

**DOCKET NO. 453-05-4089.M2
MDR NO. M2-05-0405-01**

**NORTH TEXAS PAIN & RECOVERY
CENTER,
Petitioner**

VS.

**AMERICAN & FOREIGN
INSURANCE COMPANY,
Respondent**

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BEFORE THE STATE OFFICE

OF

ADMINISTRATIVE HEARINGS

DECISION AND ORDER

North Texas Pain & Recovery Clinic (NTPRC) requested a hearing on an Independent Review Organization's (IRO) decision denying preauthorization for a workers' compensation claimant (___) to receive fifteen additional days of pain management services. The IRO denied the request, noting that ___ had already received fifteen days of these services but showed no improvement after the first week. At hearing, American & Foreign Insurance Company (Carrier) also argued that the requested services are no longer necessary because after NTPRC's request for preauthorization, ___ changed treating physicians, received work hardening services, and was released to return to work. This decision and order finds that the requested services are not medically reasonable and necessary at the present time. Therefore, the request for preauthorization is denied.

I. JURISDICTION & HEARING

There were no challenges to notice or jurisdiction, and those matters are set forth in the findings of fact and conclusions of law without further discussion here. Administrative Law Judge (ALJ) Thomas H. Walston conducted a hearing in this case on March 30, 2005, at the State Office of Administrative Hearings (SOAH), William P. Clements State Office Building, Austin, Texas. Michael Walker appeared by telephone on behalf of NTPRC. Attorney Tommy Lueders appeared on behalf of Carrier. The hearing concluded and the record closed the same day.

II. DISCUSSION

A. Parties's Evidence and Arguments

Both NTPRC and Carrier offered into evidence various medical records and other documents. Dr. Kenneth Walker (Ph.D.) testified for NTPRC. No other witnesses testified.

The documentary evidence established that ___ is a 43-year-old female who injured her left arm at work on ___, when an airgun malfunctioned and jerked her arm. She had surgery on her left elbow in January 2004 but continued to complain of pain, swelling, and tingling in her fingers. As a result, Geoffrey Powell, D.C., referred ___ to NTPRC for an interdisciplinary chronic pain management program. NTPRC received preauthorization for three weeks of pain management services beginning in late September 2004. On October 15, 2004, NTPRC requested preauthorization for three additional weeks of pain management services, but Carrier denied the request.

NTPRC appealed the adverse preauthorization decision to the Texas Workers' Compensation Commission, which referred the matter to the IRO. On January 10, 2005, the IRO upheld the Carrier's denial of preauthorization. The reviewing doctor stated his rationale as follows:

The most recent literature . . . indicates that the maximum efficacy is with 20 sessions of CPMP. In that 15 sessions have been completed, an additional 15 sessions would be considered excessive and not reasonable and necessary care for the injury sustained. Moreover, after the first week, the progress had plateaued and no real improvement was noted. This would speak against any additional treatment even to reach the 20 session mark. Simply because the standard is there is not a reason to provide all that care if there is no measurable improvement in the prior two weeks.

NTPRC timely requested a contested case hearing on the IRO's denial of preauthorization. In the meantime, however, ___ completed 30 sessions of work hardening through REHAB 2112, with a final functional capacity evaluation (FCE) on February 14, 2005. The FCE reported that ___ had no pain or tenderness and that she met the medium heavy physical demand level of her job. ___ also changed treating doctors from Geoffrey Powell, D.C., to Inson Stoltz, D.C., effective February 1, 2005,¹ and Dr. Stoltz released ___ to return to work without restrictions effective February 15, 2005.

Dr. Kenneth Walker testified for NTPRC. He is a licensed psychologist and holds a Ph.D. from the University of North Texas. Dr. Walker supervised and provided direct services to ___ He recounted her accident and treatment and stated that ___ continues to suffer from chronic regional pain syndrome, also referred to as reflex sympathetic dystrophy (RSD). Dr. Walker testified that Carrier initially preauthorized 15 days of chronic pain management services, so he does not believe there is any dispute that such services were medically reasonable and necessary. He explained that these services were interdisciplinary, including medical, psychological, and physical therapy. Initially, ___ reported fairly serious levels of pain and depression, and Dr. Walker stated that these problems improved during the first three weeks of the pain management program. He expressly disagreed with the IRO reviewer who stated that ___ plateaued after the first week. He also added that NTPRC developed specific treatment plans for ___ that were reviewed and revised as necessary each week. Dr. Walker agreed that the literature cited by the IRO reviewer refers to a 20-day program, but he emphasized that this was only a guideline that referred to optimal results and not to efficacy. He also pointed out that there are always patients who are exceptions to the guidelines. He believed that ___ was an exception because of her RSD diagnosis. Dr. Walker also complained that the delay from the October preauthorization request to the present has likely caused ___ to regress and that she may now need more than fifteen additional days of pain management services.

¹ The ALJ notes that both doctors show the same address and apparently were with the same clinic.

On cross-examination, Dr. Walker stated that he has not had any contact with Dr. Powell recently, and he was not aware that ___ changed treating physician from Dr. Powell to Dr. Stoltz. He also stated that ___ was last seen in his office on the last day of her treatment in October 2004. However, someone from his office spoke to ___ by telephone about a week before the hearing and she continued to complain of pain. He did not think that work hardening would be appropriate for ___ and he could not say that fifteen more days of pain management services will be enough to solve ___'s problems.

In argument, NTPRC stated that ___ was progressing well but Carrier terminated the pain management program prematurely. It contends that no dispute exists about medical necessity of the pain management program because carrier authorized it initially. Instead, the only issue is whether ___ would benefit from fifteen additional days of services. In NTPRC's view, the additional fifteen days are medically reasonable and necessary and should be approved.

Carrier relied on the records and offered no testimony. It argued that medical necessity must be determined as of the time of the hearing. In this case, by the time of the hearing, ___ had undergone a 30-session work hardening program and had been released to return to work without restriction. Under these circumstances, Carrier argues that additional pain management services are not now medically reasonable and necessary, if they ever were.

B. ALJ's Analysis and Decision

The ALJ finds that the requested pain management services are not medically necessary at the present time. As pointed out by Carrier, after NTPRC's request for preauthorization, ___ changed treating doctors, received 30-days of work hardening services, and was released to return to work without restriction. NTPRC stated that someone from its office recently spoke to ___ by telephone and that she continued to make complaints of pain. However, complaints of pain over the telephone,

without more, are not sufficient to justify a potentially expensive pain management program. Further, there is no evidence that ___'s current treating physician has recommended a pain management program. Under these circumstances, the ALJ denies NTPRC's request for preauthorization of fifteen additional days of pain management services.

III. FINDINGS OF FACT

1. A workers' compensation claimant (___) suffered a compensable injury to her left arm on ___, when an airgun malfunctioned and jerked her arm.
2. ___ had surgery on her left arm in January 2004 but continued to complain of pain, swelling, and tingling in her fingers.
3. ___'s treating doctor, Geoffrey Powell, D.C., referred ___ to North Texas Pain & Recovery Clinic (NTPRC) for an interdisciplinary chronic pain management program.
4. NTPRC requested preauthorization for chronic pain management services. American & Foreign Insurance Company (Carrier) granted preauthorization for fifteen sessions of pain management services.
5. NTPRC provided ___ fifteen days of pain management services from late September 2004 through October 15, 2004. At the end of these first fifteen days of pain management services, NTPRC requested preauthorization to provide an additional fifteen days of such services.
6. Carrier denied NTPRC's request for additional pain management services as not being medically reasonable or necessary.
7. NTPRC requested medical dispute resolution.
8. On January 10, 2005, an Independent Review Organization (IRO) denied D.O.'s request for preauthorization for the fifteen additional days of chronic pain management services.
9. REHAB 2112 provided ___ with 30 days of work hardening services, with a final functional capacity evaluation (FCE) on February 15, 2005. At that time, ___ had no pain or tenderness and she met the medium-heavy physical demand level of her job.

10. ___ changed treating doctors from Geoffrey Powell, D.C., to Inson Stoltz, D.C., effective February 1, 2005.
11. Dr. Stoltz released ___ to return to work without restrictions effective February 15, 2005.
12. NTPRC requested a hearing before the State Office of Administrative Hearings, seeking to reverse the IRO's denial of preauthorization for fifteen additional days of pain management services.
13. A hearing was conducted March 30, 2005, and the record closed the same day.
14. NTPRC and the American & Foreign Insurance Company attended the hearing.
15. All parties received not less than ten days notice of the time, place, and nature of the hearing; 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.
16. All parties were allowed to respond and present evidence and argument on each issue involved in the case.

IV. CONCLUSIONS OF LAW

1. The State Office of Administrative Hearings has jurisdiction over matters related to the hearing, including the authority to issue a decision and order. TEX. LABOR CODE ANN. § 413.031(k).
2. All parties received proper and timely notice of the hearing. TEX. GOV'T CODE ANN. §§2001.051 and 2001.052.
3. NTPRC has the burden of proof by a preponderance of the evidence.
4. The medical reasonableness and necessity of a proposed treatment must be determined as of the time of the contested case hearing.
5. The fifteen additional days of chronic pain management services requested by NTPRC are

not medically reasonable or necessary for the proper diagnosis and treatment of claimant ___ at the present time. TEX. LABOR CODE ANN. §§ 401.011(19) and 408.021.

6. NTPRC's appeal is denied and the American & Foreign Insurance Company is not required to pay for fifteen additional days of chronic pain management services for ___

ORDER

IT IS, THEREFORE, ORDERED that NTPRC's appeal is denied and preauthorization is denied for ___ to receive fifteen additional days of chronic pain management services.

SIGNED April 12, 2005.

**THOMAS H. WALSTON
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS**