

____,	§	<b>BEFORE THE STATE OFFICE</b>
<b>Petitioner</b>	§	
	§	
v.	§	
	§	<b>OF</b>
<b>ACE AMERICAN INSURANCE</b>	§	
<b>COMPANY/ESIS,</b>	§	
<b>Respondent</b>	§	<b>ADMINISTRATIVE HEARINGS</b>

**DECISION AND ORDER**

Claimant\_\_\_\_, requested a hearing to contest an Independent Review Organization (IRO) decision to deny preauthorization for a chronic pain management program. Claimant is an injured employee who sustained a work-related injury to her knee and lower back. The Administrative Law Judge (ALJ) finds that authorization should be ordered for the requested treatment because it is medically necessary to maintain Claimant’s ability to continue working.

**I. JURISDICTION, NOTICE, AND VENUE**

The State Office of Administrative Hearings (SOAH) has jurisdiction over this proceeding, including the authority to issue a decision and order, pursuant to TEX. LAB. CODE ANN. § 413.031(d) and TEX. GOV'T CODE ANN. Chapter 2003. The hearing was conducted pursuant to the Administrative Procedure Act, TEX. GOV'T CODE ANN., Chapter 2001 and SOAH’s rules, 1 TEX. ADMIN. CODE (TAC) Chapter 155.

Notice of the hearing was sent to the parties on March 26, 2004. Notice and jurisdiction are not contested and are addressed in the Findings of Fact and Conclusions of Law set out below.

ALJ Catherine C. Egan convened the hearing on May 25, 2004. Peter Rogers, attorney, appeared by telephone and represented Claimant. Jeanie Cupit, attorney, represented Ace American Insurance Company/ESIS (Carrier). The record closed the same day.

**II. BACKGROUND**

Claimant, a \_\_\_\_-year old female, incurred a compensable injury to her knees and lower back on (Date of Injury), while riding in an eighteen-wheel truck. At the time of the accident, Claimant was a truck driver in training, and her trainer was driving. Claimant was asleep in the sleeping berth, when the truck was involved in an accident, went off the road, and rolled down a hill. Claimant was thrown out of the berth and tossed around in the truck. As a result of the accident, Claimant was

bruised, and had cuts on her head and knees. Shortly thereafter, Claimant reported pain in her lower back and knees. Claimant was diagnosed with traumatic injury to her thoracic and lumbar spine, sprain/strain of bilateral knee/leg; tear of cartilage or meniscus of bilateral knee; and headaches.

Claimant underwent three weeks of active rehabilitation and six weeks of work hardening (ending on August 8, 2003). Claimant was released to return to work, but did not return to work until March 3, 2004, because of pain. On August 11, 2003, Carrier sent Claimant to Jack Kern, M.D. for an evaluation. According to Dr. Kern, Claimant had no effusion in her knees, no strength deficient in her knees, and had good range of motion in her back.<sup>1</sup> Claimant reached maximum medical improvement on November 24, 2003, with an impairment rating of 4 percent. Claimant has since been diagnosed with chronic pain syndrome, and continues to experience chronic low back pain, and chronic pain and swelling in her knees. To manage the pain, she takes prescription pain medications including hydrocodone, and SOMA.

On November 11, 2003, Provider requested pre-authorization for Claimant to participate in 27-29 chronic pain management sessions (a total of 200 hours). Carrier denied the request twice, the last time on December 8, 2003. Claimant then requested an appeal of Carrier's denial before the Commission's Medical Review Division. The Commission referred the appeal request to an IRO.

On February 9, 2004, the IRO issued a letter denying Claimant's request. The IRO doctor reasoned that because the "previously attempted work hardening and psychological/counseling treatments had within them the self-help strategies, coping mechanisms, exercises, and modalities that are inherent in and central to the proposed chronic pain management program," Claimant would not benefit from a chronic pain management program just as she had not benefitted from the work hardening program. The IRO doctor further stated that a chronic pain management program is not medically necessary until all other therapies are tried and have failed. While Claimant had received spinal manipulations, the IRO doctor found them insufficient in amount and opined that only spinal manipulations could cure Claimant's acute low back pain.<sup>2</sup>

On February 25, 2004, Provider appealed the IRO decision, which resulted in this hearing before SOAH.

### **III. DISCUSSION**

#### **A. Applicable Law**

The only issue in this case is whether, by a preponderance of the evidence, there is medical necessity for the requested treatment. Medical necessity is defined in TEX. LABOR CODE ANN. §408.021(a), which states:

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<sup>1</sup>Ex. Respondent D at 5.

<sup>2</sup>Ex. P-1 at 3.

(a) 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.

Under 28 TAC §148.21(h), the appealing party has the burden of proof pursuant to TEX. LABOR CODE ANN. § 413.031. Therefore, Claimant must prove the requested chronic pain management program is reasonably required within the meaning of TEX. LABOR CODE ANN. § 408.021(a).

## **B. Evidence**

Claimant testified that since the accident she has suffered with constant pain in her lower back and knees. She is now driving an eighteen-wheeler for two to three weeks at a time. Driving an eighteen-wheeler requires her to climb into and out of the cab, to double shift, to maneuver the rig, to sit for long hours while she drives, and to hook up the cab to the trailer. All these activities aggravate her knees and back. Both of her knees swell, and at times she experiences numbness and tingling in her legs. According to Claimant, the level of her pain in her knees and back has increased since she returned to work.

While Claimant can medicate the pain when she is not driving, when she is on the job it is illegal for her to take prescription medications.<sup>3</sup> Consequently, Claimant can only sleep four to five hours a night when she is on the road because of her pain. Claimant expressed concern that her lack of sleep could endanger others on the road if she becomes too fatigued. Claimant explained that she wants to participate in the chronic pain management program so she can learn to deal with her pain, and hopefully wean herself off of the prescription pain medications.

Tom G. Mayer, M.D., an orthopedic doctor, treats Claimant and recommends that she participate in a chronic pain management program. Dr. Mayer explained that work hardening is part of secondary rehabilitation, while chronic pain management is a tertiary level of care. Work hardening is provided at a lower level of intensity than chronic pain management, and focuses on physical efforts to help the patient reactivated at an earlier stage of recovery. If a patient's problems develop into chronic pain difficulties, a chronic pain management program is warranted.

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<sup>3</sup>According to Claimant, she cannot even have prescription medications inside her truck.

According to Dr. Mayer, Claimant is qualified to enter a chronic pain management program because she is suffering from chronic pain, has had no lasting relief from this pain through primary and secondary levels of treatment, has psychosocial dysfunction related to her pain in activities of daily living, and has become dependent on her pain medications. Dr. Mayer testified that Claimant meets the criteria for a chronic pain management program because she is still in pain more than a year after her injury, the pain was not alleviated by treatments including physical therapy, medications, and work hardening; and she experiences pain every day.

Dr. Mayer took issue with the Carrier's suggestion that the imaging tests did not show objective findings of damage to both Claimant's knees and lower back. According to Dr. Mayer, the imaging findings of Claimant's knees are unusual and show substantial injury to her knees and lower back. Claimant's knees had partial tears and a fracture of the cartilage coating. As a result, Dr. Mayer opined that Claimant will experience severe arthritis in the future. Likewise, Dr. Mayer maintains that Claimant's lower back problems will be exasperated by driving an eighteen wheeler for long periods of time unless she learns to cope with her chronic back pain.

Scott Limpert, M.D., testified on behalf of Carrier. According to Dr. Limpert, because work hardening did not work for Claimant, even though she was able to complete the program and was released to work, a chronic pain management program will not help her. Dr. Limpert found too many inconsistencies between the objective findings in the functional capacity evaluation (FCE) and between the work hardening final evaluation and the FCE. Dr. Limpert did discuss these discrepancies with Dr. Mayer, but Dr. Mayer did not find these findings to be inconsistent. Ultimately, neither changed their professional opinions.

## **V. ANALYSIS**

Claimant had the burden of proof in this proceeding. Pursuant to the Texas Labor Code, an employee who has sustained a compensable injury is entitled to all health care reasonably required by the nature of the injury as and when needed. Under TEX. LABOR CODE ANN. §408.021(a), the employee is specifically entitled to health care that cures or relieves the effects naturally resulting from the compensable injury, promotes recovery, or enhances the ability of the employee to return to or retain employment. Claimant's chronic pain is the natural result of her compensable injury. Treatment including physical therapy, chiropractic adjustments, work hardening, and prescription medications have not alleviated Claimant's pain. In this instance, Claimant proved by a preponderance of the evidence that chronic pain management is medically necessary for the treatment of Claimant's condition, in that it will help her cope with the pain naturally resulting from her compensable injury, help reduce the amount of prescription pain medications she needs to reduce her pain, and will enhance her ability to retain employment. Therefore, it should be pre-authorized.

## **IV. FINDINGS OF FACT**

1. Claimant, a truck driver, suffered a compensable injury to her knees and lower back on \_\_\_\_, when the eighteen-wheeler she was riding in was in an accident.

2. Ace American Insurance Company/ESIS (Carrier) was the insurance provider for Claimant's employer when Claimant was injured.
3. Claimant was initially diagnosed with traumatic injury to her thoracic and lumbar spine, sprain/strain of bilateral knee/leg; and tear of the cartilage or meniscus of bilateral knee. Claimant was subsequently diagnosed with chronic pain disorder.
4. Claimant has been treated with active rehabilitation, medication, and work hardening.
5. After completing the work hardening program, Claimant was released to return to work.
6. Claimant did not return to work because she continued to experience severe pain in her knees and lower back.
7. Claimant returned to work on March 3, 2004, driving an eighteen wheeler for two to three weeks at a time.
8. Claimant may not take her prescribed pain medication while on the job driving her truck despite experiencing severe pain in her knees and lower back.
9. Claimant's condition has deteriorated since she returned to work with increased pain in both her knees and back, numbness and tingling in her legs, and an inability to sleep more than four or five hours at a time due to the pain.
10. Claimant is dependant on the pain medications to function without pain.
11. Claimant's inability to sleep due to her pain while on the road, increases the risk that she will be a danger to herself and others on the road.
12. Claimant may develop a severe arthritis in the future because of her compensable injuries and in developing a disabled lifestyle to cope with her pain.
13. Claimant's condition will not improve without chronic pain management.
14. Twenty-seven sessions of chronic pain management would address Claimant's injury-related psychosocial issues, and help her learn how to cope with and self-manage her chronic pain.
15. In November 11, 2003, Claimant's Provider requested pre-authorization from Carrier for Claimant to undergo 27-29 sessions of chronic pain management, which was denied by Carrier twice, the last time on December 8, 2003.
16. Claimant filed a timely request with the Texas Workers' Compensation Commission (TWCC) for medical dispute resolution.

17. Claimant's request was assigned to an independent review organization (IRO), by the TWCC's Medical Review Division, for consideration.
18. The IRO issued a decision February 9, 2004, recommending denial of Provider's request for preauthorization on the basis that Claimant needed additional spinal adjustments.
19. On February 25, 2004, Claimant requested a hearing before the State Office of Administrative Hearings (SOAH).
20. Notice of the hearing was sent to the parties on March 26, 2004.
21. The notice 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.
22. Administrative Law Judge Catherine Egan convened the hearing May 25, 2004, in the William Clements State Office Building, 300 West 15<sup>th</sup> Street, Fourth Floor, Austin, Texas. Peter N. Rogers, attorney, represented Claimant, and appeared by telephone. Jeanie Cupit, attorney, represented the Carrier, and appeared in person. The hearing concluded and the record closed the same day.

## **VI. 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(d) and TEX. GOV'T CODE ANN. Chapter. 2003.
2. The hearing was conducted pursuant to the Administrative Procedure Act, TEX. GOV'T CODE ANN. Chapter 2001 and SOAH's rules, 1 TEX. ADMIN. CODE (TAC) Chapter 155.
3. Adequate and timely notice of the hearing was provided in accordance with TEX. GOV'T CODE ANN. § 2001.052.
4. Claimant met her burden of proving the pain management sessions are medically necessary and reasonably required within the meaning of TEX. LAB. CODE ANN. § 408.021(a).
5. Based on the foregoing Findings of Fact and Conclusions of Law, the requested 27 sessions of chronic pain management should be authorized.

**ORDER**

**IT IS, THEREFORE, ORDERED** that Ace American Insurance Company/ESIS shall provide coverage for 27 sessions of chronic pain management for Claimant, as requested.

**SIGNED June 24, 2004.**

**CATHERINE C. EGAN  
ADMINISTRATIVE LAW JUDGE  
STATE OFFICE OF ADMINISTRATIVE HEARINGS**