
V.
CITY OF HOUSTON

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BEFORE THE STATE OFFICE
OF
ADMINISTRATIVE HEARINGS

DECISION AND ORDER

I. INTRODUCTION

____ (Claimant) has appealed a decision of the Texas Workers' Compensation Commission (TWCC) Medical Review Division (MRD), which was based on an independent review organization (IRO) review. That decision denied preauthorization of a chronic-pain management program (Pain Program) for the Claimant. The IRO found that the Pain Program was not reasonably medically necessitated by the Claimant's compensable injury.

The only disputed issue is whether the Pain Program is medically necessitated by the compensable injury. As set out below, the Administrative Law Judge (ALJ) finds that it is and pre-authorizes it.

The Claimant sustained his compensable injury when he drove a truck over a speed bump and experienced pain in his lower back and leg. As a result of his compensable injury, the Claimant had back and left leg pain, mild physiological changes, bilateral facet syndrome, myofascial pain syndrome, lumbar disc disorder, lumbar neuralgia, lumbar myofascitis, and a bulging lumbar disc. To treat his injury, he was provided passive rehabilitation and physical therapy, chiropractic treatment, and pain medications. Active physical therapy was also attempted, but the Claimant could not proceed with it due to his pain.

Despite receiving those services, the Claimant, according to Eric Hatch, D.C. (Treating Doctor), still has pain and has other psychological problems, including anger and depression, stemming from the compensable injury. Dr. Hatch testified that further physical therapy, chiropractic services, *etc.* would not help those problems. He also stated that the Claimant would not be able to move on to active physical therapy and possibly return to work until those problems are resolved.

Dr. Hatch referred the Claimant to Positive Pain Management (PPM) to determine if the Claimant was an appropriate candidate for its Pain Program. According to Doctor Hatch and the Claimant, PPM found the Claimant was an appropriate candidate for the Pain Program. They also testified that a TWCC designated doctor, Rhonda Boone, had also recommended a Pain Program for the Claimant after she evaluated him. The Treating Doctor also testified that Dr. Ziegler, another TWCC designated doctor who examined the Claimant, found that the Claimant needed a Pain Program.

None of the underlying medical records by the health-care professionals who actually examined the Claimant were admitted into evidence. However, the testimony by the Treating Doctor and Claimant concerning the recommendations of the designated doctors and PPM was neither objected to nor contradicted. The ALJ concludes it was true.

This claim against the Employer was administered by Ward North America, whose representative was Ellen Duncan, M.D., a board-certified pain-management anesthesiologist. She concluded that the Pain Program was not reasonable or appropriate for the Claimant. Dr. Duncan based her opinion solely on her review of documentation. There is no evidence that she examined the Claimant. She did not testify, although her written review and opinions were introduced into evidence.

Dr. Duncan indicated that the Claimant was treated only by the Treating Doctor, a chiropractor, and not referred to a medical doctor (M.D.). She claimed that was a serious omission. However, both the Treating Doctor and the Claimant testified that the Claimant had been treated by two MDs, who prescribed pain medications for the Claimant. Since the Treating Doctor and Claimant are in better positions to know, the ALJ finds that the Claimant was referred to two MDs by the Treating Doctor.

In Dr. Duncan's opinion, the Claimant has rather severe medical and psychological problems. However, she indicated that they did not result from the compensable injury. She stated that the Claimant was examined by Dr. Hood, whose affiliation is not in the record, in October 2002. Dr. Hood felt the Claimant should be able to return to work based on his compensable injury. Dr. Duncan also indicated that the Claimant had a normal medical exam by Dr. Hood in March 2003 and appeared to be malingering. During that exam, Dr. Hood observed that the Claimant had a full range of motion with no pain behavior until the physical exam was formally begun. Then, the Claimant had marked magnification of pain behavior, suggesting malingering.

The evidence is sufficiently clear that the Claimant is experiencing pain and psychological problems and likely would benefit from the Pain Program. The Treating Doctor, Designated Doctor, and PPM thought so. Even Dr. Duncan concedes that he has severe medical and psychological problems.

It is less clear, however, that the Claimant's need for that Pain Program stems from the compensable injury. The only evidence of that is the Treating Doctor's testimony that the Claimant continues to have pain from that injury and that his depression, *etc.* results from that pain. On the other hand, there is some evidence, Dr. Duncan's summary of Dr. Hood's report, that the Claimant is malingering. The ALJ finds marginally more persuasive the Treating Doctor's live, cross-examined testimony, showing the need for services that he will not provide and in which he has no direct financial interest.

The ALJ finds that the Claimant more likely than not needs the Pain Program due to his Compensable Injury. The ALJ pre-authorizes the Pain Program.

II. FINDINGS OF FACT

1. ____ (Claimant) sustained a work-related injury on ____, while his employer was the City of Houston, which was self-insured for workers' compensation claims.
2. The Claimant's compensable injury was to his lower back and included bilateral facet syndrome, myofascial pain syndrome, lumbar disc disorder, lumbar neuralgia, lumbar myofascitis, and a bulging disc.

3. Eric S. Hatch, D.C. is the Claimant's treating doctor and began treating the Claimant on July 22, 2002.
4. To treat the Claimant's injury, the Treating Doctor provided passive physical therapy and chiropractic treatment and attempted active physical therapy, which the Claimant could not adequately participate in due to his pain.
5. The Claimant also received pain medications prescribed by medical doctors to whom his Treating Doctor had referred him.
6. Despite receiving those services, the Claimant still has pain and has psychological problems, including anger and depression, stemming from the compensable injury.
7. Further physical therapy, chiropractic services, *etc.* will help his pain and psychological problems.
8. The Claimant will not be able to move on to active physical therapy and possibly return to work until his pain and psychological problems are resolved.
9. The Treating Doctor referred the Claimant to Positive Pain Management (PPM) to determine if the Claimant was an appropriate candidate for its 30-day chronic-pain-management program (Pain Program).
10. PPM found the Claimant was an appropriate candidate for the Pain Program, which will address the Claimant's pain and psychological problems.
11. Two TWCC designated doctors, Rhonda Boone and Dr. Ziegler, also examined the Claimant and concluded that he needed a Pain Program.
12. The Claimant reasonably needs the Pain Program due to his Compensable Injury.
13. In January 2003 and again on May 12, 2003, PPM sought preauthorization from the Employer for the Claimant's participation in PPM's Pain Program for 30 days.
14. The Employer denied the requested pre-authorization for the Pain Program, maintaining that it was not medically necessitated by the Compensable Injury.
15. On behalf of the Claimant, the Treating Doctor timely filed a request for medical dispute resolution with TWCC, which referred it to the IRO.
16. The IRO reviewed the medical dispute and found that the Pain Program was not medically necessitated by the Claimant's compensably injury.
17. After the IRO decision was issued, the Treating Doctor, on the Claimant's behalf, asked for a contested-case hearing by a State Office of Administrative Hearings (SOAH) Administrative Law Judge (ALJ) concerning the medical dispute.

18. Notice of a September 23, 2003, hearing in this case was mailed to the Claimant and the Employer on August 21, 2003.
19. On September 23, 2003, William G. Newchurch, an Administrative Law Judge (ALJ) with SOAH held a hearing on this case at the William P. Clements, Jr. Building, 300 W. 15th Street, 4th Floor, Austin, Texas. The hearing concluded and the record closed on that same day.
20. The Employer appeared at the hearing through its Attorney, Robert F. Josey.
21. The Claimant telephonically appeared at the hearing and represented himself.
22. The Treating Doctor telephonically appeared at the hearing and testified as a witness for the Claimant.
23. TWCC Assistant Ombudsman Luz Loza appeared at the hearing to assist the Claimant.

IV. CONCLUSIONS OF LAW

1. 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. LABOR CODE ANN. (Labor Code) §§ 402.073(b) and 413.031(k) (West 2003) and TEX. GOV'T CODE ANN. (Gov't Code) ch. 2003 (West 2003).
2. Adequate and timely notice of the hearing was provided in accordance with Gov't Code §§ 2001.051 and 2001.052.
3. Based on the above Findings of Fact and Gov't Code § 2003.050 (a) and (b), 1 Tex. Admin. Code (TAC) § 155.41(b) (2003), and 28 TAC §§ 133.308(v) and 148.21(h) (2002), the Claimant has the burden of proof in this case.
4. 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. Labor Code § 408.021(a).
5. Pre-authorization is required for the Pain Program. 28 TAC § 134.600(h)(10)(B).
6. Based on the above Findings of Fact and Conclusions of Law, the Claimant reasonable needs the Pain Program to treat his pain and psychological problems that resulted from his compensable injury.
7. The Claimant's participation in the Pain Program should be preauthorized.

ORDER

IT IS ORDERED THAT the Claimant's participation in a chronic-pain-management program for 30 days is pre-authorized.

Signed October 24, 2003.

**WILLIAM G. NEWCHURCH
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS**