

AMERICAN HOME ASSURANCE	§	BEFORE THE STATE OFFICE
COMPANY,	§	
<i>Petitioner</i>	§	
	§	
VS.	§	OF
	§	
POSITIVE PAIN	§	
MANAGEMENT, INC.,	§	
<i>Respondent</i>	§	ADMINISTRATIVE HEARINGS

DECISION AND ORDER

This issue in this case is whether a chronic pain management program should have been preauthorized for the Claimant. The Administrative Law Judge concludes it should.

I. Factual and Procedural History

The Claimant in this case sustained a compensable back injury on ____, while working at ____. Conservative treatment was tried, but she continued to feel pain that fluctuated in intensity, but generally was at 4 or 5 on a scale of 1 to 10. Positive Pain Management, Inc. (PPM) sought preauthorization for her to participate in a chronic pain management program for 30 days. American Home Assurance Company (AHAC), the Carrier, denied the request. PPM sought review from the Texas Workers's Compensation Commission (the Commission). An Independent Review Organization (IRO), on April 23, 2003, found preauthorization should be granted. AHAC filed a timely request for a hearing before the State Office of Administrative Hearings (SOAH).

The hearing was held July 22, 2003, before ALJ Henry D. Card, at SOAH's offices in Austin, Texas. Representatives of both parties participated in the hearing, which was adjourned the same day. The record closed with the submission of additional documents by PPM, on July 28, 2003.

After the IRO preauthorized the program, PPM went ahead and provided it to the Claimant.

AHAC has the burden of proof in this proceeding. 28 TAC §148.21(h).

II. Discussion

AHAC's testifying expert, Dr. Hayes, presented several reasons why a chronic pain management program should not have been preauthorized for the Claimant. First, Dr. Hayes pointed out that no actual pain generator had been identified; in other words, it was not clear what was causing the Claimant's pain. Second, the Claimant's pain levels were inconsistent, but generally were too low to justify a chronic pain management program. Third, the Claimant did not appear to be a good candidate for such a program due to her home situation and other factors. Specifically, Dr. Hayes pointed to interviews which suggested the Claimant's husband reinforced her pain behaviors, which would make it difficult for the program to succeed. AHAC provided several scientific studies to support its position.

PPM's expert, Dr. Wright, testified the Claimant was an excellent candidate for a chronic pain management program. According to Dr. Wright, the Claimant had a documented history of pain for six months, with inhibition of functions. She exhibited psychological issues that warranted chronic pain intervention. Moreover, according to Dr. Wright, the inability to identify a specific pain generator was an indicator for a chronic pain management program, not a factor that militated against such a program. PPM also provided several scientific studies to support its position.

A psychological evaluation report by Julie Duncan, PhD. on December 17, 2002, does suggest the Claimant's husband might have been reinforcing her pain behavior. It also contains information to the contrary, however. According to the evaluation, the Claimant reported that her husband was nicer to her and paid more attention to her when she was in pain, but also that he sometimes criticized or became angry with her pain behavior. The evaluation ultimately recommended the chronic pain management program.

The ALJ found both experts to be credible witnesses who had a legitimate disagreement about whether chronic pain management is warranted in this situation. The ALJ's review of the scientific literature provided did not resolve the issue in either direction. Considering Dr. Wright's testimony combined with the psychological evaluation report, however, the ALJ concludes AHAC did not meet its burden of proving the IRO decision was wrong. He concludes the chronic pain management program was medically necessary for the treatment of the Claimant's compensable injury and should be preauthorized.

III. Findings of Fact

1. The Claimant in this case sustained a compensable back injury on ____, while working at ____.
2. Conservative treatment was tried, but the Claimant continued to feel pain that fluctuated in intensity, but generally was at 4 or 5 on a scale of 1 to 10.
3. PPM sought preauthorization for the Claimant to participate in a chronic pain management program for 30 days.
4. AHAC denied the preauthorization request.
5. PPM sought review of AHAC's decision from the Commission.
6. The IRO, on April 23, 2003, found preauthorization should be granted.
7. AHAC filed a timely request for a hearing before SOAH.
8. Notice of the hearing was sent to the parties June 26, 2003.
9. 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.

10. The hearing was held July 22, 2003, before ALJ Henry D. Card, at SOAH's offices in Austin, Texas. Representatives of both parties participated in the hearing, which was adjourned the same day. The record closed with the submission of additional documents by PPM, on July 28, 2003.
11. After the IRO preauthorized the program, PPM provided it to the Claimant.
12. The Claimant had a documented history of pain for six months, with inhibition of functions.
13. Conservative care had not alleviated the Claimant's pain.
14. The Claimant exhibited psychological issues.

IV. Conclusions of Law

1. 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.
2. Adequate and timely notice of the hearing was provided in accordance with TEX. GOV'T CODE ANN. §2001.052.
3. AHAC has the burden of proof in this matter. 28 TEX. ADMIN. CODE (TAC) §148.21(h).
4. AHAC did not meet its burden of proving the IRO decision was wrong.
5. The chronic pain management program was medically necessary for the treatment of the Claimant's compensable injury.
6. The chronic pain management program should have been preauthorized.

ORDER

IT IS, THEREFORE, ORDERED that the Respondent, Positive Pain Management, Inc., was entitled to preauthorization to provide the Claimant with a chronic pain management program for thirty days.

Signed this 6th day of October, 2003.

STATE OFFICE OF ADMINISTRATIVE HEARINGS

Henry D. Card
Administrative Law Judge