

AMERICAN HOME ASSURANCE
COMPANY,
Petitioner

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BEFORE THE STATE OFFICE

V.

OF

BEHAVIORAL MEDICINE OF
HOUSTON-EL PASO,
Respondent

ADMINISTRATIVE HEARINGS

DECISION AND ORDER

This case concerns a request for preauthorization for a thirty-session outpatient pain management multi-disciplinary program, five times a week for six weeks. The ALJ agrees with the workers' compensation carrier and declines to order preauthorization.

I. DISCUSSION

The Claimant, ____, was injured on ____,¹ when she tripped over a cushion and landed on her buttocks in the course of her employment at ____ in El Paso. X-rays of her coccyx, lumbar spine, and sacrum taken November 28, 2003, were negative. She saw Manouchehr Refaeian, M.D., on December 1, 2003. Dr. Refaeian diagnosed her condition as a lumbar contusion and cervical sprain. On December 4 and 6, 2003, he ordered therapy for six visits and an MRI of the lumbar spine. The lumbar MRI, conducted December 9, found facet arthrosis and mild annular bulging with mild impingement on the lateral recess on the left at L4-5. In a follow-up examination on December 15, 2003, Dr. Refaeian found the Claimant had full range of motion in her cervical spine and mild tenderness in the lumbar spine at L5 and S1. Her gait was normal. He discontinued therapy, recommended a home exercise program, and found she had reached maximum medical improvement with a zero percent impairment and could return to work the following week.²

The Claimant continued to complain of pain and sought treatment from a different health care provider, W.C. LaRock, D.C. Her symptoms, as described to Dr. La Rock, included sharp,

¹ At the time of her injury, the Claimant was 44 years old. She is 4 feet, nine inches tall and, at the time of her injury, weighed approximately 163 pounds.

² Carrier Ex. 1 at 32-49.

aching,

and numbing pain in her lower back, radiating into her right leg, as well as similar pain in her neck, radiating into her left hand. She stated she had not experienced any of those symptoms before her fall. Dr. LaRock found she could not return to work and prescribed additional therapy.³

At the Claimant's request, she was referred for a designated doctor examination, which Brian August, M.D., conducted on February 9, 2004.⁴ Dr. August also diagnosed the Claimant's condition as cervical and lumbosacral sprains/strains. Although he believed Dr. Refaeian might have attempted to return the Claimant to work a little early, he found the Claimant's condition should be resolved at the time of his examination, more than two months after the injury.

At some point, the Claimant again changed physicians. She was referred in April of 2004 to the Respondent, Behavioral Medicine of Houston-El Paso (BMH), for evaluation. The therapist at BMH determined she suffered from chronic pain disorder with symptoms of anxiety and depression. At approximately the same time, the Claimant was examined by Dean Smith, M.D., a spinal surgeon, who recommended a cervical MRI. The cervical MRI, conducted May 30, 2004, found a shallow left-sided disc protrusion at C6-7, a small central disc protrusion at C4-5, and mild disc dessication diffusely in the cervical spine.⁵ On May 20, 2004, she was examined by Gilbert Mayorga, M.D., who recommended an orthopaedic or surgical consultation and continued conservative care.

In June of 2004, Jose Muniz, M.D., performed a functional capacity evaluation. He found moderate disability and recommended a four-week program of active therapy. Also in June of 2004, the Claimant received an epidural steroid injection (ESI).

Despite the ESI, extensive therapeutic exercises, and medication, the Claimant's symptoms did not significantly improve. The Claimant also participated in some psychotherapy, which also did not significantly improve her symptoms.⁶

³ Carrier Ex. 1 at 51-63, 80-88.

⁴ Carrier Ex. 1 at 68-72.

⁵ Carrier Ex. 1 at 120.

⁶ The record is not entirely clear as to the amount and type of psychotherapy.

In August of 2004, the Texas Workers' Compensation Commission (the Commission) determined that the Claimant's compensable injury did not include the disc bulging and facet arthrosis at L4-5, the disc protrusion at C6-7, the small central disc protrusion at C4-5, or the mild disc dessication generally in the cervical spine. That determination is not at issue in this proceeding.

Also in August of 2004, BMH requested preauthorization for 30 sessions of a chronic pain management program. The workers' compensation carrier, American Home Assurance Company (AHAC), denied the request initially and on redetermination. BMH filed a request for medical dispute resolution regarding the preauthorization request with the Commission, which referred the matter to an Independent Review Organization (IRO). The IRO found in BMH's favor.

AHAC sought a hearing before the State Office of Administrative Hearings (SOAH) regarding the IRO decision. That hearing was held June 22, 2005, with ALJ Henry D. Card presiding. AHAC was represented by counsel; Dr. Mayorga represented BMH. After testimony from Melissa Tonn, M.D., on AHAC's behalf, and argument from the parties, the hearing was adjourned the same day.

Two reviews of the Claimant's medical file, which appear in the evidentiary record, are notable. The first is a review by Dmitry Golovko, M.D., in June of 2004. In Dr. Golovko's opinion, the "worst case scenario" for the Claimant from her fall should have been a buttock contusion which should have resolved within a few weeks. Dr. Golovko also observed that the Claimant did not complain of any radiating pain on her initial examinations. According to Dr. Golovko, those symptoms should have been present immediately if the Claimant had injured herself severely.

The IRO reviewer, on the other hand, emphasized that many types of treatment had failed to relieve the Claimant's pain. The reviewer believed the Claimant to be "an ideal candidate" for a multi-disciplinary pain management program, to reduce her pain and enable her to function with ongoing pain.

The ALJ finds the chronic pain management program not to be medically necessary. The Commission has determined that the Claimant's compensable injury does not include the spinal conditions shown on the Claimant's MRIs. The Claimant's compensable injury is limited to the lumbar contusion and cervical sprain described by Drs. Refaeian and August. The ALJ also found

the testimony of Dr. Tonn, the examination of Dr. August, and the review by Dr. Golovko persuasive concerning the extent of the Claimant's injury. That injury should have resolved itself within a few months, at the most, and does not require the 30 sessions of a chronic pain management program requested by BMH.

II. FINDINGS OF FACT

1. The Claimant, ____, was injured on ____, when she tripped over a cushion and landed on her buttocks in the course of her employment at ____ in El Paso.
2. X-rays of the Claimant's coccyx, lumbar spine, and sacrum taken November 28, 2003, were negative.
3. The Claimant saw Manouchehr Refaeian, M.D., on December 1, 2003. Dr. Refaeian diagnosed her condition as a lumbar contusion and cervical sprain.
4. The Claimant did not complain of any radiating pain on her initial examinations.
5. An MRI of the Claimant's lumbar spine, conducted December 9, 2003, found facet arthrosis and mild annular bulging with mild impingement on the lateral recess on the left at L4-5.
6. In a follow-up examination on December 15, 2003, Dr. Refaeian found the Claimant had full range of motion in her cervical spine and mild tenderness in the lumbar spine at L5 and S1. Her gait was normal. He discontinued therapy, recommended a home exercise program, and found she had reached maximum medical improvement with a zero percent impairment and could return to work the following week.
7. The Claimant's complaints include sharp, aching, and numbing pain in her lower back, radiating into her right leg, as well as similar pain in her neck, radiating into her left hand.
8. The Claimant has received various forms of treatment, including epidural steroid injections, extensive therapeutic exercises, medication, and psychotherapy.
9. None of the therapies has significantly improved the Claimant's symptoms.
10. A cervical MRI, conducted May 30, 2004, found a shallow left-sided disc protrusion at C6-7, a small central disc protrusion at C4-5, and mild disc dessication diffusely in the cervical spine.
11. In August of 2004, the Texas Workers' Compensation Commission (the Commission) determined that the Claimant's compensable injury did not include the disc bulging and facet arthrosis at L4-5, the disc protrusion at C6-7, the small central disc protrusion at C4-5, or the mild disc dessication generally in the cervical spine.
12. In August of 2004, Behavioral Medicine of Houston-El Paso (BMH) requested preauthorization for 30 sessions of a chronic pain management program.

13. The workers' compensation carrier, American Home Assurance Company (AHAC) denied the preauthorization request initially and on redetermination.
14. BMH filed a request for medical dispute resolution regarding the preauthorization request with the Commission, which referred the matter to an Independent Review Organization (IRO). The IRO found in BMH's favor.
15. AHAC sought a hearing before the State Office of Administrative Hearings (SOAH) regarding the IRO decision.
16. Notice of the hearing was sent to the parties January 19, 2005.
17. 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.
18. The hearing was held June 22, 2005, with ALJ Henry D. Card presiding, and was adjourned the same day.
19. The Claimant's lumbar contusion and cervical sprain should have resolved itself within a few months, at the most.
20. The Claimant's compensable injury does not require the 30 sessions of a chronic pain management program requested by BMH.

III. CONCLUSIONS OF LAW

1. SOAH has jurisdiction over 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. Adequate and timely notice of the hearing was provided in accordance with TEX. GOV'T CODE ANN. §2001.052.
3. The proposed chronic pain management program is not medically necessary under TEX. LAB. CODE ANN. §§ 408.021 and 401.011(19).
4. The Carrier should not be required to preauthorize the requested program.

ORDER

IT IS THEREFORE, ORDERED THAT American Home Assurance Company shall not be required to preauthorize the 30 thirty-session outpatient pain management multi-disciplinary program that is the subject of this dispute.

SIGNED July 21, 2005.

**HENRY D. CARD
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS**