

DOCKET NO. 453-03-4452.M2
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AMERICAN HOME ASSURANCE	§	BEFORE THE STATE OFFICE
COMPANY,	§	
Petitioner	§	
	§	
VS.	§	OF
	§	
POSITIVE PAIN MANAGEMENT	§	
Respondent	§	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 Positive Pain Management (Provider) to provide 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) Wendy K. L. Harvel conducted a hearing in this case on January 22, 2004, at the State Office of Administrative Hearings (SOAH), William P. Clements State Office Building, 300 West 15th Street, Austin, Texas. Attorney Peter Macaulay appeared on behalf of AHAC. Provider appeared by telephone and was represented by attorney Peter Rogers. The hearing concluded and the record closed the same day.

II. DISCUSSION

A. Background

Claimant injured herself at work at a ___ store when she fell. She failed conservative care and has generally been diagnosed with L4-5 and L5-S1 disk dessication with L5-S1 herniation with possible right S1 compression. She has seen several doctors and has undergone a course of conservative treatment, but she has not had surgery and currently declines to undergo surgery. She also has a history of post-traumatic stress disorder and other psychological ailments.

Claimant was referred by Dr. Sid Bernstein, her treating doctor, to a chronic pain management program, which required preauthorization. Carrier denied the request for preauthorization, and Provider appealed. Provider then appealed to the IRO. The IRO reviewed the clinical history and approved preauthorization with the following basis for decision:

Although the patient's past psychological history affected her ability to cope with her pain, she has MRI findings and symptoms consistent with the disk herniation seen on MRI. She had failed conservative care and opted not to undergo surgery. A chronic pain management program is an appropriate option.

This appeal by AHAC followed.

B. Medical Necessity of Chronic Pain Management Services

1. Carrier

Carrier presented one witness, Dr. Melissa Tonn, who specializes in occupational medicine, and works part-time for ____, Claimant's employer. She testified that the Claimant was not a good candidate for a pain management program because several doctors believed she could return to work. On cross-examination, she admitted that approximately twenty percent of her practice is devoted to ____-related matters.

Carrier argues that based on Dr. Tonn's testimony, the chronic pain management sessions should not be preauthorized. Specifically, Carrier asserts that the Claimant could have returned to work prior to the sessions, and that the Claimant, because of her history of psychological problems was not a good candidate for pain management training.

2. Provider

Provider presented one witness, Dr. Julie Duncan, a psychologist who works for Provider. Dr. Duncan testified that she met with Claimant and that Claimant met the criteria for entry into a pain management program. She testified that before entering the pain management program, Claimant had received medications, chiropractic care, steroid injections, aquatic therapy, physical therapy, work hardening, and a TENS unit. Despite the treatments provided, Dr. Duncan testified that Claimant still complained of pain.

In addition to Dr. Duncan's testimony, Provider points to another doctor who recommended a chronic pain management program. Dr. Jack Kern, an orthopedic surgeon, recommended that Claimant enter a PRIDE program.¹

Provider argues that the chronic pain management program is necessary because all treatments have failed. Provider argues that the greater weight of the evidence favors Claimant because one doctor referred her to the program, an independent doctor also recommended a chronic pain management program, and the IRO decided the program should be preauthorized. The evidence that Claimant would not benefit from the program was from Dr. Tonn, who Provider argues is biased because twenty percent of her practice involves evaluating workers for Claimant's employer.

3. Analysis

Based on the evidence presented, the ALJ finds that the chronic pain management program should be preauthorized. At this time, Claimant has refused surgical treatment, yet she continues to live with chronic pain. Several treatments have been tried and have failed. A chronic pain management program is essentially a last step to dealing with chronic pain that has not been treated

¹ Pet. Ex. 1 at 87-93. Dr. Duncan testified that a PRIDE program is a form of a chronic pain management program.

successfully.

The IRO decision was supported by the greater weight of the evidence in this case. Claimant has MRI findings indicating damage to her back. All of the treatments and interventions in which she participated have failed. Her treating doctor and an independent doctor both recommended some type of chronic pain management program. Although Claimant does have some psychological issues, those issues may be addressed in the program.

III. FINDINGS OF FACT

1. Claimant suffered a compensable injury on ____, when she slipped and fell while at work.
2. Claimant received extensive conservative treatment, diagnostic studies, and treatment, including chiropractic care, a TENS unit, and injections, none of which were successful.
3. Dr. Sid Bernstein referred Claimant to a chronic pain management program at Positive Pain Management (Provider).
4. Provider requested preauthorization for thirty days in a chronic pain management program.
5. American Home Assurance Company (Carrier) denied the request for the chronic pain management program.
6. Provider timely requested medical dispute resolution.
7. The Independent Review Organization (IRO) granted Provider's request for preauthorization on July 21, 2003.
8. On July 25, 2003, Carrier requested a contested case hearing before the State Office of Administrative Hearings.
9. Claimant has findings on an MRI that indicate injury to her spine at the L4-L5, and L5-S1 level, with possible right S1 compression.
10. Claimant has post traumatic stress disorder and continues to complain of low back pain.
11. Claimant has not had back surgery, and she has decided not to undergo surgery.
12. A chronic pain management program for Claimant is medically reasonable and necessary.
13. Administrative Law Judge Wendy K. L. Harvel conducted a hearing in this case on January 22, 2004. Both parties participated in the hearing, and the record closed the same day.

14. 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.

IV. CONCLUSIONS OF LAW

1. The Texas Workers' Compensation Commission (Commission) has jurisdiction related to this matter pursuant to TEX. LABOR CODE ANN. § 413.031(k).
2. 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) and TEX. GOV'T CODE ch. 2003.
3. All parties received proper and timely notice of the hearing. TEX. GOV'T CODE ANN. §§ 2001.051 and 2001.052.
4. Carrier has the burden of proof by a preponderance of the evidence. 28 TEX. ADMIN. CODE §§148.21(h) and (i); 1 TEX. ADMIN. CODE §155.41.
5. 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 Claimant. TEX. LABOR CODE ANN. §§ 401.011(19) and 408.021.
6. Carrier's appeal is denied and Carrier is required to pay for 30 days of chronic pain management for Claimant.

ORDER

IT IS, THEREFORE, ORDERED that preauthorization is hereby GRANTED for 30 days of chronic pain management for Claimant.

SIGNED February 5, 2004.

**WENDY K. L. HARVEL
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS**