATION,
Respondents**

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BEFORE THE STATE OFFICE

OF

ADMINISTRATIVE HEARINGS

DECISION AND ORDER

I. Summary

____ (Petitioner or Claimant) sought review of a decision by the Medical Review Division (MRD) of the Texas Workers' Compensation Commission (TWCC or Commission) declining to preauthorize a chronic pain management program (CPM) to treat her injury. The substantive review of Petitioner's claim was conducted by an Independent Review Organization (IRO). General Motors Corporation (Carrier) had denied preauthorization for the treatment on the ground that the services were not medically necessary. In a decision issued on May 7, 2003, the IRO officer¹ concluded that Petitioner had not demonstrated that there was a medical need for CPM services in early 2003, although he did not categorically state they would never be appropriate.

Based on the evidence, the Administrative Law Judge (ALJ) concluded that Petitioner did not meet her burden of proof to show that a 196-hour CPM course would be medically necessary to relieve the effects of her injury or promote her recovery, and hereby denies preauthorization of the requested course of treatment.

¹ The IRO company in this case was Forte. As is the practice in cases in which it acts as an IRO, Forte did not disclose the identity of the reviewer it employed, although he or she was identified as a board-certified psychiatrist. Carrier Exh. 2, P. 1.

II. Discussion

It is undisputed that on____, Claimant suffered a compensable repetitive trauma injury to her left elbow while using an air wrench in the course of her employment on an assembly line. After the injury, she continued to work until May 2001. She was taken off work at that time to undergo a course of conservative treatment and therapy, returning to work in August 2001. She then worked for six months—from August 2001 to February 2002—before undergoing an elbow surgery on March 21, 2003. After 12 weeks of therapy following the surgery, she returned to limited duty in August 2002. Claimant was taken off work in October 2002 due to ongoing complaints of pain in her left elbow and arm and has not returned to work since that date. Her diagnosis has consistently been lateral epicondylitis², commonly named “tennis elbow.” By January, 2003, her condition was classified as chronic. Carrier Exh. 1, P. 15; Pet Exh. 1, P. 58.

In January 2003, Claimant’s treating doctor, Anthony Brentlinger, M.D., referred her to Peter Polatin, M.D., to be evaluated for her suitability as candidate for a structured CPM course. Dr. Polatin concluded that Claimant met the entry criteria for such a program and sought preauthorization for a 196-hour CPM course administered by the PRIDE organization.³ Carrier denied that request on the grounds that a CPM course was not medically necessary. In a denial letter issued on February 11, 2003, the Carrier asserted that an intensive CPM course would not be the most reasonable means of treatment and, in lieu of that, suggested increased application by Claimant to a home exercise program and better ergonomic instruction in use of the equipment at a work station.⁴ Carrier Exh. 1, Pp. 1-8. In denying Claimant’s appeal of the Carrier’s denial, the IRO reviewer likewise concluded that CPM was not justified at the current stage of Claimant’s treatment. However, the IRO reviewer’s analysis differed significantly from the Carrier’s in that the IRO

² Lateral epicondylitis is inflammation of the epicondyle [eminence of a bone] or of the tissues adjoining the epicondyle of the humerus [bone of the upper arm]. *Dorland’s Illustrated Medical Dictionary*, 28th edition (1988), P. 564.

³ While the Carrier’s reviewing physician, Charles Graham, M.D., disagreed that a CPM program was appropriate for this patient, Dr. Graham did agree that the PRIDE program was a good one which offered patient follow-up and had demonstrated a return-to-work rate of 75 to 80 percent.

⁴ Although suggesting ergonomic instruction as one means of preventing a recurrence of Claimant’s pain while performing her job tasks, there is nothing in the record that suggests that the Carrier knew whether such instruction is available at Claimant’s work place, or whether Carrier could in any way direct or influence Claimant’s employer to offer such instruction. The record is silent as to whether ergonomic instruction and re-training had been provided to Claimant since her initial report of injury in January 29, 2001, so it is unknown whether this course of “treatment” had been tried. Without any indication of a means by which this service could or would be provided to Claimant, a recommendation for “ergonomic instruction” amounts to a recommendation for no treatment at all.

reviewer *did not entirely discount* the need for additional structured treatment as had the Carrier, but rather considered a formal CPM course premature. The IRO reviewer concluded Claimant's medical history did not demonstrate that all primary and secondary levels of treatment had been tried and failed, a condition that he or she felt should be met before a CPM course would be warranted. Carrier Exh. 2, P. 3. Specific treatment methods referenced by the IRO reviewer included pain medications, physical therapy, and work conditioning.⁵

Dr. Politan contended that a CPM program would be useful in a case such as Claimant's in which more conventional therapies have been tried without success and Claimant's pain and lack of function have reached chronicity. He noted that Claimant's condition had lasted more than six months, she continued to experience significant functional weakness, and that she has suffered a lack of job capacity and disability. She was found to have mild symptoms of depression, arising from the injury and subsequent work performance issues, and to have some difficulty with those activities of daily living involving lifting. The mental health reviewer concluded that Claimant had made the pain a major focus of her life. Pet. Exh. 1, P. 65. Claimant has apparently not undergone any mental health treatment or counseling directed particularly toward pain management skills. She has been on both anti-depressants and prescription pain medications, but only intermittently, due to other medical conditions. She has apparently recently experienced some relief from her elbow pain by use of prescription medication; details regarding specific past trials were not in the record. Pet. Exh. 1, P. 57.

At the hearing, Claimant stated that she wanted to return to full duty at her former employment, because her salary would be higher than disability benefits. This statement is consistent with her prior attempts to return to work and also is consistent with her statement to Dr. Politan in January 7, 2003, that returning to work, as well as pain reduction, were her goals. Pet. Exh. 1, P. 57.

⁵ Although not the subject matter of this hearing, the ALJ notes that Dr. Politan also sought, without success, preauthorization for additional physical and occupational therapy for Claimant after the Carrier denied preauthorization for the CPM course. The Carrier denied those requests on June 9 and 30, 2003, shortly after the May 7, 2003, decision from the IRO endorsing the notion of additional structured treatment. Pet. Exh. 1, Pp. 14, 24. The ALJ notes that among the treatments for which the Carrier denied preauthorization were manual therapy, occupational therapy, and training in activities of daily living. Pet. Exh. 1, P. 25. Dr. Politan's recommendation for lesser therapy thus appears to have been consistent with the course of treatment suggested by the IRO as appropriate to this Claimant's needs. Pet. Exh. 1, Pp. 14-19. Inexplicably, the Carrier considered the IRO officer's decision authoritative as to the CPM course, but apparently of no weight as regards its decision on a course of less-intensive, but structured therapy.

In contrast, Dr. Graham, the Carrier's reviewing doctor predicted that it would be unlikely that Claimant would be a successful candidate for a CPM program based on her failure to respond to other therapies, some spotty attendance at earlier physical therapy sessions, and what he deemed to be lack of motivation. It is not expressly stated whether Claimant was instructed in a home exercise program in conjunction with her earlier physical therapy sessions, but it is reasonable to infer that she had been as home exercise is usually used as an adjunct to structured physical therapy. It is known that in January 2003 she was instructed how to perform pain-relieving stretches. Pet. Exh. 1, P 63. While no medical record suggests that Claimant demonstrated a pattern of non-compliance with medical instruction, neither was there any affirmative evidence that Claimant has been diligently pursuing a home exercise and stretching program to attempt self-care. Significantly, Claimant did not affirmatively state that she had engaged in a home exercise program, either during therapy, or on her own between therapy sessions. At her evaluation in January 2003, she reported that she had modified her daily activities in response to the pain, reclining up to 11 hours per day in some cases. Pet. Exh. 1, P. 57. She apparently participated in a employer-sponsored work conditioning program, although the timing, content, and outcome of those sessions was not in evidence. Pet. Exh. 1, P. 48. The January 2003 evaluation did not present a detailed discussion or analysis of her motivation or receptiveness to the demands of a CPM program. Based on the conflicts within the evidence in this case in regard to prior behavior demonstrating motivation, the ALJ is unable to conclude that Claimant met her burden of proof to show she would be a successful candidate for a CPM course.

The recent evidence on Claimant's physical condition is also conflicting. Although Claimant reports difficulty with activities of daily living involving her left hand, TWCC's designated doctor, Bruce R. Beavers, M.D., concluded during his examination of her in April 2003 that the pain which Claimant reported did not conform to the distribution of any peripheral nerve or nerve root, and that the numbness she reported was not consistent with injury. In addition, she had no limitation on her range of motion which he could attribute to the injury. During that examination the symptoms presented did not differ between whether Claimant was performing tasks with her hand or when her arm and hand were at rest. Carrier Exh. 1, P. 15. Her examination in January 2003 revealed that while Claimant was experiencing tenderness in her elbow and forearm, she demonstrated adequate grip strength in both hands, and full mobility of the shoulders and wrists on both arms. She demonstrated upper arm deconditioning, but apparently no structural problems. Pet. Exh. 1, Pp. 56-63.

Although the parties focused on Claimant's physical condition, the ALJ notes there is a lack of clarity in the record regarding the vocational element in Claimant's case. While the stated goal of the

proposed CPM course would be to return Claimant to a reasonably heavy demand capability, i.e., “full-duty work,” and “as close to pre-injury status as possible,” the ALJ is unable to interpret the goal that those phrases represent. Pet. Exh. 1, Pp. 53-54. The assembly line job Claimant held for eight years is not currently available. Pet. Exh. 1, P. 56. Given the several failed courses of therapy in the past, a diagnosis of a chronic condition, and the lack of a clear articulation of the treatment goal, the ALJ is unable to assess whether either the self-treatment advocated by the Carrier, or the structured treatment advocated by Dr. Politan, could ever enable Claimant to manage a heavy demand job that she apparently seeks, or whether its purpose would be to teach her to manage the pain sufficiently to hold a medium or light demand job.⁶ It is thus not clear whether Claimant will require major vocational readjustment, or simply conditioning to meet the demands of a known job. This lack of clarity regarding the functional goals in relation to Claimant’s work status substantially weakened her case in demonstrating such an intensive program was needed.⁷

In sum, the ALJ concurs with the IRO that a CPM program is not medically warranted at this time. Claimant failed to meet her burden of proof to show that she presents such a complex mixture of medical and mental problems that a CPM program is warranted.

III. Findings of Fact

1. On ___, ___ (Claimant), an assembly-line worker, suffered a compensable repetitive motion injury to her left elbow while using an air wrench. Claimant’s diagnosis was lateral epicondylitis, a condition commonly termed “tennis elbow.” In January 2003, the condition was declared chronic.

⁶ Examining Claimant on April 15, 2003, Dr. Beavers determined that Claimant had reached maximum medical improvement (MMI) on September 9, 2002, and assigned her a zero impairment rating. Apparently this was a second review as a previous MMI determination had been made, then rescinded. Pet. Exh. 1, P. 57. Dr. Beavers agreed with the same MMI date set by the previous designated doctor. The purpose of the designated doctor examination is not to determine appropriate treatment, but rather eligibility for impairment income benefits. TEX. LABOR CODE ANN §§ 408.121, 408.122, and 408.125. For his part, Dr. Politan said he simply disagreed with the designated doctor’s finding that Claimant had reached MMI.

⁷ Additional goals Dr. Politan listed were decreased health [care] utilization and a decreased risk of recurrent injury.

2. General Motors Corporation (Carrier) was self-insured for workers' compensation insurance coverage and was the responsible insurer on Claimant's on the date of injury.
3. Claimant continued working through May 2001, then manifested elbow pain during a period of increased production demand. She was off work May through August 2001 to order to undergo a course of conservative treatment and therapy.
4. She returned to work from August 2001 to February 2002, three weeks of which were on light duty due to recurrence of elbow pain.
5. On March 21, 2003, Claimant underwent elbow surgery, a lateral fascial release referred to as the Nirschl procedure. She also received a post-surgical corticosteroid injection which did not relieve her symptoms.
6. After 12 weeks of therapy following the surgery, she was returned to work with restrictions in August 2002, but continued to experience elbow and arm pain. She was taken off duty in October 2002, but has continued to experience pain and lack of function in her right elbow and arm even while off work.
7. In January 2003, Claimant's treating doctor referred her to Peter Politan, M.D., for evaluation as to her suitability for participation in a chronic pain management program (CPM).
8. In January 2003, Claimant reported some difficulty with activities of daily living which require her to use her left hand, i.e., housework, driving, or yard work. She was diagnosed with minor depression arising out of the injury and subsequent failures in work performance. She was given a global assessment of functioning (GAF) rating of 68, with the mental health evaluator noting that pain and pain management had become a "major focus" of Claimant's life.
9. Claimant has been instructed in home exercises and stretches to relieve her pain and aid in conditioning. It is unknown whether Claimant has consistently and routinely performed those activities outside her therapy sessions. Claimant remains inactive for much of the day.

10. Claimant participated in an employer-sponsored work conditioning program, although the timing, content, and effects on her level of functionality due to that program are unknown.
11. Claimant has been administered anti-depressants and prescription pain medications intermittently after her injury.
12. In April 2003, Claimant reported pain that did not conform to the distribution of any peripheral nerve or nerve root, and reported numbness that was not consistent with the injury. She has no limitation on her range of motion attributable to the injury. Claimant's pain was present both during rest and when she performed hand and arm activities and was not worsened by use of her hand and arm.
13. Claimant has a zero impairment rating and reached maximum medical improvement as of September 9, 2002.
14. In January 2003, Claimant demonstrated adequate grip strength in both hands, and full mobility of the shoulders and wrists on both arms. She demonstrated upper arm deconditioning and less-than-normal lifting capacity, but no structural problems of the upper arm.
15. On the basis of the January 2003 evaluations, Dr. Politan sought preauthorization for a 196-hour CPM course administered by the PRIDE program. On February 11, 2003, Carrier denied preauthorization on the basis the treatment was not medically necessary.
16. Petitioner appealed the Carrier's denial of benefits to the Medical Review Division (MRD) of the Texas Workers Compensation Commission (TWCC), which referred the dispute to an Independent Review Organization (IRO).
17. On May 7, 2003, a case reviewer for Forte, the assigned IRO, concluded that there was no medical need for CPM for Claimant in that the request was premature. The IRO reviewer, a board-certified psychiatrist, recommended trials of less intensive therapy such as pain medication, additional physical therapy, and work conditioning before considering a CPM program under the tertiary level of care.

18. On March 29, 2003, Claimant filed a timely request for a hearing at the State Office of Administrative Hearings (SOAH) on the MRD decision rendered on its behalf by the IRO.
19. On June 6, 2003, the Commission issued a notice of hearing which included the date, time, and location of the hearing, the applicable statutes under which the hearing would be conducted, and a short, plain statement on the nature of the matters asserted.
20. SOAH Administrative Law Judge (ALJ) Cassandra Church convened a hearing on these issues on July 22, 2003, and the record closed that day.

IV. Conclusions of Law

1. The Texas Workers' Compensation Commission (Commission) has jurisdiction to decide the issues presented pursuant to TEX. LABOR CODE ANN § 413.031.
2. The State Office of Administrative Hearings (SOAH) has jurisdiction over matters related to the hearing in this proceeding, including the authority to issue a Decision and Order, pursuant to TEX. LABOR CODE ANN § 413.031 and TEX. GOV'T CODE ch. 2003.
3. The notice of hearing issued by the Commission was sufficient under the terms of TEX. GOV'T CODE § 2001.052.
4. Petitioner, the Claimant, has the burden of proving by a preponderance of the evidence that it should prevail in this matter, pursuant to TEX. LABOR CODE ANN § 413.031.
5. The CPM program for which Claimant sought preauthorization is the type of treatment program which must be preauthorized according to TEX. LABOR CODE ANN § 413.015 and 28 TEX. ADMIN. CODE ANN. § 134.600.
6. Petitioner failed to prove by a preponderance of the evidence that a 196-hour CPM course would be a service reasonably required to relieve the effects of or promote recovery from the compensable injury she suffered, within the meaning of TEX. LABOR CODE ANN. §§ 408.021 and 401.011(9).

ORDER

IT IS HEREBY ORDERED that Claimant _____'s request for preauthorization for a 196-hour chronic pain management course is hereby denied.

ISSUED August 18, 2003.

CASSANDRA J. CHURCH
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS