

**SOAH DOCKET NO. 453-05-4321.M2
TWCC MR NO. M2-05-0461-01**

**AMERICAN HOME ASSURANCE
COMPANY,
Petitioner**

V.

**DEAN MCMILLAN, M.D.,
Respondent**

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BEFORE THE STATE OFFICE

OF

ADMINISTRATIVE HEARINGS

DECISION AND ORDER

Petitioner, American Home Assurance Company, (Carrier) appealed the Findings and Decision of the Medical Review Division (MRD) of the Texas Workers' Compensation Commission (TWCC) granting preauthorization for an injured worker (Claimant) to receive ten sessions of a chronic pain management program at the request of Dean McMillan, M.D. (Provider). The Administrative Law Judge (ALJ) concludes that Carrier has met its burden of proof and therefore, that preauthorization for the program should not be granted.

I. PROCEDURAL HISTORY

ALJ Penny A. Wilkov convened a hearing in this case on June 7, 2004, at the State Office of Administrative Hearings (SOAH), Austin, Texas. Carrier appeared and was represented by Attorney Steven M. Tipton. Provider did not appear and was not represented at the hearing. No party challenged jurisdiction or notice. Following post-hearing filings by the parties, the record closed on June 24, 2005.

II. DISCUSSION

1. Background

Claimant sustained a work-related injury on ____, when in his job as a carpenter, he lifted a 100-pound metal bar and injured his back. He has been diagnosed with intervertebral disc syndrome at multiple levels involving the lumbar spine. Claimant describes symptoms of severe back pain radiating down his legs, along with numbness and tingling in his back. Claimant's history of treatments has included medications, physical therapy, chiropractic treatments, and injections as well

as diagnostic testing including an MRI and x-rays.¹ He has also completed sixteen sessions for a total of 120 hours of a chronic pain management program in September and October, 2004, overseen by Dipti Patel, D.C.

Provider requested preauthorization of participation in a chronic pain management program for an additional ten sessions for a total of 80 hours. Carrier disputes that these services are medically necessary.

B. Applicable Law

Under the workers' compensation system, an employee who sustains a compensable injury is entitled to all health care reasonably required by the nature of the injury. The employee is specifically entitled to health care that: (1) cures or relieves the effects naturally resulting from the injury; (2) promotes recovery; or (3) enhances the ability to return to or retain employment. TEX. LAB. CODE ANN. § 408.021. "Health care" includes "all reasonable and necessary medical . . . services." TEX. LAB. CODE ANN. § 401.011(19).

Certain healthcare, however, must be preauthorized before it can be provided and such preauthorization will be granted only if there is a prospective showing of medical necessity. TEX. LAB. CODE ANN. § 413.014. Chronic pain management is included in the type of treatment which requires preauthorization. 28 TEX. ADMIN. CODE § 134.600(h)(10)(b).

C. Medical Necessity of the Chronic Pain Management Program

Carrier submitted Claimant's medical records, consisting of a 486-page compilation of medical evaluations, assessments, follow-ups, reviews, and test results.

Carrier argues that the request for a chronic pain management program is not appropriate or medically necessary, citing several sources. First, Carrier relies on a peer reviewer, Laurence A. Miller, M.D., who stated that the program was medically unnecessary based on the lack of progress demonstrated in Claimant's subjective pain level, need for medication, and the results of

¹ Petitioner's Exhibit 1, pages 4-8.

psychological testing, including the Beck Depression Inventory (BDI) and Anxiety Inventory.² Second, Carrier cites another peer review conducted by Allison Venture, M.D., who stated that the prior pain management program of sixteen sessions administered by Provider was reasonable and necessary but that there was no need shown for further sessions of the program.³ Third, Carrier refers to a medical report by Ignazio G. LaChina, M.D., who examined Claimant and stated that after completion of the pain management program, Claimant reports a pain level of seven, on a scale of one to ten with ten the most painful, and poor sleep patterns. Dr. LaChina states that “I do not feel that any further therapy is indicated at this time. It seems like he has had a substantial amount.”⁴

Lastly, Carrier points out that despite the written goal of the prior chronic pain management program of reducing Claimant’s Global Assessment of Function (GAF) score by 10 points, decreasing Claimant’s subjective pain rating by 2 to 4 points, and decreasing the BDI score by 10 points, none of these goals were accomplished.⁵ Carrier refers to Provider’s report that shows no significant change in GAF scores, BDI scores, or pain level amounts after sixteen sessions of the program.⁶ Specifically, Carrier notes that the GAF score increased by only one point rather than the projected ten points; the BDI score increased by one point rather than the proposed decrease of ten points; and the pain levels reported remained constant at a level of seven, on a scale of one to ten, from August 2004, until November 2004.

D. Analysis and Conclusion

After considering the documentary evidence and arguments, the ALJ concludes that Carrier has shown that the chronic pain management program is not medically necessary for Claimant’s work-related injury. The medical evidence supports a finding that Claimant has already undergone sixteen sessions of the program in an attempt to help Claimant develop pain coping strategies, gain physical strength to resume daily living activities, and to deal with depression and anxiety. However,

² Petitioner’s Exhibit 1, page 9 (October 13, 2004, Health Direct, Inc.).

³ Petitioner’s Exhibit 1, page 9 (December 17, 2002, Health Direct, Inc.).

⁴ Petitioner’s Exhibit 1, page 304 (November 5, 2004 Initial Office Visit).

⁵ Petitioner’s Exhibit 1, page 372 (August 19, 2004, Mental Health Evaluation, Denise Turboff, M.Ed.).

⁶ Petitioner’s Exhibit 1, page 323 (October 7, 2004 Report by Dean McMillan, M.D.).

the need for addition sessions has not been shown as necessary. The peer reviewers all concur that Claimant has not made progress in the program as demonstrated in a reduction in pain or the necessity for medication. Further, the psychological testing has not shown any reduction in depression or anxiety levels related to the injury or any return to functionality and pain levels reported remain constant. As such, the disputed services have not been shown necessary to promote recovery, enhance the ability to return or work, or relieve the effects of the injury.

Therefore, the chronic pain management program is not medically necessary for the treatment of Claimant's injury and should not be preauthorized.

III. FINDINGS OF FACT

1. An injured worker (Claimant) sustained a work-related injury on ____, when in his job as a carpenter, he lifted a 100-pound metal bar and injured his back.
2. Claimant has been diagnosed with intervertebral disc syndrome at multiple levels involving the lumbar spine.
3. Claimant described symptoms of severe back pain radiating down his legs, along with numbness and tingling in his back.
4. Claimant's history of treatments has included medications, physical therapy, chiropractic treatments, and injections as well as diagnostic testing including an MRI and x-rays.
5. Claimant has completed sixteen sessions for a total of 120 hours of a chronic pain management program, in September and October, 2004, overseen by Dipti Patel, D.C.
6. Dean McMillan, M.D.(Provider), requested preauthorization to treat Claimant with ten additional sessions for a total of 80 hours of a chronic pain management program.
7. Carrier denied Provider's request for preauthorization.
8. Provider requested medical dispute resolution with the Texas Workers' Compensation Commission's (Commission) Medical Review Division (MRD).
9. An Independent Review Organization concluded that the chronic pain management program was medically necessary.
10. Carrier requested a contested case hearing before the State Office of Administrative Hearings and requested denial of preauthorization for the chronic pain management program.

11. The Commission sent notice of the hearing to the parties on February 28, 2005. The hearing notice informed the parties of the time, place, and nature of the hearing; the legal authority and jurisdiction under which the hearing was to be held; the statutes and rules involved; and the matters asserted.
12. Administrative Law Judge Penny A. Wilkov convened a hearing in this case on June 7, 2004, at the State Office of Administrative Hearings (SOAH), Austin, Texas. Carrier appeared and was represented by Attorney Steven M. Tipton. Provider did not appear and was not represented at the hearing. Following post-hearing filings by the parties, the record closed on June 24, 2005.
13. Claimant has already undergone sixteen sessions of the chronic pain management program in an attempt to help Claimant develop pain coping strategies, gain physical strength to resume daily living activities, and to deal with depression and anxiety.
14. After completion of the sixteen sessions of a chronic pain management program in September and October 2004, no progress was demonstrated in reducing Claimant's subjective pain level, curtailing Claimant's need for medication, or with improving the results of psychological testing, including the Beck Depression Inventory (BDI) and Anxiety Inventory.
15. Another ten sessions of a chronic pain management program will not serve to further promote recovery, enhance the ability to return or work, or relieve the effects of the injury.

IV. CONCLUSIONS OF LAW

1. The State Office of Administrative Hearings (SOAH) has jurisdiction over matters related to the hearing, 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. Carrier timely filed a request for hearing before SOAH, as specified in 28 TEX. ADMIN. CODE § 148.3.
3. The parties received proper and timely notice of the hearing pursuant to TEX. GOV'T CODE ANN. ch. 2001 and 1 TEX. ADMIN. CODE § 155.27.
4. Carrier had the burden of proving the case by a preponderance of the evidence pursuant to 28 TEX. ADMIN. CODE § 148.21.
5. An employee who has sustained a compensable injury is entitled to all health care reasonably required by the nature of the injury as and when needed. The employee is specifically entitled to 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. TEX. LAB. CODE ANN. § 408.021(a).

6. Health care includes all reasonable and necessary medical services. TEX. LAB. CODE ANN. § 401.011(19)(A).
7. As provided by TEX. LAB. CODE ANN. § 413.014 and 28 TEX. ADMIN. CODE 134.600(h)(10)(B), preauthorization is required for a chronic pain management treatment program.
8. Based on Findings of Fact Nos. 14, 15, and 16, the requested pain management program is not medically necessary.

ORDER

IT IS ORDERED that Provider's request for preauthorization of ten sessions of chronic pain management program is denied.

SIGNED July 6, 2005.

**PENNY WILKOV
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS**