

DOCKET NO. 453-04-2252.M2
MDR Tracking No. M2-04-0513-01

IHSAN SHANTI, M.D.	§	BEFORE THE STATE OFFICE
Petitioner	§	
	§	
VS.	§	OF
	§	
SERVICE LLOYDS	§	
INSURANCE COMPANY,	§	ADMINISTRATIVE HEARINGS
Respondent	§	

DECISION AND ORDER

Ihsan Shanti, M.D., appealed an independent review organization (IRO) determination that a chronic pain management program he requested was medically unnecessary to treat an injured worker (the Claimant). Service Lloyds Insurance Company (Service Lloyds) had denied the claim. This decision concludes that the Claimant’s condition satisfied the requirements for a chronic pain management program and that it is reasonably required by the nature of his injury.

I. PROCEDURAL HISTORY

A hearing convened in this matter on February 11, 2004, before the undersigned Administrative Law Judge (ALJ) at the State Office of Administrative Hearings (SOAH), Austin, Texas. Dr. Shanti appeared and represented himself. Service Lloyds appeared and was represented by its counsel, William E. Weldon. The hearing closed on February 12, 2004, when both parties submitted authority on the legal requirements for a chronic pain management program.

As there were no issues concerning notice or jurisdiction, those matters are set forth in the fact findings and legal conclusions without further discussion here.

II. DISCUSSION

1. Background

The Claimant, a ___ year-old male, sustained an at-work injury to his right knee on ____. He has received a variety of treatments, including non steroidal anti-inflammatory medications and

opioids, but has continued to have severe pain. He had arthroscopies in March and June 2003.¹ After each surgery, he tried to return to his job, which requires heavy labor, but was unable to do so. He was referred by his treating doctor to Ihsan Shah, M.D., who requested a pain management program. Service Lloyds denied the request.

Employees have a right to necessary health treatment under TEX. LABOR CODE ANN. §§ 408.021 and 401.011. Section 408.021(a) provides, “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. The employee is specifically entitled to health care that: (1) cures or relieves the effects naturally resulting from the compensable injury; (2) promotes recovery; or (3) enhances the ability of the employee to return to or retain employment.” Section 401.011(19) of the Labor Code provides that health care includes “all reasonable and necessary medical . . . services.”

As Appellant, the Dr. Shanti has the burden of proof.²

2. Discussion

Medical Fee Guideline (MFG) _ Chronic Pain Management Program³

The Texas Workers’ Compensation Commission (Commission) adopted 1996 MFG defines and states entrance criteria for a chronic pain management program as follows:

Chronic Pain Management: A program which provides coordinated, goal-oriented, interdisciplinary team services to reduce pain, improve functioning, and decrease the dependence on the health care system of persons with chronic pain syndrome.

Chronic pain syndrome is defined as any set of verbal and/or nonverbal behaviors that:

1. involves the complaint of enduring pain;
2. differs significantly from the injured worker’s premorbid status;
3. has not responded to previous appropriate medical, surgical, and/or injection treatments; and

¹ The surgery was to repair a meniscus cartilage tear. The second surgery was a second repair attempt.

² 1 TEX. ADMIN. CODE (TAC) § 155.41; 28 TAC § 148(h).

³ 28 TAC § 134.201. Both parties submitted portions of the 1996 MFG as authoritative in this case.

4. interferes with the injured worker's physical, psychological, social, and/or vocational functioning.

Entrance/admission criteria shall enable the program to admit persons:

- a. who are likely to benefit from this program design;
- b. whose symptoms meet the above description of chronic pain syndrome; and
- c. whose medical, psychological, or other conditions do not prohibit participation in the program.⁴

Components of the program include individual and group psychotherapy, reduction of drug dependence, one-on-one time with the treating doctor, physical therapy, and occupational therapy.⁵

2. Dr. Shanti's Testimony

Dr. Shanti testified that the Claimant's need for a chronic pain management program is based on the following history: he sustained a right knee injury nearly two years ago; although he has had two surgeries, he still has significant pain and cannot return to work; he has gone through lower levels of treatment, including physical therapy, anti-inflammatory drugs and other medications; he has completed the secondary level of care by having surgery; and he is now in the tertiary level. Dr. Shanti said the tertiary level of care is designed to return an injured worker to work.⁶

Dr. Shanti believes a chronic pain management program is justified in this case based largely on the Claimant's having experienced severe pain for an extended period. As a result, he has had depression and anxiety secondary to his injury. He has also had lack of concentration, loss of memory, and loss of sleep—all are symptoms of the depression/anxiety that is secondary to his injury. His pain has touched every aspect of his life. He has been on anti-depressants. He has had limited improvement with six to eight individual psychotherapy sessions to deal with his anxiety/depression, control his frustration, and improve his coping skills. His doctors have attempted to reduce his dependence on narcotic drugs, with a small amount of progress.

⁴ MFG, Medicine Ground Rules, II.G.

⁵ *Id.*

⁶ Dr. Shanti indicated the tertiary level of care consists of work conditioning, work hardening, or a chronic pain management program. He said a chronic pain management program is indicated in this case.

Dr. Shanti explained that anxiety and depression naturally result from six to eight months of severe pain. He said pain, anxiety, and depression all follow the same chemical pathway. He asserted that the Claimant needs a multi-dimensional approach to his problem because he has multiple problems secondary to his injury.

Dr. Shanti said the chronic pain management program will include physical training, psychological counseling. It will also include an attempt to wean the Claimant off opioids, which is not a good long-term solution. Another important component will be vocational training because the ultimate goal is to return the Claimant to work. They will contact the Texas Rehabilitation Commission, when the Claimant is ready, to help him find employment.

Dr. Shanti does not believe the Claimant will be able to perform his previous job, requiring heavy labor, but believes he will improve and be able to work, perhaps at a lesser job with the same employer. He said he has an approximate eighty percent success rate with the chronic pain management program returning workers to work within two months of discharge from the program.

Dr. Shanti contended a chronic pain management program is the Claimant's best option because nothing else has worked.

3. Analysis

This decision concludes the chronic pain management program is reasonably required by the nature of the Claimant's injury. The Claimant's situation clearly meets the program entrance criteria: he is likely to benefit from the program design; his symptoms meet the definition of chronic pain syndrome in that they involve a complaint of enduring pain, his status is significantly different from his pre-injury situation, he has not adequately responded to previous appropriate medical, surgical, and injection treatments, and his symptoms interfere with his physical, psychological, social, and vocational functioning; and Dr. Shanti's testimony shows that his medical, psychological, and other conditions do not prohibit participation in the program.

Service Lloyds' arguments against the program were not persuasive. It contended first that

the Claimant has already received extensive treatment for a minor injury. However, Dr. Shanti asserted convincingly that any injury requiring two surgeries is not minor.

Service Lloyds' argument that workers' compensation coverage is only meant to extend to the worker's physical functioning was also not convincing. The treatments outlined in the MF Ground Rule description of a chronic pain management program amply demonstrate that a multi-discipline approach may be appropriate.⁷

Service Lloyds' argued that a thorough psychological examination is required by Commission rules. This was not supported by its post-hearing submission of the Medicine Ground Rule description of chronic pain management, however. The rule says an initial mental health evaluation to determine the injured worker's readiness for the program "may" be performed prior to entrance into the program. In any event, a psychological evaluation and psycho-physiological profile were provided.⁸

Finally, Service Lloyds' assertion, based on Dr. Shanti's statements that the Claimant is "entitled to state of the art medical care for life" and "This is not about how much it costs,"⁹ that Dr. Shanti is not interested in effective cost control as required by §413.011 of the Labor Code, was not relevant under the facts of this case. First, the program is a recognized treatment in the MFG. Second, the evidence strongly supports the appropriateness of the chronic pain management program for the Claimant in this particular case.

On the basis of the above-stated considerations, the ALJ concludes that the chronic pain management program is reasonably required by the nature of the Claimant's injury.

⁷ The same is true for work hardening described at MFG Medicine Ground Rule II.E.

⁸ Ex. 3 at 19-24. Service Lloyds contended that the evaluations were defective because the discipline of the evaluator was not shown. This was not supported by Medicine Ground Rule II. G, however, which does not specify a particular discipline for the evaluator.

⁹ Ex. 3 at 26.

III. FINDINGS OF FACT

1. The Claimant, a ___ year-old male, sustained an at-work injury to his right knee on ___.
2. The Claimant has received a variety of treatments, including non steroidal anti-inflammatory medications and opioids, but has continued to have severe pain.
3. The Claimant had arthroscopies in March and June 2003.
4. After each surgery, the Claimant tried to return to his job, which requires heavy labor, but was unable to do so.
5. The Claimant was referred by his treating doctor to Ihsan Shah, M.D., who requested a pain management program.
6. Service Lloyds Insurance Company denied the request.
7. Dr. Shah requested medical dispute resolution.
8. An Independent Review Organization (IRO) determined that the chronic pain management program should be denied.
9. It is undisputed that the Dr. Shah requested a hearing not later than the twentieth day after receiving notice of the IRO decision.
10. Because of his severe pain, the Claimant has had depression and anxiety secondary to his injury.
11. The Claimant has also had lack of concentration, loss of memory, and loss of sleep-all are symptoms of the depression/anxiety that is secondary to his injury.
12. The Claimant has been on anti-depressants.
13. The Claimant had limited improvement with six to eight individual psychotherapy sessions to deal with his anxiety/depression, control his frustration, and improve his coping skills.
14. The Claimant's doctors have attempted to reduce his dependance on narcotic drugs, with a small amount of progress.
15. Anxiety and depression naturally result from six to eight months of severe pain because pain, anxiety, and depression all follow the same chemical pathway.
16. The chronic pain management program will include physical training, psychological counseling, vocational training, and attempting to wean the Claimant off opioids (opioids)

are not a good long-term solution).

17. There is an approximate eighty percent success rate with Dr. Shanti's recommended chronic pain management in returning workers to work within two months of being discharged from the program.
18. The Claimant needs a multi-dimensional approach because he has multiple problems secondary to his injury.
19. The Claimant's situation clearly meets the following chronic pain management program entrance criteria:

§ the Claimant is likely to benefit from the program design;

§ the Claimant's symptoms meet the definition of chronic pain syndrome in that they involve a complaint of enduring pain; his status is significantly different from his pre-injury situation; he has not adequately responded to previous appropriate medical, surgical, and injection treatments, and his symptoms interfere with his physical, psychological, social, and vocational functioning; and

§ the Claimant's medical, psychological, and other conditions do not prohibit participation in the program.

22. The chronic pain management program is reasonably required by the nature of the Claimant's injury.
23. All parties received not less than ten days' notice of the time, place, and nature of the hearing; the legal authority and jurisdiction under which the hearing was to be held; the particular sections of the statutes and rules involved; and a short, plain statement of the matters asserted.
24. All parties had an opportunity to respond and present evidence and argument on each issue involved in the case.

V. CONCLUSIONS OF LAW

1. The State Office of Administrative Hearings (SOAH) has jurisdiction over this proceeding, including the authority to issue a decision and order. TEX. LAB. CODE ANN. §413.031(k) and TEX. GOV'T CODE ANN. ch. 2003.
2. All parties received adequate and timely notice of the hearing. TEX. GOV'T CODE ANN. §§ 2001.051 and 2001.052.
3. Dr. Shanti has the burden of proof. 1 TEX. ADMIN. CODE (TAC) § 155.41(b); 28 TEX. ADMIN. CODE § 148.21(h).

4. The requested chronic pain management program is appropriate for the Claimant's injury. TEX. LAB. CODE ANN. § 408.021.
5. Service Lloyds should cover the costs of the chronic pain management program.

ORDER

IT IS THEREFORE ORDERED that Service Lloyds cover the costs of the requested chronic pain management program to be provided to the Claimant.

SIGNED March 9, 2004.

**JAMES W. NORMAN
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS**