

DOCKET NO. 453-03-4222.M2
MDR Tracking Number: M2-03-1181-01

**AMERICAN HOME ASSURANCE
COMPANY**

V.

SUSAN LINDER, M.D.

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BEFORE THE STATE OFFICE

OF

ADMINISTRATIVE HEARINGS

DECISION AND ORDER

American Home Assurance Company (Carrier) appealed the decision of the Independent Review Organization (IRO) approving the preauthorization request of Susan Linder, M.D. (Provider) for 15 additional sessions of chronic pain management for ___, an injured worker. After considering the evidence and arguments of the parties, the Administrative Law Judge (ALJ) concludes that Carrier has shown by preponderance of the evidence that the 15 sessions of chronic pain management are not medically necessary treatment for ___'s work-related, compensable injury. Accordingly, the ALJ finds that the 15 additional sessions of chronic pain management should not be preauthorized.

I. BACKGROUND FACTS

___suffered a compensable, work-related injury on ___, when the forklift he was driving ran into a stack of pallets, jarring him physically but resulting in no broken bones or observable external injuries. As a result of the incident, ___suffered pain in his back and neck. He continued to work for two weeks, but suffered ongoing pain. Because of his pain, ___visited the emergency room of a local hospital and was released. Then, he received ongoing treatment for his injury from Reza Assadolahi, D.C., who ordered x-rays and an MRI of ___ spine. The MRI showed normal lumbar curve without evidence of acute fracture or unstable injury, mild facet arthrosis indicative of degenerative change, and a one millimeter focus of bright signal at L5-S1 level indicating a focal annular tear. ___received injections, underwent chiropractic treatment, and received other conservative care designed to alleviate the pain from his injury.

Thereafter, in November and December 2001, ___participated in a work hardening program to enable him to return to work. On January 2, 2002, ___ was evaluated by Myron Glickfield, D.O., who determined that all of his existing problems as of that date were attributed to degenerative

arthritis. Then, on January 7, 2002, ___ was evaluated by Bryan Weddle, D.C., and determined to be at maximum medical improvement (MMI) with a 10% whole person impairment. ___ disputed this and changed treating doctors, but did return to work in a less strenuous capacity.

In February 2002, ___ saw Gaston Dubois, M.D., who concluded that ___ “appears to be slipping into a chronic myofascial/chronic pain pattern.” Dr. Dubois then determined that ___ needed to be treated in a comprehensive multi-disciplinary pain setting and referred him to Provider, a chronic pain management specialist. Provider examined ___ and, on February 26, 2002, she referred ___ to Thomas Sheriff, Ph.D., and Barry Dikes, therapist, for evaluation of ___ for a chronic pain management program. It was then determined that ___ was a candidate for a chronic pain management program. Therefore, Provider requested preauthorization from Carrier for 30 days of chronic pain management.

After numerous communications with Provider about the necessity of chronic pain management, Carrier preauthorized ten days of treatment. On request by Provider for additional treatment, Carrier preauthorized an additional five days of treatment. At the conclusion of the 15 days, Provider requested that an additional 15 days be authorized (bringing the total to 30 days). Carrier denied the request, contending that ___ had not shown improvement from the first 15 days and was not expected to improve with additional chronic pain management. Provider then requested that the Commission review and overrule Carrier’s denial of preauthorization. The matter was referred to an IRO designated by the Commission for the review process. The IRO determined that the 15 additional days of chronic pain management was medically necessary and should be authorized. Carrier then requested a hearing before SOAH.

The hearing convened initially on September 4, 2003, with ALJ Craig R. Bennett presiding. The hearing was recessed that day and reconvened on September 26, 2003, at which time the hearing concluded and the record closed. Carrier appeared through its representative, Dan C. Kelley. Provider appeared through her attorney, Bill Aleshire. No parties objected to notice or jurisdiction.

II. DISCUSSION AND ANALYSIS

The sole issue in this case is whether 15 additional chronic pain management sessions are medically necessary to treat __ work-related injury. This matter is governed by the Texas Workers' Compensation Act (Act) and the Commission's rules.¹ Section 408.021(a) of the Act governs an injured worker's entitlement to benefits for compensable injuries under the Act, and provides that an employee who sustains a compensable injury is entitled to all health care reasonably required by the nature of the injury as and when needed. Certain healthcare, however, must be preauthorized before it can be provided within the strictures of the Act, and such preauthorization will be granted if there is a prospective showing of medical necessity.² Chronic pain management is one type of treatment for which preauthorization is required.³

As noted, before treatment will be preauthorized, it must be shown to be medically reasonable and necessary. On this issue, Carrier presented the testimony of Melissa Tonn, M.D. In her testimony, Dr. Tonn discussed __ detailed treatment history, pointing out that __ already had received significant conservative care, undergone two functional capacity evaluations, completed work hardening, and been placed at MMI. Dr. Tonn testified that __ had shown no improvement from the first 15 days of chronic pain management, citing his subjective pain levels as being similar to those from at least six months before after he had completed his more conservative care. Given __ lack of improvement from other past treatments, Dr. Tonn concluded that additional chronic pain management treatment was not expected to provide any medical benefit to __. She also pointed out that the functional capacity evaluations performed on Claimant showed that he was able to perform work at levels commensurate with his job, so additional treatment was not medically necessary. Finally, Carrier notes that the reports from other physicians who treated __ would not support such ongoing treatment, citing Dr. Glickfield's finding that __ ongoing symptoms were simply the result of degenerative arthritis and Dr. Weddle's finding that __ was at MMI.

¹ The Act is found at TEX. LAB. CODE ANN. ch. 401 *et seq.*

² TEX. LABOR CODE ANN. § 413.014; 28 TEX. ADMIN. CODE § 134.600.

³ 28 TEX. ADMIN. CODE § 134.600(h)(10)(B).

In response, Provider points out that the standard time period for chronic pain management is typically 28-30 days and, by failing to allow the full time period, Carrier has prevented the program from being effective.⁴ Moreover, Provider asserts that ___ failure to improve in his pain levels from prior treatment is a primary reason that chronic pain management is appropriate for him. As its name implies, chronic pain management is for individuals who continue to suffer chronic pain even though they have received significant treatment for their injury and their injury is no longer appropriate for further surgical or medical intervention. Provider argues that, because she is a specialist in pain management, she is in the best position to make a determination as to the benefit of chronic pain management for ___. She contends that if he was given the full 30 days of treatment, he would benefit and show some improvement.

After considering the documentary evidence (including the extensive treatment notes) and the testimony of Dr. Tonn, the ALJ concludes that Carrier has shown that an additional 15 days of chronic pain management treatment is not medically necessary for ___ work-related injury. In particular, the ALJ notes that ___ had extensive treatment prior to the chronic pain management program, including work hardening. One aspect of work hardening addresses psychological and behavioral matters related to the employee's ability to return to work, including ongoing pain issues. Despite all of the extensive treatment and placement at MMI, ___ continued to have subjective complaints of pain. However, even through the first 15 days of chronic pain management, ___ complaints continued and he showed no significant improvement. Under the circumstances, the ALJ agrees with Dr. Tonn and concludes that an additional 15 days of chronic pain management will not provide any benefit to ___ particularly when all of the extensive prior treatment and chronic pain management have not relieved his subjective pain complaints. Therefore, the ALJ finds that such services should not be preauthorized. In support of this conclusion, the ALJ makes the following findings of fact and conclusions of law.

⁴ References to Provider's statements or assertions are intended to reflect her attorney's arguments at the hearing.

III. FINDINGS OF FACT

1. ___ suffered a compensable, work-related injury on ___, resulting in pain to his back and shoulder.
2. American Home Assurance Company (Carrier) is the provider of workers' compensation insurance covering ___ for his compensable injury.
3. ___ continued to work for two weeks after his injury, but suffered ongoing pain. Because of his pain, ___ visited the emergency room of a local hospital and was released.
4. ___ received ongoing treatment for his injury from Reza Assadolahi, D.C., who ordered x-rays and an MRI of ___'s spine. The MRI showed normal lumbar curve without evidence of acute fracture or unstable injury, mild facet arthrosis indicative of degenerative change, and a one millimeter focus of bright signal at L5-S1 level indicating a focal annular tear.
5. ___ received injections, underwent chiropractic treatment, and received other conservative care designed to alleviate the pain from his injury.
6. In November and December 2001, ___ participated in and completed a work hardening program to enable him to return to work.
7. On January 2, 2002, ___ was evaluated by Myron Glickfield, D.O., who determined that all of his existing problems as of that date were attributed to degenerative arthritis.
8. On January 7, 2002, ___ was evaluated by Bryan Weddle, D.C., and determined to be at maximum medical improvement (MMI) with a 10% whole person impairment.
9. ___ disputed his impairment rating and changed treating doctors, but did return to work in a less strenuous capacity.
10. In February 2002, ___ saw Gaston Dubois, M.D., who concluded that ___ "appears to be slipping into a chronic myofascial/chronic pain pattern."
11. Dr. Dubois determined that ___ needed to be treated in a comprehensive multi-disciplinary pain setting and referred him to Susan Linder, M.D. (Provider), a chronic pain management specialist.
12. After examining ___ and reviewing reports from other physicians regarding ___'s condition, Provider requested preauthorization from Carrier for 30 days of chronic pain management.
13. Carrier initially preauthorized 10 days of chronic pain management treatment. On request by Provider for additional treatment, Carrier preauthorized an additional five days of treatment.

14. At the conclusion of the first 15 days of treatment, Provider requested that an additional 15 days be authorized (bringing the total to 30 days).
15. Carrier denied the preauthorization request, contending that __ had not shown improvement from the first 15 days and was not expected to improve with additional chronic pain management.
16. Provider requested medical dispute resolution by the Texas Workers' Compensation Commission's Medical Review Division (MRD), which referred the matter to an Independent Review Organization (IRO).
17. On July 10, 2003, after conducting medical dispute resolution, the IRO physician reviewer determined that the requested 15 additional days of chronic pain management was medically necessary and should be authorized.
18. On July 15, 2003, Petitioner requested a hearing on the IRO decision and the case was referred to the State Office of Administrative Hearings (SOAH).
19. The hearing convened initially on September 4, 2003, with ALJ Craig R. Bennett presiding. The hearing was recessed that day and reconvened on September 26, 2003, at which time the hearing concluded and the record closed. Carrier appeared through its representative, Dan C. Kelley. Provider appeared through her attorney, Bill Aleshire.
20. An additional 15 days of chronic pain management is not likely to provide any benefit to __ in light of the fact that all of his extensive prior treatment and chronic pain management have not relieved his subjective pain complaints.

IV. CONCLUSIONS OF LAW

1. SOAH has jurisdiction over this proceeding, including the authority to issue a decision and order, pursuant to the Texas Workers' Compensation Act (the Act), specifically TEX. LABOR CODE ANN. §413.031(k), and TEX. GOV'T CODE ANN. ch. 2003.
2. The hearing was conducted pursuant to the Administrative Procedure Act, TEX. GOV'T CODE ANN. ch. 2001 and 28 TEX. ADMIN. CODE ch. 148.
3. The request for a hearing was timely made pursuant to 28 TEX. ADMIN. CODE §148.3.
4. Adequate and timely notice of the hearing was provided according to TEX. GOV'T CODE ANN. §§ 2001.051 and 2001.052.
5. Carrier has the burden of proof in this matter. 28 TEX. ADMIN. CODE §§ 148.21(h) and 133.308(v).
6. Carrier established, by a preponderance of the evidence, that the requested 15 additional sessions of chronic pain management are not medically necessary for the treatment of ___'s work-related injury.
7. Provider's request for preauthorization should be denied.

ORDER

IT IS, THEREFORE, ORDERED that the requested 15 sessions of chronic pain management are not medically necessary, and preauthorization for such is denied.

Signed this 22nd day of October 2003.

CRAIG R. BENNETT
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS