

**SOAH DOCKET NO. 453-05-6611.M2
TWCC MRD NO. M2-05-0976-01**

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| OLD REPUBLIC INSURANCE COMPANY, Petitioner | § § § § § § § § § § | BEFORE THE STATE OFFICE OF ADMINISTRATIVE HEARINGS |
| V. | | |
| FORT WORTH HEALTHCARE SYSTEMS, Respondent | | |

DECISION AND ORDER

Old Republic Insurance Company (Carrier) appealed the decision of Maximus, an independent review organization certified by the Texas Department of Insurance, in Texas Workers' Compensation Commission (TWCC) Medical Review Division tracking number M2-05-0976-01, granting preauthorization to Fort Worth Healthcare Systems¹ (Provider) for a 10-session chronic pain management program for a workers' compensation claimant (Claimant). This decision finds that the Provider is not entitled to preauthorization for the requested chronic pain management program.

I. JURISDICTION, NOTICE, AND PROCEDURAL HISTORY

There were no contested issues of jurisdiction, notice or venue. Therefore, those issues are addressed in the findings of fact and conclusions of law without further discussion here.

¹ The Provider was referred to in the record as both Fort Worth Healthcare Systems and Bexar County Healthcare Systems. At the hearing, the Provider correctly identified itself as Fort Worth Healthcare Systems.

The Administrative Law Judge (ALJ) convened the hearing on July 6, 2005. The Carrier was represented by Jeremy Lunn, Attorney. The Provider appeared telephonically though Nick Kempisty, Chief Compliance Officer.² At the conclusion of the hearing that day, the record was closed.

II. EVIDENCE AND BASIS FOR DECISION

The Carrier submitted a packet containing 29 Exhibits identified as Exhibits A through CC, and presented the testimony of its expert, George M. Cole, D.O. The Provider did not present either documentary evidence or testimony. The Carrier argued that the proposed treatment was not medically necessary because the Claimant's complaints were not related to the injury of ____, but to preexisting conditions from prior injuries and degenerative changes.

The Claimant sustained a work-related injury to his back when he fell on his buttocks and back inside a truck trailer on ____. At the time of the compensable injury, the Carrier was responsible for Claimant's workers' compensation insurance coverage. Following a TWCC compensability hearing held on August 10, 2004, a TWCC hearing officer determined that the Claimant suffered cervical and lumbar sprain/strain and aggravated chronic lumbalgia.³ Further, the hearing officer found that the Claimant did not sustain cervical, thoracic and lumbar disc protrusions and coccyx injury on ____.⁴ The Claimant's treatment included medical therapy, physical therapy, chiropractic adjustments, massage, exercise therapy, stretching, electrical stimulation, and psychological counseling. The Claimant continues to complain of pain radiating to both knees.⁵

² The Provider failed to appear at the hearing and Mr. Lunn telephoned Mr. Kempisty on his cellular telephone. Mr. Kempisty stated he wanted to appear by telephone and Mr. Lunn did not object to the untimely request.

³ Chronic low back pain.

⁴ Exh. V.

⁵ Exh. X.

Dr. Cole is a certified orthopaedic surgeon who reviewed the Claimant's medical records in preparation for his testimony. He also performed a peer review and prepared a report dated March 20, 2004, concluding that the Claimant did not require additional treatment because any remaining symptoms were the result of preexisting degenerative changes.⁶

In his testimony, Dr. Cole referred to the report of Karl D. Erwin, M.D., who examined the Claimant on March 1, 2004, and concluded that additional chiropractic care and use of muscle relaxants would be unreasonable. Dr. Erwin believed that the Claimant would benefit from a home exercise program and intermittent use of analgesic medication.⁷

Dr. Cole also relied on the June 17, 2004 report of Richard A. Suss, M.D., who compared imaging studies performed on the Claimant.⁸ Dr. Suss noted that a lumbar spine MRI performed prior to the injury on January 22, 2003,⁹ and lumbar spine MRI performed subsequent to the injury on February 2, 2004,¹⁰ showed that there was no MRI evidence of any real change in the lumbar spine that could be attributed to the ___ injury. The medical records also contained a radiographic study performed on the date of injury,¹¹ and an FCE evaluation by Dr. Erwin dated January 10, 2005.¹² The radiograph of the lumbar spine showed no fractures and that the vertebral bodies and interspaces were within normal limits. Dr. Erwin concluded in the FCE report that any further treatment, diagnostic testing, and prescription medication would not be medically necessary for the

⁶ Exh. P.

⁷ Exh. Q.

⁸ Exh. R.

⁹ Exhs. J and K.

¹⁰ Exh. O.

¹¹ Exh. G, page 9.

¹² Exh. BB.

Claimant's injury. Further, Dr. Erwin stated the Claimant's medical condition was not related to the injury of ____.

The ALJ concludes the Carrier proved the requested 10-session chronic pain management program is not medically necessary healthcare for the Claimant because the Claimant's current pain complaints are not related to the Claimant's work injury. The medical evidence, including imaging studies, the radiograph, peer reviews, and other examinations, overwhelmingly shows that the requested treatment is not medically necessary treatment. This decision orders that the Carrier is not required to provide the requested 10-session chronic pain management program.

III. FINDINGS OF FACT

1. On ____, the Claimant sustained an injury compensable under the Texas Workers' Compensation Act.
2. At the time of the Claimant's compensable injury, Old Republic Insurance Company (Carrier) provided workers' compensation coverage and is responsible for paying for the Claimant's healthcare for the compensable injury.
3. The Claimant suffered from cervical and lumbar sprain/strain and aggravated chronic lumbalgia.
4. The Claimant's treatment included medical therapy, physical therapy, chiropractic adjustments, massage, exercise therapy, stretching, electrical stimulation, and psychological counseling.
5. The Claimant continues to suffer from pain.
6. The Claimant's current pain relates to preexisting conditions from prior injuries and degenerative changes.
7. The Claimant's treating physician referred him to Fort Worth Healthcare Systems (Provider) for treatment of chronic pain.
8. The Provider recommended a 10-session chronic pain management program.
9. Imaging studies performed before and after the ____ injury revealed no MRI evidence of

change in the lumbar spine that can be attributed to the injury.

10. A radiographic study of the lumbar spine performed on the date of injury revealed no fractures and showed that the vertebral bodies and interspaces were within normal limits
11. The Claimant's pain and the work injury are unrelated.
12. The Carrier denied preauthorization of the requested 10-session chronic pain management program.
13. After the Carrier denied preauthorization, the Provider sought medical dispute resolution with the Texas Workers' Compensation Commission (TWCC).
14. After TWCC's designee, an Independent Review Organization, granted preauthorization, the Carrier timely appealed that decision.
15. TWCC sent notice of hearing to the parties on June 3, 2005. The notice informed the parties of the matter to be determined; the right to appear and be represented by counsel; the date, time, and location of the hearing; and cited to the legal statutes and rules involved.
16. The hearing convened July 6, 2005, before Michael J. Borkland, Administrative Law Judge. The Carrier was represented by Jeffery Lunn, Attorney. The Provider appeared *pro se* through Nick Kempisty, Chief Compliance Officer.

IV. CONCLUSIONS OF LAW

1. The Texas Workers' Compensation Commission has jurisdiction related to this matter pursuant to TEX. LABOR CODE ANN. § 413.031.
2. 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. LABOR CODE ANN. § 413.031 and TEX. GOV'T CODE ANN. ch. 2003.
3. The hearing was conducted pursuant to the Administrative Procedure Act, TEX. GOV'T CODE ANN. ch. 2001 and the Commission's rules, 28 TEX. ADMIN. CODE (TAC) § 133.308.
4. Adequate and timely notice of the hearing was provided in accordance with TEX. GOV'T CODE ANN. §§ 2001.051 and 2001.052.
5. The Carrier had the burden of proof in this proceeding. 28 TAC § 148.21(h).
6. The requested 10-session chronic pain management program is not medically necessary or

reasonably required for the proper treatment of the Claimant. TEX. LABOR CODE ANN. §§ 401.011(19) and 408.021.

7. For a carrier to be liable to reimburse a provider for chronic pain management, the service must be preauthorized. 28 TAC § 134.600(h).
8. The Carrier's appeal is granted, and the Carrier's denial of the requested treatment is affirmed.

ORDER

It is ORDERED that the request of Fort Worth Healthcare Systems for preauthorization of a 10-session chronic pain management program for the Claimant is denied.

SIGNED July 14, 2005.

**MICHAEL J. BORKLAND
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS**