

**SOAH DOCKET NO. 453-05-1197.M2
TWCC DOCKET NO. M2-04-1924-01**

TRUCK INSURANCE EXCHANGE,	§	BEFORE THE STATE OFFICE
Petitioner	§	
	§	
VS.	§	OF
	§	
HEALTH TRUST, LLC,	§	
Respondent	§	ADMINISTRATIVE HEARINGS

**DECISION AND ORDER
I. INTRODUCTION**

Truck Insurance Exchange (“Petitioner”) challenged a decision by an Independent Review Organization (“IRO”), issued on behalf of the Texas Workers’ Compensation Commission (“Commission”) in a preauthorization dispute. The IRO found that Petitioner improperly denied preauthorization for a chronic pain management program (“CPMP”), intended to provide therapy for a claimant suffering from a compensable injury under the workers’ compensation laws of Texas.

Contrary to the IRO’s position, Petitioner urges that the requested program is not medically reasonable and necessary for the claimant’s treatment, within the meaning of §§ 408.021 and 401.011(19) of the Texas Workers’ Compensation Act (“the Act”), TEX. LABOR CODE ANN. ch. 401 *et seq.*

This decision disagrees with that of the IRO, finding that the requested CPMP is not medically reasonable and necessary under the circumstances of this case.

II. JURISDICTION, NOTICE, AND VENUE

The Commission has jurisdiction over this matter pursuant to § 413.031 of the Act. The State Office of Administrative Hearings (“SOAH”) has jurisdiction over matters related to the hearing in this proceeding, including the authority to issue a decision and order, pursuant to § 413.031(k) of the Act and TEX. GOV’T CODE ANN. ch. 2003. No party challenged jurisdiction, notice, or venue.

III. STATEMENT OF THE CASE

The hearing in this docket was initially scheduled for November 22, 2004. However, on November 16, 2004, Petitioner submitted to SOAH an Agreed Motion for Continuance, seeking to reschedule the hearing on December 15, 2004. The motion noted that Health Trust, LLC, (“Respondent”) had been consulted and was not opposed to the continuance. The motion was subsequently granted and the parties were properly issued notice of the rescheduled hearing by SOAH.

The hearing was convened on December 15, 2004, at SOAH facilities in Austin, Texas. Administrative Law Judge (“ALJ”) Mike Rogan presided. Petitioner was represented by James

Loughlin, Attorney. Respondent did not appear and was not represented at the hearing. After presentation of evidence and argument by Petitioner, the hearing was adjourned and the record closed on the same date.¹

The record developed at the hearing revealed that the claimant, on ____, suffered a compensable injury to his lumbar spine, which ultimately required surgical fusion at the L4-5 and L5-S1 levels. When the claimant's severe post-operative pain persisted, Respondent proposed to enroll him in a CPMP of 30 sessions (eight hours per day) B for which Respondent sought required preauthorization from Petitioner, the insurer for the claimant's employer. Petitioner denied preauthorization for the requested care, on the basis that it was not medically necessary. Respondent then sought dispute resolution review before the Commission.

The IRO to which the Commission referred the dispute issued a decision on September 29, 2004, concluding that the requested CPMP was medically necessary to treat the claimant's work-related chronic pain condition and associated depression. Petitioner then made a timely request for review of the IRO decision before SOAH.

IV. THE PARTIES' EVIDENCE AND ARGUMENTS

Respondent did not participate in the scheduled evidentiary hearing and provided no explanation to SOAH or the Commission, either before or after the hearing, for that failure to appear. Moreover, Respondent submitted to SOAH no documents pertaining to the case. However, since Respondent prevailed in the IRO proceeding related to this dispute, Petitioner bears the burden of proof in this SOAH proceeding and must demonstrate by a preponderance of the evidence that, contrary to the IRO's determination, the requested CPMP was medically unnecessary.

Petitioner submitted in evidence 196 pages of records pertaining to this case and presented the testimony of Neal Blauzvern, D.O. Dr. Blauzvern, a chronic pain management specialist who is certified by the Board of Anesthesiology, stated that a CPMP is only appropriate in the following circumstances:

- * Care providers have exhausted all methods of treating the patient's underlying *organic pathology* (as opposed to addressing and coping with mere *symptoms*, as a CPMP does).
- * Evidence indicates that the patient has experienced overuse or abuse of pain medication (but not actual addiction), which is a condition that a CPMP can properly address.
- * Valid testing reveals in the patient psychological elements that a CPMP can properly address, such as anxiety, depression, focusing on pain, or emotional issues manifesting themselves as pain.

In Dr. Blauzvern's judgment, the claimant's case satisfies none of these criteria. The claimant's treating physicians, Dr. Blauzvern insisted, have not adequately evaluated significant indications of persisting organic pathology in the patient, which might be susceptible to further

¹The staff of the Commission formally elected not to participate in this proceeding, although it filed a general "Statement of Matters Asserted" with the notice of the hearing.

physical treatment. He noted a clinical report on December 23, 2003, describing a recurrence of pain in the claimant's left leg B a type of pain that had previously dissipated in the aftermath of the patient's surgery. A report on May 4, 2004, reflected a similar development with pain caused by "straight leg raises." According to Dr. Blauzvern, both of these manifestations indicated a strong possibility of organic change and therefore warranted serious investigation. However, in his view, the record shows that the claimant's physicians gave them no more than perfunctory attention.

Dr. Blauzvern stated that the record also shows no sign of excessive use of pain medication by the claimant. Indeed, it indicates that in June of 2004 the patient was switched, at his own request, from a narcotic medication to the less problematic Celebrex in order to assure that excessive dependence upon medication would not develop.

As to the claimant's psychological condition, Dr. Blauzvern pointed to a functional capacity examination ("FCE") on December 19, 2003, which gave the patient low scores in depression and anxiety, indicating a lack of significant psychological problems. The FCE report nonetheless recommended transition for the claimant to *both* a work hardening program and a CPMP B an anomalous approach, in Dr. Blauzvern's view, since these two types of programs address very different types of therapeutic problems and solutions. In addition, Dr. Blauzvern asserted, the claimant's response to a series of eight individual psychotherapy sessions in June of 2004 was so good that it realistically precluded the need for the more intensive treatment represented by a CPMP.

Critiquing the IRO's decision, Dr. Blauzvern stated that its rationale for approving the disputed services was simply wrong. The claimant does not have significant depression and has not yet "failed conservative therapy," as the IRO declares. Rather, the record indicates that the claimant has undergone little, if any, physical therapy. Dr. Blauzvern concluded that the IRO's recommendation of a CPMP B a treatment of last resort B is premature in a case where the care providers have failed to evaluate sufficiently the prospects for further treatment of the patient's underlying organic pathology or for relying successfully on less intensive psychotherapeutic alternatives.

V. ANALYSIS

In the ALJ's view, Petitioner has discharged its burden of proof to demonstrate that the requested CPMP is medically unnecessary. Petitioner's uncontroverted evidence presented coherent and persuasive support for the position that approval of a CPMP was premature, given the prospects for further treatment of underlying organic pathology or for less intensive psychotherapy.

The IRO's analysis of the case is brief, conclusory, and markedly inconsistent with the evidentiary record that has been presented. Its reasoning is thus clearly outweighed by the testimony and documentation presented by Petitioner.

VI. CONCLUSION

The ALJ finds that, under the record provided in this case, the IRO's previous decision was incorrect, and the CPMP sought by Respondent should not be preauthorized.

VII. FINDINGS OF FACT

1. On ____, a claimant suffered a compensable injury to his lumbar spine, which was a compensable injury under the Texas Workers' Compensation Act "the Act"), TEX. LABOR CODE ANN. ch. 401 *et seq.*
2. Claimant's injury ultimately required surgical fusion at the L4-5 and L5-S1 levels of the spine.
3. When claimant continued to experience severe post-surgical pain, Health Trust, LLC, ("Respondent") proposed to enroll claimant in a 30-day chronic pain management program ("CPMP").
4. Respondent requested preauthorization from Truck Insurance Exchange ("Petitioner")Bthe insurer for the claimant's employerBto enroll the claimant in the CPMP.
5. Petitioner denied the request for preauthorization.
6. Respondent made a timely request to the Medical Review Division ("MRD") of the Texas Workers' Compensation Commission ("Commission") for medical dispute resolution with respect to the requested CPMP.
7. In a decision dated September 29, 2004, in dispute resolution docket No. M2-04-1924-01, the Independent Review Organization ("IRO") to which the MRD referred the dispute overruled Petitioner's denial of preauthorization, concluding that the requested CPMP was medically necessary to treat claimant's work-related chronic pain condition and associated depression.
8. Petitioner requested in timely manner a hearing with the State Office of Administrative Hearings ("SOAH"), seeking review and reversal of the IRO decision regarding preauthorization.
9. The Commission mailed notice of the hearing's setting to the parties at their addresses on October 21, 2004.
10. November 16, 2004, Petitioner submitted to SOAH an Agreed Motion for Continuance, seeking to reschedule the hearing on December 15, 2004. The motion noted that Respondent had been consulted and was not opposed to the continuance. The motion was subsequently granted and the parties were properly issued notice of the rescheduled hearing by SOAH.
11. A hearing in this matter was convened on December, 15, 2004, in Austin, Texas, before an Administrative Law Judge with the SOAH. Petitioner appeared and presented evidence and argument. However, Respondent did not appear and provided no explanation to SOAH or the Commission, either before or after the hearing, for that failure to appear. The hearing was adjourned and the record closed on the same date.
12. Treatment through a CPMP is only appropriate when care providers have exhausted all

methods of evaluating and treating the patient's underlying *organic pathology* (as opposed to addressing and coping with mere *symptoms*, as a CPMP does), when evidence indicates that the patient has experienced overuse or abuse of pain medication, and/or testing reveals in the patient psychological elements that a CPMP can properly address, such as anxiety, depression, focusing on pain, or emotional issues manifesting themselves as pain.

13. The claimant's case satisfies none of these criteria for administering a CPMP noted in Finding of Fact No. 12.
14. Contrary to the articulated rationale of the IRO decision noted in Finding of Fact No. 7, the record in claimant's case does not indicate that he has significant depression or that he has "failed conservative therapy," since he has undergone little, if any physical therapy since the injury noted in Finding of Fact No. 1.

VIII. CONCLUSIONS OF LAW

1. The Commission has jurisdiction related to this matter pursuant to § 413.031 of the Act.
2. 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 § 413.031(k) of the Act and TEX. GOV'T CODE ANN. ch. 2003.
3. Adequate and timely notice of the hearing was provided in accordance with TEX. GOV'T CODE ANN. §§ 2001.051 and 2001.052.
4. Petitioner, the party seeking relief, bore the burden of proof in this case, pursuant to 28 TEX. ADMIN. CODE § 148.21(h).
5. Based upon the foregoing Findings of Fact the enrollment of the claimant in the CPMP requested by Respondent does not represent an element of health care that is medically necessary under § 408.021 of the Act.
6. Based upon the foregoing Findings of Fact and Conclusions of Law, the Findings and Decision of the IRO, issued in this matter on September 29, 2004, are incorrect; Petitioner should not be required to preauthorize or reimburse the CPMP sought by Respondent.

ORDER

IT IS THEREFORE, ORDERED that preauthorization for a 30-session chronic pain management program, as sought by Health Trust, LLC, from Truck Insurance Exchange, is denied.

SIGNED December 21, 2004.

**MIKE ROGAN
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS**