SOAH DOCKET NO. 453-04-3584M2R.DOC

AMERICAN HOME ASSURANCE COMPANY,	§	**BEFORE THE STATE OFFICE**
Petitioner	§	
	§	
V.	§	**OF**
	§	
NORTH TEXAS PAIN RECOVERY CENTER,	§	**ADMINISTRATIVE HEARINGS**
Respondent		

DECISION AND ORDER

American Home Assurance Company (Carrier) appeals an Independent Review Organization (IRO) decision to grant preauthorization for a chronic pain management program for an injured employee who sustained an injury to her lower back. This decision finds that the Carrier failed to sustain its burden of proving that the program is not medically necessary and preauthorizes the treatment.

I. PROCEDURAL HISTORY, NOTICE, AND JURISDICTION

There are no contested issues of notice or jurisdiction in this proceeding, and these matters are addressed only in the findings of fact and conclusions of law. The hearing convened and closed May 26, 2004, before Administrative Law Judge (ALJ) Nancy N. Lynch. Peter Macaulay represented the Carrier. Peter Rogers represented the North Texas Pain Recovery Center (Provider.)

II. BASIS FOR DECISION

1. Background

The Claimant is a ___-year-old female who sustained a compensable injury to her lower back on ___, when she was pushing an entertainment center on a buggy. The buggy struck a metal rod on the floor, and she fell forward against the buggy. She was diagnosed with a lumbar sprain/strain. The Claimant has undergone conservative care consisting of rest, pain medications, chiropractic treatment, physical therapy, trigger point injections and work hardening. Some of these apparently provided some relief, but the relief did not last. In early November 2003, her treating doctor recommended she undergo a 30-session chronic pain management program, and referred her to Provider for evaluation. Carrier denied preauthorization and asserted that the multidisciplinary program is unnecessary for the compensable injury.

2. Legal Standards

The Texas Labor Code (the Act) 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. The employee is specifically entitled to health care that: (1) cures or relieves the effects naturally resulting from the injury; (2) promotes recovery; or (3) enhances the ability to return to or retain employment.[1]

"Health care" includes "all reasonable and necessary medical aid, medical examinations, medical treatment, medical diagnoses, medical evaluations, and medical services."[2] Certain categories of health care identified by the Texas Worker's Compensation Commission (Commission) require preauthorization, which is dependent upon a prospective showing of medical necessity. The requested treatment requires preauthorization.[3]

Under the Commission's rules, an IRO decision is deemed a Commission decision and order.[4] Carrier, as the party who appealed the IRO decision, has the burden of proving by a preponderance of the evidence that the procedure sought is not a reasonable and necessary medical service.[5]

3. IRO Decision

The IRO evaluated this request by using the chronic pain definition set out in the AMA Guides to the Evaluation of Physical Impairment. That definition is:

> Chronic pain or chronic pain behavior is defined as devastating and recalcitrant pain with major psychosocial consequences. It is self sustaining, self regenerating and self-reinforcing and is destructive in its own right as opposed to simply being a symptom of an underlying somatic injury. Chronic pain patients display marked pain perception and maladaptive pain behavior with deterioration of coping mechanisms and resultant functional capacity limitations. The patients frequently demonstrate medical, social and economic consequences such as despair, social alienation, job loss, isolation and suicidal thoughts. Treatment history is generally characterized by

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[1] TEX. LAB. CODE ANN. § 408.021.

[2] TEX. LAB. CODE ANN. § 401.011(19).

[3] TEX. LAB. CODE ANN. § 413.014; 28 TEX. ADMIN. CODE §134.600(a)(5)

[4] 28 TEX. ADMIN. CODE § 133.308(p)(5).

[5] 28 TEX. ADMIN. CODE §' 148.21(h), (i).

excessive use of medications, prolonged use of passive therapy modalities and unwise surgical interventions. There is usually inappropriate rationalization, attention seeking and financial gain appreciation.[6]

The IRO also noted that a chronic pain program typically involves a multidisciplinary approach, and is reserved for patients who respond poorly to conventional treatment interventions, have significant psychosocial issues, and extensive absences from work. This patient, it found, met the applicable requirements, citing the following from her medical records:

X The patient has a Global Assessment Rating of 50.
X She has a psychosocial stressor rating of 4.
X She has responded poorly to primary and secondary stages of treatment.
X She exhibits pain behavior and functional limitations which disrupt her activities of daily living and is facing loss of functioning due to limitations requiring vocational, physical, and psychological adjustment.
X The available diagnostic studies (MRI and electrodiagnostic studies) are insufficient to explain her pain.
X Her pain has persisted beyond expected tissue healing time.[7]

4. Discussion

1. Evidence

The record in this proceeding consists of Carrier=s Exhibit 1 (104 pages), Carrier=s Exhibit 2 (169 pages), Provider=s Exhibits 1-9 (a total of 313 pages). Melissa Tonn, M.D., testified on behalf of the Carrier. Psychologist Michael R. Walker, Ed.D., M.H.L., testified on behalf of the Provider. The Carrier and the Provider each submitted approximately a hundred pages of articles that each claimed supported its view of chronic multidisciplinary pain management programs.

2. Parties= Positions and Arguments

1. Carrier argues that some elements already have been provided, others were not fully utilized

The Carrier asserts that the requested chronic pain management program has not been shown to be necessary. First, it argues that many elements of typical pain management programs have already been completed. Some of those treatments had some success, for a while. Therefore, Carrier maintains, there is no reason to provide them again.

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[6] IRO Decision, R-1, p. 5.

[7] *Id.*

As an example of this, Dr. Tonn, Carrier=s witness, testified she had approved eight sessions of individual psychotherapy, but that Claimant quit without finishing all eight sessions, saying she did not believe she was getting any benefit from them. In fact, Dr. Tonn said that Claimant's pain appeared to increase during those sessions. Dr. Tonn opined that such a history was not a good indicator for a chronic pain management program. Dr. Tonn also stated that other primary care options had not been fully utilized.

Provider points out that Carrier=s arguments are inconsistent. It originally denied preauthorization because the Areview failed to indicate that primary care options had been fully utilized.@[8] Now, it argues that a chronic pain management program is inappropriate because some components have already been provided.

Provider=s witness, Dr. Walker, testified that it is a fallacy to conclude that because some individual modalities were provided to Claimant without success, a multidisciplinary program would also fail. Dr. Walker said that individual modalities have extremely poor results with a chronic patient like Claimant. The advantage of a chronic pain management program, he testified, is that different disciplines can work together, create an appropriate treatment program, and use the different disciplines together in an organized setting. It is the team approach that makes these programs successful when individual treatment modalities have not been. Interdisciplinary, multidisciplinary programs are more effective than individual treatment modalities for individuals suffering from chronic back pain and more likely to bring about substantial healing, reduction of pain, and a return to work, according to Dr. Walker.

2. Carrier argues that the injury was resolved by April of 2003

Carrier argues that Claimant=s work-related injury was resolved by April of 2003, citing the medical evaluation that assigned her an MMI of 0% whole body impairment.[9] Before that evaluation, in November and December of 2002, Claimant participated in three weeks of a planned seven-week work hardening program. At the end of three weeks in the program, she met four of the five goals articulated for the program and had reached a plateau on the fifth goal. The interim functional capacity examination (FCE) found she was functioning at a medium physical demand capacity on December 6, 2002,[10] and she was released to work by her treating doctor without any restrictions on December 9, 2002.[11] Therefore, Carrier argues, the injury was clearly resolved.

[8] R. Ex. 1, p. 17.

[9] P. Ex. 2, pp. 117-125.

[10] P. Ex. 2, pp. 75-84.

[11] P. Ex. 2, pp. 85-87.

Provider responds that the designated doctor did not provide an impairment rating based on Claimant's lumbar spine because Claimant's condition did not meet the criteria for the diagnostic related estimates of the *Guides to the Evaluation of Permanent Impairment*, Fourth Edition, published by the American Medical Association (AMA Guides).[12] The designated doctor also stated that the range of motion (ROM) of the lumbar spine was measured using computerized dual inclinometers because the AMA Guides prefer that an evaluator use the diagnosis-related estimates (DRE) or injury model rather than the ROM model: AThis has been done, therefore, no impairment is awarded for range of motion deficit in the lumbar spine.@[13] The evaluation also noted that, ABased on neuromuscular examination, the examinee shows no objective sensory deficit and no objective motor deficit of the lumbar spine or lower extremities.@[14] and that:

> Upon review of the medical records and physical examination, the examinee complained of lumbosacral pain, but there is no ratable diagnosis related impairment. Based on Table 72, DRE Category I, page 110, she is assigned a whole person impairment of 0% due to this condition.[15]

The lack of an impairment rating for her lumbar sprain/strain does not negate the fact that Claimant was experiencing chronic pain, according to Provider, and she clearly was experiencing lumbosacral pain, as noted by the designated doctor.

Provider also pointed out that, as of April 10, 2003, when the medical evaluation was performed, Claimant was taking 1-2 Hydrocodone tablets every evening after returning from her part-time job.[16] She was also taking naproxen and an unknown muscle relaxant. Provider argued that the use of the medications, and the fact that she was seeing her treating doctor every two weeks, showed clearly she had not healed from her injury.

3. Carrier argues that Claimant had complained of low back pain and had been diagnosed with depression before her compensable injury

Carrier also argues that Claimant also had a history of low back pain before this injury, but that Dr. Walker (who evaluated Claimant for the multidisciplinary program) just assumed any pain reported was related to this injury. Dr. Tonn testified that Claimant's medical records indicated she had complained to a doctor about lower back pain in January 2002, prior to this accident at work.[17]

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[12] P. Ex. 2, p. 118.

[13] *Id.*

[14] *Id.* at 119.

[15] *Id.*.

[16] P. Ex. 2, p. 122.

[17] P. Ex. 2, p. 13.

According to that note, Claimant's pain dated back to a motor vehicle accident when she was eight or nine years old, and was made much worse by long periods of standing, bending, and lifting at work.[18]

Dr. Tonn also noted that Claimant had been described as Adepressed several months@ in a doctor=s note made in January 2000.[19] Carrier also asserts that treatments for anxiety and depression and a lumbar disc condition are not related to the compensable injury. Finally, Carrier argues that Dr. Walker=s evaluation only lasted an hour and was based on Claimant's responses to his questions, not on actually seeing how she was functioning and on reviewing the medical records in the case.

Provider argues that it really did not matter whether this injury aggravated a previous injury because an aggravated injury is still an injury for workers compensation purposes. Furthermore, Provider argues, compensability has already been decided in Claimant's favor, so the fact that she had previous complaints of pain is irrelevant to this proceeding. Dr. Walker also testified that Claimant's current depression and anxiety directly related to the chronic pain caused by the compensable injury.

Dr. Walker, Provider=s witness, testified that Claimant met the generally recognized criteria for a multidisciplinary chronic pain management program, as follows: She had suffered from pain for more than six months; she had received a diagnosis of chronic pain syndrome; her diagnostic testing indicated possible reasons for her pain, but was insufficient to fully explain it; she had no barriers to participation in the program; she had psychological stressors, including economic, occupational, educational, and social stressors; she had a global assessment of functioning (GAF) rating of 50; she was not working; her pain interfered with her ability to perform household duties, sleep, work, or participate in recreational activities; she had exhausted primary and secondary modalities, including individual counseling, biofeedback, injections, chiropractic treatment, physical therapy, medications, and rest; and she was still experiencing significant pain on a level of 6-7 out of 10. Dr. Walker also testified on cross examination that he had seen patients who were malingering and that he did not believe that Claimant was malingering.

D. ALJ=s Analysis

The IRO decision in this case is unusually detailed. The IRO compared Claimant's condition to the regulatory criteria for a chronic pain management program and concluded she met the criteria. The ALJ finds that the Carrier has failed to prove that the IRO decision should be overturned or that the requested chronic pain management program is not medically necessary.

Provider=s witness, Dr. Walker, was very credible and his testimony reinforced the documentary evidence by detailing the aspects of Claimant's medical history that made her an

[18] *Id.*

[19] P. Ex. 2, p. 12.

appropriate candidate for the proposed chronic pain management program. The ALJ is persuaded by his testimony that Claimant would benefit from a multidisciplinary pain management program, even though she had individual components of such a program without lasting success.

The ALJ is not persuaded by Carrier's arguments that Claimant=′ injury was resolved by April of 2003. There was other evidence in the record that demonstrated she continued to have back pain, although it did temporarily get better in response to various treatments. Carrier relied primarily on the designated doctor=s assignment of 0% whole body impairment on April 10, 2003. However, the designated doctor acknowledged that she complained of lumbosacral pain during the MMI examination and indicated he was required to use a computerized dual inclinometer test rather than measure the ROM of the lumbar spine. Because he used that particular test, his report stated, no impairment is awarded for ROM deficits in the lumbar spine. Therefore, the ALJ does not find the impairment rating to be convincing evidence that Claimant's injury was fully resolved.

Carrier also argued that Claimant had complained of lower back pain before the date of the compensable injury. The ALJ concludes that whether Claimant had a pre-existing lower back injury is not relevant to the determination of this case because Claimant clearly had a compensable lower back injury as a result of the at-work accident of (date of injury). Dr. Walker also testified he had seen patients who were malingering and that he did not believe this Claimant was malingering.

Based on the foregoing, the ALJ finds that the requested Chronic Pain Management Program should be preauthorized.

III. FINDINGS OF FACT

1. The Claimant sustained a sprain/strain injury to her lower back on ___.

2. At the time of the accident, American Home Assurance Company (the Carrier) was the worker=s compensation carrier for Claimant's employer.

3. The Claimant has undergone conservative care, including rest, pain medications, chiropractic treatments, physical therapy, trigger point injections, biofeedback, and work hardening.

4. Claimant continued to suffer debilitating levels of pain that interfered with her activities of daily living and precluded her from returning to the work force when preauthorization for the chronic pain management program was requested.

5. North Texas Pain Recovery Center (Provider) requested preauthorization for a 30-session chronic pain management program at the request of Claimant′s treating doctor, Inson Stoltz, D.C.

6. The Carrier timely denied the preauthorization request, and the Provider requested medical dispute resolution.

7. In a decision dated February 2, 2004, and mailed to the parties on February 3, 2004, the Independent Review Organization reviewer (IRO) determined that the requested chronic pain management program was medically necessary and should be preauthorized.

8. The Carrier timely appealed the IRO decision, which the Commission had adopted.

9. The Commission sent notice of the hearing on the appeal to all parties on March 1, 2004.

10. The notice of hearing 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.

11. The hearing convened and closed on May 26, 2004.

12. Extensive conservative care failed to adequately relieve Claimant's pain.

13. Nothing was shown to medically or psychologically prohibit Claimant from successfully participating in the requested chronic pain management program.

14. Carrier failed to establish that the requested chronic pain management program is not medically necessary.

IV. CONCLUSIONS OF LAW

1. The State Office of Administrative Hearings has jurisdiction over this proceeding, including the authority to issue a decision and order, pursuant to TEX. LAB. CODE ANN. ' 413.031(k) and TEX. GOV=T CODE ANN. ch. 2003.

2. The Carrier timely requested a hearing, as specified in 28 TEX. ADMIN. CODE (TAC) ' 148.3.

3. Proper and timely notice of the hearing was provided in accordance with TEX. GOV=T CODE ANN. '' 2001.051, 2001.052, and 28 TAC ' 148.4.

4. TEX. LAB. CODE ANN. ' 413.014 and 28 TAC ' 134.600 require that chronic pain management programs be preauthorized, dependent on a showing of medical necessity.

5. The Carrier had the burden of proof in this appeal, pursuant to 28 TAC ' 148.21(h).

6. The Carrier failed to establish that the chronic pain management sessions would not cure or relieve the effects naturally resulting from Claimant's injury, promote her recovery, or enhance her ability to return to or retain employment.

7. The Carrier did not establish that the requested chronic pain management is not medically necessary to treat the Claimant's injury.

8. Based on the foregoing Findings of Fact and Conclusions of Law, preauthorization for the requested 30 sessions of chronic pain management should be approved, pursuant to TEX. LAB. CODE ANN. ' 413.014 and 28 TAC ' 134.600.

ORDER

It is ORDERED that 30 chronic pain management sessions with North Texas Pain Recover Center are preauthorized for the Claimant. All other pending motions or requests for relief, if any, not specifically granted herein are denied for want of merit.

SIGNED June 21, 2004.

NANCY N. LYNCH
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS