

**SOAH DOCKET NO. 453-05-8826.M2
TWCC MR NO. M2-05-1957-01**

**AMERICAN HOME ASSURANCE
COMPANY,
Petitioner**

V.

**POSITIVE PAIN MANAGEMENT,
Respondent**

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BEFORE THE STATE OFFICE

OF

ADMINISTRATIVE HEARINGS

DECISION AND ORDER

Petitioner, American Home Assurance Company, (Carrier) challenged the Findings and Decision of the Medical Review Division (MRD) of the Texas Workers' Compensation Commission (TWCC)¹ granting preauthorization for an injured worker (Claimant) to receive twenty sessions of a chronic pain management program at the request of Positive Pain Management (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 and closed a hearing in this case on December 13, 2005, at the State Office of Administrative Hearings (SOAH), Austin, Texas. Carrier appeared and was represented by Attorney Peter Macaulay. Scott Worsham, D.C., a chiropractor with Positive Pain Management, appeared on behalf of Provider. No party challenged jurisdiction or notice.

II. DISCUSSION

1. Background

Claimant sustained a work-related injury on ____, when in his job as a door greeter, he struck the back of his neck while pushing shopping carts through a low opening. He has been diagnosed with spinal stenosis at C4-5, C5-6, and C6-7, disc bulges from C3 through C7, and radiculopathy.²

¹ As of September 1, 2005, the functions of TWCC have been assumed by the Texas Department of Insurance, Workers' Compensation Division.

² Petitioner's Exhibit 1, pages 75-78.

Claimant describes symptoms of pain in the low back and neck radiating to the right arm, pain in the bilateral shoulder, right elbow, right wrist, right hand and fingers, head, right knee, right ankle, and right foot.³ Claimant's history of treatments has included several medications, physical therapy, chiropractic treatments, and injections as well as diagnostic testing including an MRI, EMG, discogram, and x-rays.⁴ He has also attended a chronic pain management program in July 2004, as noted by Jose Reyes, Jr., M.D, who commented that "[Claimant] is going through the chronic pain management program. It seems to be helping."⁵

Provider requested preauthorization of participation in a chronic pain management program for twenty sessions. 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).

³ *Ibid*, page 76.

⁴ Petitioner's Exhibit 1, pages 4-8.

⁵ Petitioner's Exhibit 1, page 132.

C. Medical Necessity of the Chronic Pain Management Program

1. Carrier

Carrier presented Claimant's medical records and called Martin Steiner, M.D., as a witness. Dr. Steiner is board-certified in Psychiatry and Neurology, and has been in practice for more than twenty years.

Dr. Steiner has examined Claimant and has reviewed all of his medical records and, in his opinion, the request for chronic pain management therapy is not appropriate or medically necessary. Dr. Steiner indicates, as the basis for his opinion, that a physical examination conducted on March 7, 2003, revealed that Claimant "sustained a minor contusion to the posterior cervical region when he lifted up and bumped the back of his neck in a doorway . . . [which is] the type of injury that would be expected to resolve spontaneously in a week or less."⁶ Dr. Steiner also states that "[Claimant] does not require any chiropractic treatments, nor does he require any additional medical visits in regards to the incident in question."⁷ Dr. Steiner testified that he believes that Claimant has made a full recovery but continues to magnify his symptoms, based on an examination that he performed recently, on September 9, 2005, where Claimant moved his neck normally in all planes, although he entered the office wearing a cervical collar.

Carrier also relies on a surveillance video conducted by Metro Private Investigations, Inc., on August 26, 2005, wherein Claimant was observed engaging in normal activities such as driving a vehicle, washing the car, and talking on a cell phone.⁸

Lastly, Carrier points to the IRO decision as fallible, noting that the reviewing physician cited three insufficient reasons to support the preauthorization request; namely, increased productivity, reduced medications, and reduced subjective pain intensity. Carrier contends that since there is no physiological reason for the pain, a chronic pain management program is unnecessary, and

⁶ Petitioner's Exhibit 1, page 35.

⁷ *Ibid.*

⁸ Petitioner's Exhibit 4.

particularly where Claimant has already attended a similar program in July 2004, as reported by Dr. Reyes.

2. Provider

Provider asserts that the chronic pain management program is appropriate for Claimant for numerous reasons. Provider points out that Claimant had an extensive injury which has resulted in a painful condition. According to Provider, the injury only results in a fair prognosis since “injuries of this nature heal with scar tissue and predispose the areas to weakness and re-injury.”⁹ Provider also contends that Claimant will benefit from the psychological component of the program. For instance, Claimant feels guilt and depressed since he is unable to resume his normal activities such as playing ball with his ___-year-old ____. Provider states that the program will help Claimant deal with his negative feelings of apprehension and fear and will enable Claimant to develop appropriate coping mechanisms for the pain so that he can improve his quality of life.

Provider also relies on the designated doctor exam perform on April 7, 2005, by Victor Kumar-Misir, M.D., as further justification for the necessity of the program. Dr. Kumar-Misir assigned Claimant a whole-body impairment rating of 15% based on Claimant’s radiculopathy and reported level of pain of eight, on a one-to-ten scale with ten as the most severe. Dr. Kumar-Misir also noted that Claimant’s symptoms “interfere with recreation, social functions and activities of daily living, e.g., bending, pushing, bathing, and dressing.”¹⁰

Lastly, Provider cites the opinion of the physician reviewer of the IRO, who stated that “there is a reasonable change [*sic*] of showing significant improvement in at least three of the first seven program goals (i.e., increased productivity, reduced medication misuse, reduced subjective pain intensity, etc.).”¹¹

D. Analysis and Conclusion

⁹ Petitioner’s Exhibit 1, pages 93-74.

¹⁰ Petitioner’s Exhibit 1, pages 148-159.

¹¹ Respondent’s Exhibit 1, page 2.

After considering the documentary evidence and arguments, the ALJ concludes that Carrier has shown that the chronic pain management program is not medically necessary.

The evidence establishes that Claimant has already recovered sufficiently to resume normal activities, thereby obviating the necessity of a pain management program. This is based on a functional capacity examination, performed by Dr. Steiner, a board-certified Neurologist and Psychiatrist, that concluded that Claimant had regained functionality within normal limits and indicated “giveaway weakness,” a term describing exaggerated pain behaviors. Dr. Steiner also noted that Claimant had displayed signs of symptom magnification, including that Claimant had the full use of his neck, despite entering the office wearing a neck brace. This recovery is corroborated by the surveillance video showing that Claimant has been able to resume daily activities such as washing a car and driving.

Further, the preponderant evidence supports a finding that Claimant has already undergone a successful chronic pain management program in July 2004, as reported by Jose Reyes, Jr., M.D., in an attempt to help Claimant develop pain coping strategies. It was not established that another program, combined with Claimant’s apparent recovery, will further promote recovery, enhance the ability to return to 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 door greeter, he struck the back of his neck while pushing shopping carts through a low opening.
2. Claimant has been diagnosed with spinal stenosis at C4-5, C5-6, and C6-7, disc bulges from C3 through C7, and radiculopathy.
3. Claimant describes symptoms of pain in the low back and neck radiating to the right arm, pain in the bilateral shoulder, right elbow, right wrist, right hand and fingers and head, right knee, right ankle and right foot.
4. Claimant's history of treatments has included several medications, physical therapy, chiropractic treatments, and injections as well as diagnostic testing including an MRI, EMG, discogram, and x-rays.
5. Positive Pain Management (Provider), requested preauthorization to treat Claimant with twenty sessions of a chronic pain management program.
6. Carrier denied Provider's request for preauthorization.
7. Provider requested medical dispute resolution with the Texas Workers' Compensation Commission's (Commission) Medical Review Division (MRD).
8. An Independent Review Organization concluded that the chronic pain management program was medically necessary.
9. Carrier requested a contested case hearing before the State Office of Administrative Hearings and requested denial of preauthorization for the chronic pain management program.
10. The Commission sent notice of the hearing to the parties on August 12, 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.
11. Administrative Law Judge Penny A. Wilkov convened and closed a hearing in this case on December 13, 2005, at the State Office of Administrative Hearings (SOAH), Austin, Texas. Carrier appeared and was represented by Attorney Peter Macaulay. Scott Worsham, D.C., a chiropractor with Positive Pain Management, appeared on behalf of Provider.
12. This case was referred by the Commission and accepted by SOAH for hearing prior to September 1, 2005.
13. Claimant has made a recovery sufficient to enable him to move his neck normally in all planes, despite entering a physician's office wearing a cervical collar.

14. Claimant has been able to resume his daily activities, including driving a vehicle, washing the car, and talking on a cell phone.
15. Claimant has regained functionality within normal limits and shows signs of “giveaway weakness,” a term describing exaggerated pain behaviors, on a functional capacity examination.
16. Claimant previously attended a chronic pain management program in July 2004.
17. A chronic pain management program will not serve to further promote recovery, enhance the ability to return to 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. §§ 413.073(b) and 413.031(k) and TEX. GOV'T CODE ANN. ch. 2003 and Acts 2005, 79th Leg., ch. 265, § 8.013, eff. Sept. 1, 2005.
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 § 148.14(a).
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. 13, 14, 15, 16, and 17, the requested pain management program is not medically necessary.

ORDER

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

SIGNED December 29, 2005.

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