

BEXAR COUNTY HEALTHCARE SYSTEMS, Petitioner	§	BEFORE THE STATE OFFICE
	§	
	§	
V.	§	OF
	§	
TEXAS MUTUAL INSURANCE COMPANY, Respondent	§	ADMINISTRATIVE HEARINGS
	§	

DECISION AND ORDER

Bexar County Healthcare Systems (Bexar) appealed a decision by an independent review organization (IRO), on behalf of the Texas Workers' Compensation Commission (Commission), concluding that a requested ten sessions of a chronic pain management program was medically unnecessary. The Administrative Law Judge (ALJ) concludes the appeal should be denied because the Claimant's current treating doctor has not requested the service.

I. PROCEDURAL HISTORY

A hearing convened and closed in this case on February 22, 2005, before the undersigned Administrative Law Judge (ALJ) at the State Office of Administrative Hearings, Austin, Texas. Bexar appeared and was represented by its Chief Compliance Officer, Nick Kempisty. Texas Mutual Insurance Company (Texas Mutual) appeared through its counsel, Timothy Riley. There were no objections to notice or jurisdiction.

II. DISCUSSION

The following chronology is relevant to this case:

- On August 24, 2004, the Claimant's then treating doctor, George Bashton, D.C., requested preauthorization for ten sessions of chronic pain management treatment for the Claimant to begin on August 25, 2004, and end on September 15, 2004.¹
- Texas Mutual denied the request in a letter dated August 27, 2004.²
- Dr. Bashton requested reconsideration of the request on September 10, 2004, and Texas Mutual denied the request on September 17, 2004.³

1 Ex. 3 at 9.

2 *Id.* at 6.

3 *Id.* at 7.

- Bexar submitted to the Commission a request for medical dispute resolution postmarked October 1, 2004.⁴
- The Claimant submitted to the Commission a request to change treating doctors.⁵
- The Commission received the request to change treating doctors on October 8, 2004.⁶
- The Commission approved the request to change treating doctors on October 11, 2004.⁷
- The Claimant’s new treating doctor is Douglas Burke, D.C.⁸

There is no evidence that Dr. Burke has requested preauthorization of the sessions. Testimony at the hearing from Texas Mutual’s witness, Robert W. Joyner, M.D., was that the current treatment plan does not include chronic pain management. Texas Mutual represented that Dr. Burke has not requested that the chronic pain management sessions be preauthorized. Bexar did not dispute that assertion.

Section 408.0218 of the Texas Labor Code provides, “Except in an emergency, all health care must be approved or recommended by the employee’s treating doctor.” The Commission’s rules at 28 TEX. ADMIN. CODE § 180.22, entitled “Health Care Provider Roles and Responsibilities,” provides the following at subsection (c)(1):

- (3) The treating doctor is the doctor primarily responsible for the efficient management of health care and for coordinating the health care for an injured employee’s (employee) compensable injury. The treating doctor shall:
 - (1) except in the case of an emergency, approve or recommend all health care rendered to the employee including, but not limited to, medically reasonable and necessary treatment

Based on the fact that the Claimant has changed treating doctors and her new treating doctor has not requested the chronic-pain management sessions, the ALJ concludes that Bexar has not satisfied the necessary conditions for pre-authorization of a pain management program and this case should therefore be dismissed. In view of this conclusion, it is not necessary to decide whether the pain management program is medically necessary.

III. FINDINGS OF FACT

3. Bexar County Healthcare Systems (Bexar) appealed a decision of an independent review organization (IRO), on behalf of the Texas Workers’ Compensation Commission

⁴ *Id.* at 2.

⁵ Ex. 2.

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

(Commission), concluding that a requested ten sessions of a chronic pain management program were medically unnecessary.

4. On August 24, 2004, the Claimant's then treating doctor, George Bashton, D.C., requested preauthorization for ten sessions of chronic pain management treatment for the Claimant to begin on August 25, 2004, and end on September 15, 2004.
5. Texas Mutual denied the request in a letter dated August 27, 2004.
6. Dr. Bashton requested reconsideration of the request on September 10, 2004, and Texas Mutual denied the request on September 17, 2004.
7. Bexar submitted to the Commission a request for medical dispute resolution postmarked October 1, 2004.
8. The Claimant submitted to the Commission a request to change treating doctors.
9. The Commission received the request to change treating doctors on October 8, 2004.
10. The Commission approved the request to change treating doctors on October 11, 2004.
11. The Claimant's new treating doctor is Douglas Burke, D.C.
12. There is no evidence that Dr. Burke has requested preauthorization of the sessions.
13. The current treatment plan does not include chronic pain management.
14. All parties received not less than 10 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.
15. There were no objections to notice or jurisdiction.
16. All parties had an opportunity to respond and present evidence and argument on each issue involved in the case.

III. CONCLUSIONS OF LAW

1. 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(k) and TEX. GOV'T. CODE ANN. ch. 2003.
2. Notice of the hearing was proper and timely. TEX. GOV'T. CODE ANN. §§ 2001.051 and 2001.052.
3. Bexar has not satisfied the necessary conditions for pre-authorization of a chronic pain management program for the Claimant. TEX. LABOR CODE ANN. § 408.0218; 28 TEX. ADMIN. CODE § § 180.22(c)(1).

4. Bexar's request for preauthorization should be dismissed. TEX. LABOR CODE ANN. § 408.021(c); 28 TEX. ADMIN. CODE §§ 180.22(c)(1).

ORDER

IT IS THEREFORE ORDERED that Bexar County Healthcare Systems' appeal of a denial by an independent review organization of its request for preauthorization of ten sessions of a chronic pain management program to be provided by Texas Mutual Insurance Company be, and the same is hereby, dismissed.

SIGNED March 15, 2005

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