

HOUSTON I.S.D.,  
Petitioner

V.

DEAN MCMILLIAN, M.D.,  
Respondent

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§

BEFORE THE STATE OFFICE

OF

ADMINISTRATIVE HEARINGS

### DECISION AND ORDER

Houston I.S.D. (Carrier) challenged the decision of an Independent Review Organization (IRO) granting preauthorization for 20 sessions of a chronic pain management (CPM) program for Claimant. In this decision, the Administrative Law Judge (ALJ) finds that Carrier met its burden of proving the requested CPM program is not reasonable and necessary medical care that should be preauthorized. Therefore, the ALJ orders that Carrier is not required to preauthorize the requested CPM program.

The hearing convened and closed on February 23, 2005, before ALJ Steven M. Rivas. Carrier appeared and was represented by Brandi Prejean, attorney. Provider did not appear and was not represented at the hearing.

#### I. DISCUSSION

##### A. Background Facts

Claimant sustained a compensable shoulder and neck injury on \_\_\_\_\_. After her injury, Claimant was treated with physical therapy and medications. At some point, Claimant was referred to Dean McMillan, M.D. (Provider) at Pain & Recovery Clinic of North Houston. Provider sought preauthorization for 20 sessions of CPM, which was denied by Carrier on the basis that it was not medically necessary. The dispute was referred to an IRO, which held the 20 session's of CPM was medically necessary. Carrier timely appealed the IRO decision to the State Office of Administrative Hearings (SOAH).

##### B. Applicable Law

Pursuant to the Texas Workers' Compensation Act ("the Act"), TEX. LAB. CODE ANN. § 408.021 *et seq.*, an employee who sustains a compensable injury is entitled to all 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.

Under TEX. LAB. CODE ANN. § 401.011(19), health care includes all reasonable and necessary medical aid, medical examinations, medical treatment, medical diagnoses, medical evaluations, and medical services.

Certain categories of health care identified by the Commission require preauthorization, which is dependent upon a prospective showing of medical necessity under § 413.014 of the Act and 28 TEX. ADMIN. CODE (TAC) § 134.600. In this instance, under 28 TAC § 134.600(h) preauthorization is required for the requested CPM program.

### **C. Evidence and Analysis**

The requested CPM program should not be preauthorized. Carrier presented Francisco Perez, Ph.D., a clinical psychologist, who testified the requested CPM program is a psychologically-based program that is not medically necessary to treat Claimant's compensable injury. Based on his review of the record, Dr. Perez found that Claimant suffered from an adjustment disorder, which did not require much therapy. Additionally, based on a psychological analysis, Dr. Perez found Claimant had already been treated for other psychological issues like depression and anxiety with good results. Essentially, Dr. Perez asserted Claimant had already recovered from a psychological standpoint and that there is no need to place Claimant in a psychologically-based CPM program to treat her compensable injury. Dr. Perez asserted he would place Claimant on a home exercise program and prescribe over-the-counter medications at this time.

Carrier also presented an Independent Medical Evaluation (IME) performed by James Hood, M.D., dated June 14, 2004. Dr. Hood found that Claimant had reached maximum medical improvement on February 27, 2004, and assigned her a 5% impairment rating. Dr. Hood also noted Claimant could return to work and be placed on a home exercise program at that time as well.

The ALJ believes if Claimant was able to return to work in June 2004, as noted by Dr. Hood, a CPM program would not likely be effective to treat her compensable injury at this time. Having no evidence to dispute the testimony of Dr. Perez or Dr. Hood, the ALJ concludes the requested CPM program is not medically necessary to treat Claimant's compensable injury. Therefore, the requested CPM program should not be preauthorized.

## **II. FINDINGS OF FACT**

1. \_\_\_ (Claimant) sustained a compensable shoulder and neck injury on \_\_\_.
2. Claimant was treated with physical therapy and medications following her injury.
3. Claimant was referred to Dean McMillan, M.D. (Provider) at Pain & Recovery Clinic of North Houston, who recommended Claimant undergo 20 sessions of a Chronic Pain Management (CPM) program.
4. Provider sought preauthorization for the CPM program from Houston I.S.D. (Carrier), which was denied on the basis that it was not medically necessary.
5. The dispute was referred to an Independent Review Organization (IRO), which ordered Carrier to preauthorize the CPM program.
6. Carrier timely requested a hearing before the State Office of Administrative Hearings (SOAH).

7. Notice of the hearing in this case was mailed to the parties on October 22, 2004. 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.
8. The hearing convened and closed on February 23, 2005, before ALJ Rivas. Carrier appeared and was represented by Brandi Prejean, attorney. Provider did not appear. The hearing was adjourned and the record closed the same day.
9. The requested CPM program is psychologically-based.
10. Claimant has already been treated for her psychological issues like depression and anxiety with positive results.
11. Claimant requires no further treatment from a psychological standpoint.

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

1. The Commission has jurisdiction over this matter pursuant to Section 413.031 of the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* ("the Act").
2. SOAH has jurisdiction over 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. The Carrier, as Petitioner, had the burden of proof on appeal by a preponderance of the evidence under § 413.031 of the Act, and 28 TEX. ADMIN. CODE §148.21(h).
5. Carrier proved by a preponderance of the evidence that the requested CPM program will not be effective to treat Claimant's compensable injury under TEX. LAB. CODE ANN. § 408.021, *et seq.*
6. The requested CPM program is not medically necessary for treating Claimant's compensable injury.

### **ORDER**

**IT IS, THEREFORE, ORDERED** that preauthorization for the CPM program is denied.

**SIGNED March 23, 2005.**

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**STEVEN M. RIVAS  
ADMINISTRATIVE LAW JUDGE  
STATE OFFICE OF ADMINISTRATIVE HEARINGS**