



## **II. BACKGROUND**

Claimant sustained a work-related injury to his low back on \_\_\_\_\_. He was initially treated with physical therapy but his condition did not improve. In May 2004 he underwent an L5-S1 fusion to treat his compensable injury. Since then, he has suffered persistent low back pain.

Claimant's treating doctor, Douglas W. Burke, D.C., referred him to Provider on September 22, 2004, for a psychological evaluation, during which it was determined Claimant suffers from depression and anxiety. He has had three psychotherapy sessions and has been placed on starting doses of anti-depressants.

Provider requested pre-authorization of 10 sessions of chronic pain management for Claimant, to address his ongoing psychological and physical needs. Carrier denied the request because the submitted documentation did not support medical necessity. Provider requested medical dispute resolution through the Commission, which referred the request to an IRO for a decision.

The IRO agreed with Carrier's decision to deny the request, concluding that before considering a pain management program, an aggressive trial of anti-depressant therapy should be instituted. The IRO noted in addition that Claimant might not be able to benefit from a chronic pain management program, due to his profound hearing deficit and his fifth-grade education.

## **III. EVIDENCE**

Provider offered no evidence, relying on Carrier's submission of its exhibits 1-15, which were admitted. Neither party called any witnesses. The evidence is more fully reflected in the Findings of Fact.

## **IV. FINDINGS OF FACT**

1. Claimant sustained a work-related injury to his low back on \_\_\_\_\_, while picking up angle iron.

2. At the time of the injury, Claimant's employer had its workers' compensation insurance through Carrier.
3. Claimant has not returned to work since March 21, 2003.
4. Claimant's treatment included work restrictions, medications, and physical therapy until March 24, 2003, and chiropractic care from Douglas W. Burke, D.C., from March 31, 2003, through October 20, 2004.
5. On May 26, 2004, Claimant underwent a spinal fusion at the L5-S1 level to treat his compensable injury.
6. Due to Claimant's ongoing depression after the surgery, Dr. Burke referred him to Provider for a psychological evaluation on September 22, 2004.
7. Provider conducted the requested psychological evaluation on October 6, 2004:
  - a. Rafael C. Bertran, LPC, conducted the evaluation.
  - b. Claimant's subjective pain level was 9 out of 10, with 10 being the highest level of pain.
  - c. Claimant had not learned to effectively cope with and tolerate his pain.
  - d. Mr. Bertran reported Claimant shows signs of depression and anxiety, and signs of panic with palpitations. He said the Beck Anxiety inventory revealed severe anxiety and the Beck Depression inventory revealed severe depression.
  - e. Claimant had chronic pain disorder with both psychological features and a general medical condition; a moderate depressive disorder; a generalized anxiety disorder; and a panic disorder.
  - f. Claimant appeared cognitively capable to benefit from the requested treatment and appeared motivated to participate, and the expected clinical response is "good," although the prognosis for Claimant returning to work is guarded.
  - g. The short term goals of the requested chronic pain management sessions would be to stabilize Claimant's mood, depression, and anxiety; to improve his pain management skills; and to improve functioning.
8. On November 11, 2004, Luis Bieler, M.D., P.A., Diplomate American Board of Internal Medicine, examined Claimant and recommended that in view of the patient's increasing emotional problems, he be admitted to a chronic pain management program in which his emotions and psychological problems can be addressed in a structured way to guarantee his full recovery.

9. As of November 15, 2004, Claimant's surgical wound was well-healed.
10. As of December 6, 2004, Claimant's high level of pain and his ongoing inability to adapt well to his physical impairment indicated a chronic pain management program would be the next most conservative level of care for him.
11. Based on a Functional Capacity Evaluation of Claimant on December 6, 2004, the prognosis for Claimant was good for interdisciplinary chronic pain management with goals of increasing his strength, range of motion, and endurance; decreasing his pain and focus on pain; improving his functional abilities; and improving his self-outlook.
12. Claimant underwent one-hour psychotherapy sessions on January 10, 17, and 24, 2005, with Mr. Bertran, a licensed professional counselor.
13. Claimant's January 18, 2005 x-ray showed alignment of the lumbar vertebral segments is anatomic and the disc spaces are well preserved, with no evidence of instability is seen on the flexion or extension views.
14. A chronic pain management program would most likely be the next most conservative level of care to address Claimant's ongoing chronic pain, and his depression and anxiety.
15. Claimant was at maximum medical improvement on March 9, 2005, with a whole person impairment rating of 10 percent due to objective signs of ongoing verifiable radiculopathy.
16. Conservative psychological care given to Claimant by Provider is not enough to eliminate his psychological symptoms, nor is it addressing his continued narcotic usage or physical limitations.
17. Chronic pain management is appropriate when the patient is likely to benefit from the program; the patient has not responded to previous appropriate medical care; pain interferes with the patient's physical, psychological, social, or vocational functioning; the patient's pain continues well beyond the expected tissue healing time; the patient risks development of an excessively disabled lifestyle (inadequate strategies for managing injury related stress and anxiety and pain, lack of confidence in ability to control injury related pain, symptoms of depression, symptoms of anxiety, coping style that may interfere with rehabilitation); and the patient suffers from chronic debilitating pain.
18. Claimant is likely to benefit from a chronic pain management program because despite undergoing physical therapy, a spinal fusion, and psychotherapy sessions, he continues to suffer from a level of pain that interferes with his activities of daily living. In addition, although his surgical wound is well-healed, he continues to experience chronic pain, depression, and anxiety.
19. A chronic behavioral pain management program will provide Claimant with an intense multi-disciplinary approach to treatment in which his psychological and physical deficits can be addressed simultaneously:

- a. Claimant continues to present with mild depression, moderate anxiety, and continues to have moderate impairments in his social and occupational functioning. He is currently sleeping only four hours per night, or 50 percent of his prior sleep duration. His pain is still 7 or 8 out of 10, and he has a low daily activity level.
  - b. The psychological portion of the program will assist in implementing independent utilization of pain management skills, continue to reduce his symptoms of depression and anxiety, increase sleep duration through relaxation and coping techniques and increase his daily activity level.
  - c. Claimant shows continued deficits in range of motion, strength, and endurance. He was unable to perform any cardiovascular exercise due to pain, back brace, and balance issues. Participation in the chronic pain management program will increase strength, endurance, and range of motion, while decreasing focus on pain and improving overall functional abilities.
  - d. Claimant needs to learn pain control without the use of medication. Long-term dependency on medication, especially narcotics, poses a threat to Claimant's long-term health of this individual. Claimant will benefit from the program by working with the medical director to wean him off of the narcotics and by learning to adequately cope with his pain without long-term dependency on medications.
  - e. A chronic pain management program is medically necessary to treat a condition naturally resulting from Claimant's compensable injury.
20. Provider requested pre-authorization to treat Claimant with 10 sessions of chronic pain management.
  21. The requested 10 sessions of chronic pain management treatment will act to both "cure and relieve" Claimant's condition as well as "promote recovery" from the physical and psychological issues resulting from his compensable injury.
  22. Carrier denied the request because the medical necessity of a chronic pain management program was not substantiated by the documents submitted by Provider.
  23. Provider requested medical dispute resolution before the Texas Workers' Compensation Commission (Commission).
  24. On April 19, 2005, the Commission's designee, an IRO, denied the request for preauthorization.
  25. The IRO found that the chronic pain management was not medically necessary.

26. On April 26, 2005, Provider filed a request for a hearing.
27. The Commission sent notice of the hearing to the parties on May 20, 2005.
28. 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.
29. The hearing convened August 23, 2005, before ALJ Sharon Cloninger at SOAH's hearing site in the William P. Clements State Office Building, 300 W. 15<sup>th</sup> Street, Fourth Floor, Austin, Texas. Provider was represented by Nick Kempisty, its Chief Compliance Officer. Carrier was represented by W. Jon Grove, attorney. The record closed and the hearing concluded that same day.

## **V. CONCLUSIONS OF LAW**

1. SOAH 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. §§ 402.073 and 413.031(k) and TEX. GOV'T CODE ANN. ch. 2003.
2. Provider timely filed a notice of appeal of the IRO decision, as specified in 28 TEX. ADMIN. CODE (TAC) § 148.3.
3. Proper and timely notice of the hearing was effected upon the parties according to TEX. GOV'T CODE ANN. ch. 2001 and 28 TAC § 148.4(b).
4. Provider had the burden of proving the case by a preponderance of the evidence.
5. An employee who sustains a compensable injury is entitled to all health care reasonably required by the nature of the compensable 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. Based on the foregoing Findings of Fact and Conclusions of Law, Provider met its burden of proving that its request for pre-authorization of 10 sessions of chronic pain management for Claimant should be granted.

**ORDER**

It is hereby ordered that Provider's request for pre-authorization of 10 sessions of chronic pain management for Claimant is granted.

**SIGNED September 19, 2005.**

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**SHARON CLONINGER  
ADMINISTRATIVE LAW JUDGE  
STATE OFFICE OF ADMINISTRATIVE HEARING**