



evaluation, and complained that Athis patient was not sent [to Irving Behavior Health] to be evaluated for a pain management program.

Petitioner's preauthorization review and internal appeal process determined that the pain management program was not medically necessary. By letter dated August 3, 2004, the IRO concluded that a pain management program was medically necessary for the treatment of Claimant's condition. On August 23, 2004, Petitioner timely requested a hearing before SOAH.

Pain management is a multidisciplinary approach to the management of pain once all other treatment programs have been exhausted. Pain management is a tertiary level of care that is not intended to cure or medicate for alleviation of pain. Rather, the program is intended to help patients manage their own pain and cope as effectively as possible so that they may reintegrate into a meaningful life. Pain management programs typically are conducted over a four-week period for five days per week at eight hours per day. The charge for pain management programs typically is \$100 to \$125 per hour, providing a high incentive for self-referral. As a consequence, requests or recommendations for pain management programs should be evaluated by a medical doctor.

In this case, Claimant's treatment history reveals no overuse or overreliance on medications, no psychological evaluations, and no exhaustion of other types of therapies. Mr. Esterly's credentials for evaluating Claimant were unclear or missing. Mr. Esterly's evaluation was a verbatim copy of evaluations of other patients performed by Respondent or by one of Respondent's related business entities. Mr. Esterly's evaluation did not take into account any of the criteria used in evaluating patients for pain management. Similarly, the IRO's evaluation is void of substantive analysis of Claimant's condition or need for pain management.

Pursuant to the Texas Workers Compensation Act, 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 the Act, 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. Petitioner had the burden of proof in this proceeding.

In this instance, Petitioner proved by a preponderance of the evidence that a pain management program is not medically necessary for the treatment of Claimant's condition.

## **II. FINDINGS OF FACT**

1. \_\_\_\_ (Claimant) sustained a work-related injury on \_\_\_\_.
2. Claimant underwent conservative treatment with Adam Rodriguez, D.C., beginning on January 8, 2003.
3. On May 14, 2003, Claimant changed chiropractic health care providers and began treatment with Ian Adrian, D.C.
4. On May 30, 2003, Claimant was evaluated by Fatma Gul, M.D., at the request of the Texas Workers Compensation Commission (Commission). Dr. Gul recommended that Claimant receive physical therapy.

5. On October 17, 2003, Claimant was seen by Francisco J. Battle, a neurologist, at the request of Dr. Adrian. Dr. Battle recommended that Claimant have a discogram.
6. On October 23, 2003, Claimant was evaluated by Craig Freyer, M.D., who determined that Claimant had not met maximum medical improvement, pending his discogram, a surgical procedure.
7. On February 12, 2004, Steven W. Eaton, M.D., examined Claimant after Claimant had transforaminal epidural steroid injections with little improvement in his pain. Dr. Eaton recommended to Dr. Adrian that Claimant undergo a psychological examination before his discogram.
8. On March 24, 2004, Claimant was evaluated by George Esterly, MS, LPC, at Respondent ' s office. Mr. Esterly recommended that Claimant undergo a six-week program of pain management.
9. Mr. Esterly ' s recommendation was based on his undocumented assertion that Claimant had previously taken Valium.
10. On May 17, 2004, Dr. Eaton re-evaluated Claimant and made a second recommendation that Claimant obtain a psychological evaluation.
11. Petitioner's preauthorization review and internal appeal process determined that the pain management program was not medically necessary.
12. By letter dated August 3, 2004, Maximus, the independent review organization (IRO), concluded that a pain management program was medically necessary for the treatment of Claimant ' s condition.
13. Pain management is a multidisciplinary approach to the management of pain once all other treatment programs have been exhausted.
14. Pain management is a tertiary level of care that is not intended to cure or medicate for alleviation of pain.
15. A pain management program is intended to help patients manage their own pain and cope as effectively as possible so that they may reintegrate into a meaningful life.
16. Pain management programs typically are conducted over a four-week period for five days per week at eight hours per day.
17. The charge for pain management programs typically are \$100 to \$125 per hour, providing a high incentive for self-referral.
18. As a consequence, requests or recommendations for pain management programs should be evaluated by a medical doctor.

19. In this case, Claimant's treatment history reveals no overuse or overreliance on medications, no psychological evaluations, and no exhaustion of other types of therapies.
20. Mr. Esterly's credentials for evaluating Claimant were unclear or missing.
21. Mr. Esterly's evaluation was a verbatim copy of other evaluations that were performed by Respondent or by one of Respondent's related business entities.
22. Mr. Esterly's evaluation did not take into account any of the criteria used in evaluating patients for pain management.
23. Similarly, the Independent Review Organization's (IRO) evaluation is void of any substantive analysis of Claimant's condition or need for pain management.
24. On August 23, 2004, Petitioner requested a hearing before the State Office of Administrative Hearings (SOAH).
25. By letter dated September 10, 2004, the Texas Workers' Compensation Commission (Commission) issued a notice of hearing.
26. Petitioner requested a continuance and the request was granted.
27. A hearing was convened by the Administrative Law Judge on December 9, 2004, in the hearing rooms of SOAH.
28. James Loughlin represented Petitioner. Neither Respondent nor Claimant appeared.
29. There were no contested issues of notice or jurisdiction.
30. The record closed upon adjournment of the hearing on December 9, 2004.

### **III. CONCLUSIONS OF LAW**

1. The Texas Workers' Compensation Commission has jurisdiction to decide the issue presented pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. ' 413.031.
2. The IRO decision is deemed a Decision and Order of the Commission.
3. 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. LAB. CODE ANN. ' 413.031(d) and TEX. GOV'T. CODE ANN. ch. 2003.
4. Petitioner timely requested a hearing in this matter pursuant to 28 TEX. ADMIN. CODE (TAC) ' ' 102.7 and 148.3.
5. Notice of the hearing was proper and complied with the requirements of TEX. GOV'T. CODE ANN. ch. 2001.

6. Petitioner had the burden of proof in this matter, which was the preponderance of evidence standard. 28 TAC ' ' 148.21(h) and (i).
7. 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. 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. TEX. LAB. CODE ANN. ' 408.021(a).
8. Pursuant to TEX. LAB. CODE ANN. ' 413.014, for a carrier to be liable for certain services and supplies, the service must be preauthorized by the carrier or by order of the Commission.
9. The requested pain management program is not medically necessary.
10. The requested pain management program should not be authorized.

### **ORDER**

**THEREFORE IT IS ORDERED** that Petitioner ' s request for relief is **GRANTED** and the Respondent ' s request for preauthorization for a pain management program to treat Claimant is **DENIED**.

**SIGNED December 23, 2004.**

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**PAUL D. KEEPER  
ADMINISTRATIVE LAW JUDGE  
STATE OFFICE OF ADMINISTRATIVE HEARINGS**