

SOAH DOCKET NO. 453-04-4291.M2
MDR Tracking No. M2-04-0772-01

VALLEY COMPREHENSIVE PAIN	§	BEFORE THE
MANAGEMENT CENTER, Petitioner	§	
	§	
VS.	§	STATE OFFICE OF
	§	
TML INTERGOVERNMENTAL	§	
RISK POOL, Respondent	§	ADMINISTRATIVE HEARINGS

DECISION AND ORDER

Valley Comprehensive Pain Management Center (Valley) appealed an independent review organization (IRO) determination that a chronic pain management program (Program) it requested was medically unnecessary to treat an injured worker (Claimant). TML Intergovernmental Risk Pool (TML) was the insurance carrier. The Administrative Law Judge (ALJ) concludes that the Program was medically necessary and should be provided.

I. PROCEDURAL HISTORY

A hearing convened in this matter on April 26, 2004, before the undersigned ALJ at the State Office of Administrative Hearings (SOAH), Austin, Texas. Valley appeared by telephone and was represented by its program director, Rick Moses, PhD.¹ TML was represented by its counsel, Ronald M. Johnson. The hearing closed on April 26, 2004. 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 at the time of his injury, sustained a compensable low-back injury on (Date of Injury), while working for the City of Brownsville (City). He was cleaning and repairing portable toilets at the airport when he fell backwards onto a five gallon can of paint. He

¹ Dr. Moses is a certified pain management practitioner.

struck his back and his knee folded underneath him. He was forced to retire because the City would not take him back after his injury. He has received extensive treatment since his injury, including injection therapy, Zoloft for depression, and other medications. He was referred to Valley on September 24, 2003, by Dr. Lynn Anderson because of symptoms of depression due to functional disability and anxiety, sleeplessness, frustration, worry, and pain beyond three months, with significant impairment in daily functioning.

Valley requested 30 sessions of chronic pain management for the Claimant. The request was denied based on a review by Corvel, TML's third-party reviewer.

Employees are entitled to necessary health care 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 Valley has the burden of proof.²

2. Discussion and Analysis

A November 12, 2003, "Treatment Plan Review" by Valley asserted the Program was medically necessary. Persons signing the Treatment Plan Review included Robert Earl, M.D., Medical Director and diplomate of the American Board of Psychiatry and Neurology; Rethea Ross, PhD., former program director; Bruce Starch, D.C.; and Victor Sabala, a counselor. The Treatment Plan Review said

It would be in the patient's best interest to enter into a full Chronic Pain Management Program. He needs guidance on how to continue developing the coping skills needed to deal with the compensable injury. Patient wants to return to a normal life but at this time, is not sure how to get there. He is having difficulty adjusting to pain and to limitations. He does not interact sufficiently with others to maintain a healthy mental status. . . Patient's "needs" can be better addressed through the full program in order

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

to better address patient's isolation and move patient into a more active role in managing his own pain. He will benefit from all facets of a chronic pain management program with medication management, and with medical and mental health reviews with Dr. Earl.

...

I firmly believe that patient will benefit from full participation in a chronic pain management program and will develop the skills he needs to allow him to transition into a successful return to work candidate.

...

Patient responses to individual therapy are positive; however, they are inadequate to address all aspects of the patient's deficits. Current psychological, medical, and other conditions do not prohibit participation in a chronic pain management program. . . .³

Dr. Moses testified that the Program is medically necessary. He said levels of care less intense than pain management have been tried without sufficient success, including individual psychotherapy sessions, antidepressant medications, and injection therapy. He argued that the Claimant remains impaired in his psychological, social, physical, and vocational functioning.

Medical experts saying the Program is not indicated include the IRO reviewing physician, who is board certified in anesthesiology and pain management, and a Corvel peer review doctor, whose specialty was not shown. The Corvel doctor's rationale for denying the claim was, "This assessment noted a number of psycho-social issues wholly unrelated to the injury."⁴

The IRO doctor concluded

The records provided for review do not indicate that there has been a trial of antidepressant therapy. In addition, there is an indication that the facet may be a pain generator. Injection therapy should be completed prior to considering a pain management program. And antidepressants should be aggressively utilized prior to considering a pain management program.⁵

The parties agreed that the IRO doctor's understanding of the facts was inaccurate. The

³ Ex. 2D at 4.

⁴ Ex. 2B at 2.

⁵ Ex. 2C at 2.

Claimant has undergone significant courses of injection therapy and antidepressant treatment, particularly Zoloft. TML argued, however, that the reasoning behind the IRO doctor's opinion was valid, namely that if less intensive therapy is viable, pain management should not be tried. TML acknowledged that the injection therapy has not worked, but contended that Valley's own records show that Zoloft and other medications are working.

TML maintained that the Corvel doctor's reasoning was a valid ground for denying the claim (although it argued that psycho-social issues are not a **direct** consequence of the injury, rather than "wholly unrelated to the injury," as argued by Corvel.)

1. Issues to be Decided

As indicated above, TML is asserting that the program is not medically necessary for two reasons: there are psycho-social issues to be treated that are not directly related to the compensable injury and the beneficial effects of the medications the Claimant is taking are such that the Program is not needed.

a. Whether Medications have Obviated the Need for the Program

TML's argument is based on the following statement in Valley's November 12, 2003, Treatment Plan Review:

Patient Response to Medications:

Patient has responded very well to the increase in his Zoloft. He reports that his mood is much better and that he feels more alive than ever. He was having difficulty sleeping, waking every one to two hours but with the help of the Trazadone he is getting 7-8 hours of uninterrupted sleep.⁶

TML's contention was not persuasive. The only medical opinion that arguably supports its viewpoint is the quoted statement from the Valley experts themselves.⁷ However, as indicated above, the same people concluded that the Program is needed. They said the Claimant's pain level is still high, from eight to nine down to seven, on a one-to-ten scale. They indicated that the Claimant is

⁶ Ex. 2D at 2. (Emphasis in original).

⁷ The Corvel doctor used an entirely different ground for denying the claim and the IRO doctor mistakenly concluded that antidepressants had not been tried.

starting to handle his pain better and is able to endure longer periods of sitting, standing, or walking, but he “still has a long way to go before he can function appropriately.” They said he is still working to improve his coping skills to deal with his pain and his stress level has improved somewhat, but he is still coping with his losses and worries about finding employment.⁸ Thus, the combined medical opinions of Drs. Moses, Earl, Ross, and Starch, and Mr. Sabala is that the Program is necessary. There are no contrary expert opinions.

It should also be noted that this ground for denying the claim was raised for the first time at the hearing since it was not stated in the Corvel peer review or the IRO opinion. To be considered, a reason for denial is required to be stated prior to medical dispute resolution.⁹

b. Whether Pscho-Social Issues are Related to the Compensable Injury

In its November 12, 2003, Treatment Plan Review, Valley gave the following diagnosis:

Axis IV Psycho-social stressors (PSS) 4, Severe, family problems, financial hardships, chronic pain, and unemployment.¹⁰

TML’s contention that the psycho-social issues were not directly related to the compensable injury was unpersuasive. Of the four psycho-social issues listed, chronic pain and unemployment are obviously directly related to the compensable injury. It would seem almost as obvious that financial hardship as a stressor is directly related to the compensable injury. This conclusion is amply supported by the record. A “diagnostic interview” done by Dr. Moses on December 19, 2001, showed financial problems as currently being 8 out of 10 (with 10 the most intense) compared to 0 before the injury. The Claimant was also shown to be worried about having no job to return to. He had a fear of being useless at an 8 level compared with 0 before the injury. He was shown to be “very satisfied” with his finances prior to the injury and “very dissatisfied” since the injury. Anxiety and depression symptoms in general were shown to be severe and moderate to severe respectively, since the injury compared to “none” before the injury.¹¹

⁸ Ex. 2 D at 2-3.

⁹ **28 TAC " 133.304(c) and (h); 133.307(j)(2).**

¹⁰ Ex. 2.D at 1. (Emphasis in original.)

¹¹ Ex. 1 at 146-148.

In a document entitled “Appeal for Services,” dated December 9, 2003, Drs. Earl, Ross, and Starch and Mr. Sabala wrote that the Claimant’s pain was interfering with interpersonal relationships (especially due to financial losses and irrational fears).¹²

In a mental health evaluation done on October 8, 2003, Drs. Earl, Ross, Starch and Mr. Sabala found that the Claimant was upset because he did not have a job to return to, was not accustomed to relying on others for support, and he worried about his financial situation.¹³

The evidence is virtually overwhelming that the Claimant also had family problems directly related to the compensable injury. Dr. Moses’ December 19, 2001, diagnostic interview shows the Claimant’s anger about having to depend on others at an 8 intensity level compared with 0 before his injury. The Claimant rated both marital problems and problems with children and relatives at 7 compared to 0 before the injury. He was “dissatisfied” both with his marital life and family life compared with “very satisfied” before his injury.¹⁴

The November 12, 2003, Treatment Plan Review said

Patient’s family is struggling to adjust to the losses and changes in their lives. Patient needs to be heard and have his physical and emotional needs validated. He cannot express these at home as he feels he burdens his family and brings them down into his depression.

...

Patient’s family and friends have tired of hearing complaints of pain and disability and patient cannot express himself freely without feeling he is burdening and depressing them.

...

¹² Ex. 1 at 9.

¹³ Ex. 2.D 7-8.

¹⁴ Ex. 1 at 147-148.

Fear of disapproval and judgment by others motivates this patient to continue isolating rather than overcoming physical limitations to enjoy social interaction.¹⁵

The October 8, 2003, mental health evaluation concluded that the Claimant was isolating himself from family and friends and that he believed the injury had affected his relationship with his wife and family.¹⁶

2. Overall Conclusion

Valley's request for a chronic pain management program for the Claimant should be granted. Valley produced evidence that convincingly proved both in a general sense that the Program is reasonably required by the nature of the Claimant's injury and in a specific sense that TML's reasons for denying the claim are invalid and unsupported by the evidentiary record.

III. FINDINGS OF FACT

1. The Claimant, a __ year-old male at the time of his injury, sustained a compensable low-back injury on (Date of Injury), while working for the City of Brownsville (City).
2. The Claimant was cleaning and repairing portable toilets at the airport when he fell backwards onto a five gallon can of paint, striking his back with his knee folding underneath him.
3. The Claimant was forced to retire because the City would not take him back after his injury.
4. The Claimant has received extensive treatment since his injury, including injection therapy, Zoloft for depression, and other medications.
5. The Claimant was referred to Valley Comprehensive Pain Management Center (Valley) on September 24, 2003, because of symptoms of depression due to functional disability and anxiety, sleeplessness, frustration, worry and pain beyond three months, with significant impairment in daily functioning.
6. Valley requested 30 sessions of a chronic pain management program (Program) for the Claimant.
7. TML Intergovernmental Risk Pool (TML) was the insurance carrier for the City.

¹⁵ Ex. 2D at 3.

¹⁶ Ex. 2D at 6 and 8.

8. TML denied the request based on a review by Corvel, TML's third-party reviewer.
9. On February 24, 2004, an independent review organization concluded that the claim should be denied.
10. It is undisputed that Valley requested a hearing not later than the twentieth day after receiving notice of the IRO decision.
11. 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.
12. All parties had an opportunity to respond and present evidence and argument on each issue involved in the case.

Issues

13. At the hearing TML stated the following two reasons for denying the claim: there are psycho-social issues to be treated that are not directly related to the compensable injury, and the beneficial effects of the medications the Claimant is taking are such that the Program is not needed.

Medications

14. The Claimant's pain level is still high.
15. Although the Claimant is starting to handle his pain better and is able to endure longer periods of sitting, standing, or walking, he still has a long way to go before he can function appropriately.
16. The Claimant is still working to improve his coping skills to deal with his pain, and although his stress level has improved somewhat, he is still coping with his losses and worries about his ability to find employment.
17. The Claimant's pain is interfering in interpersonal relationships, especially due to financial losses and irrational fears.

Psycho-Social Issues

18. The Claimant has the following psycho-social stressors: family problems, financial hardships, chronic pain, and unemployment.
19. The claimant's chronic pain and unemployment are directly related to his compensable injury.

20. The Claimant is upset because he does not have a job to return to, he is not accustomed to relying on others for support, and he worries about his financial situation.
21. The Claimant's financial problems have greatly increased since his injury compared to before his injury.
22. The Claimant has not been satisfied with his finances since his injury compared with being very satisfied before his injury.
23. The Claimant's family is struggling to adjust to the losses and changes in their lives.
24. The Claimant is not able to express his physical and emotional needs at home because he feels he burdens his family and brings them down into his depression.
25. The Claimant's family and friends have tired of hearing complaints of pain and disability and the Claimant cannot express himself freely without feeling he is burdening and depressing them.
26. Fear of disapproval and judgment by others motivates the Claimant to continue isolating rather than overcoming physical limitations to enjoy social interaction.
27. The Claimant has isolated himself from family and friends and he believes the injury has affected his relationship with his wife and family.
28. The Claimant rated both marital problems and problems with children and relatives as having increased significantly since his injury.
29. The Claimant has been significantly less satisfied with his marital life and family life since his injury.
30. The Claimant's family problems and financial hardship are directly related to his compensable injury.

Medical Necessity in General

31. It would be in the patient's best interest to enter into a full Program.
32. The Claimant needs guidance on how to continue developing the coping skills needed to deal with the compensable injury.
33. The Claimant wants to return to a normal life but is not sure how to get there.
34. The Claimant does not interact sufficiently with others to maintain a healthy mental status.
35. The Program can better address the Claimant's isolation and move him into a more active

role in managing his own pain.

36. The Claimant will benefit from all facets of the Program with medication management and with medical and mental health reviews from Valley personnel.
37. The Program will help the Claimant develop the skills he needs to allow him to transition into a successful return to work candidate.
38. Although the Claimant's responses to individual therapy are positive, they are inadequate to address all aspects of his deficits.
39. Current psychological, medical, and other conditions do not prohibit the Claimant's participation in the Program.
40. Levels of care less intense than the Program have been tried without sufficient success, including individual psychotherapy sessions, antidepressant medications, and injection therapy.
41. The Claimant remains impaired in his psychological, social, physical, and vocational functioning.

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. TEX. LAB. CODE ANN. § 413.031(k) and TEX. GOV'T CODE ANN. ch. 2003.
2. All parties received proper and timely notice of the hearing. TEX. GOV'T CODE ANN. §§ 2001.051 and 2001.052.
3. Valley has the burden of proof. 1 TEX. ADMIN. CODE § 155.41(b); 28 TEX. ADMIN. CODE § 148.21(h).
4. The requested Program is medically necessary for the Claimant's injury. TEX. LAB. CODE ANN. § 408.021.
5. TML should cover the reasonable costs of the Program.

ORDER

IT IS THEREFORE ORDERED that TML Intergovernmental Risk Pool cover the reasonable cost of the 30 sessions of chronic pain management for the Claimant requested by Valley Comprehensive Pain Management Center.

SIGNED May 19, 2004.

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