

<b>TOMMY OVERMAN, Ed.D.,</b>	§	<b>BEFORE THE STATE OFFICE</b>
<b>Petitioner</b>	§	
	§	
<b>V.</b>	§	<b>OF</b>
	§	
<b>CITY OF SHERMAN, SELF-INSURED,</b>	§	
<b>Respondent</b>	§	<b>ADMINISTRATIVE HEARINGS</b>

**DECISION AND ORDER**

Claimant \_\_ sustained a compensable injury to her back on \_\_. An Independent Review Organization, acting on behalf of the Texas Workers' Compensation Commission (Commission), denied preauthorization for a chronic pain management program for Claimant. Tommy Overman, Ed.D, is challenging that decision. This decision finds that the request for chronic pain management program was not sufficiently justified under 28 TEX. ADMIN. CODE (Rule) § 134.600(g)(4).

**I. NOTICE, JURISDICTION, AND PROCEDURAL HISTORY**

Notice was not contested. That issue is addressed in the findings of fact and conclusions of law without further discussion here.

Respondent, the self-insured City of Sherman (the City), raised a jurisdictional question that serves as the basis for this decision.

The IRO issued its decision on August 17, 2005. Dr. Overman filed a challenge to that decision on August 24, 2005. The hearing on the merits was held on September 29, 2005, at the State Office of Administrative Hearings, 300 W. 15<sup>th</sup> Street, Austin, Texas, with Administrative Law Judge (ALJ) Katherine L. Smith presiding. Dr. Overman appeared pro se. The City was represented by Rhett Robinson, an attorney. The record closed the day of the hearing.

## II. DISCUSSION

### A. Background

On December 3, 2004, Sidney Bernstein, M.D., submitted an initial request to the City for preauthorization of 10 sessions of chronic pain management for the Claimant. The City denied the request because lower levels of care had not been tried. Ex. 1 at 6. Dr. Bernstein did not request reconsideration. Claimant was provided with lesser care consisting of six sessions of biofeedback training and six individual psychotherapy sessions, which had been approved on April 6, 2005. *Id.* at 10. On May 26, 2005, Dr. Bernstein submitted another request for preauthorization to the City for 10 sessions of chronic pain management for Claimant. The City denied the request on June 1, 2005, based on lack of medical necessity because Claimant had showed improvement with the biofeedback and psychotherapy. *Id.* at 9. Dr. Overman filed a request for reconsideration on June 2, 2005, which was denied on June 8, 2005. *Id.* at 11. Dr. Overman filed a request for medical dispute resolution with the Commission on June 23, 2005. *Id.* at 3.

### B. Statutes and Rules

Pursuant to the Texas Workers' Compensation Act, an employee who sustains 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).

For a carrier to be liable to reimburse a provider, certain services, including a chronic pain management program, must be preauthorized by the carrier. Rule §134.600(h). Rule 134.600(g)(4) provides that, "A request for preauthorization for the same health care shall only be resubmitted when the requestor provides objective documentation to support that a substantial change in the employee's medical condition has occurred."

### C. Analysis

The City argues that Dr. Overman's request for chronic pain management should be denied because the second request for preauthorization does not meet the requirements of Rule 134.600(g)(4).

When the City denied the request for reconsideration, it relied on a peer reviewer, who stated among other things that the primary care options had not been fully provided for Claimant and that the “records indicate that a superficial approach to less extensive types of intervention had been carried out . . . in a manner that was self-defeating and misdirected, with the involved clinicians actually misinforming the claimant that such services were useless and were only being carried out in order to facilitate transition to a more extensive . . . treatment.” The peer reviewer also wrote that the documentation failed to document any form of therapy, despite claiming to deliver the service. *Id.* at 12-13.

Although Dr. Overman testified that the biofeedback and psychotherapy failed to address Claimant’s pain and that she was still on several medications, had deteriorated emotionally, was severely depressed and physically losing function, under cross-examination he admitted that there is no evidence in the record showing a substantial change in Claimant’s condition.

The ALJ interprets Rule 134.600(g)(4) to mean that there must be a showing of a substantial worsening of Claimant’s condition between the two requests. As Dr. Overman noted, there is no documentary evidence showing a substantial change in Claimant’s condition. There is also no documentary evidence whatsoever in the record showing that lesser treatments were provided. The ALJ, therefore, finds that Dr. Overman did not provide sufficient objective documentation showing that Claimant’s medical condition substantially changed justifying the resubmission of its request for chronic pain management pursuant to the requirements of Rule 134.600(g)(4). Therefore, preauthorization for chronic pain management is not warranted.

### **III. FINDINGS OF FACT**

1. Claimant\_\_ sustained a compensable injury to her back on\_\_\_, while working for the \_\_\_\_\_ (the City), which is self-insured under the Texas workers’ compensation system.
2. On December 3, 2004, Sidney Bernstein, M.D., submitted an initial request to the City for preauthorization of 10 sessions of chronic pain management for the Claimant.
3. The City denied the request because lower levels of care had not been tried.
4. Dr. Bernstein did not file a request for reconsideration.

5. Claimant was provided with lesser care consisting of six sessions of biofeedback training and six individual psychotherapy sessions, which had been approved on April 6, 2005.
6. On May 26, 2005, Dr. Bernstein submitted another request for preauthorization to the City for 10 sessions of chronic pain management for Claimant.
7. The City denied the request on June 1, 2005, based on lack of medical necessity because Claimant had showed improvement with the biofeedback and psychotherapy.
8. Tommy Overman, Ed.D, filed a request for reconsideration on June 2, 2005, which was denied on June 8, 2005.
9. Dr. Overman filed a request for medical dispute resolution with the Texas Workers' Compensation Commission (Commission) on June 23, 2005.
10. An Independent Review Organization (IRO), acting on behalf of the Commission issued a decision on August 17, 2005, upholding the denial of preauthorization.
11. Dr. Overman filed a challenge to the IRO decision on August 24, 2005.
12. The Commission sent notice of the hearing to the parties on September 6, 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.
13. Dr. Overman failed to provide objective documentation showing that Claimant's medical condition substantially worsened between the first and second requests for preauthorization for 10 sessions of chronic pain management for Claimant.

#### **IV. CONCLUSIONS OF LAW**

1. 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. TEX. LAB. CODE ANN. §§ 402.073 and 413.031(k) and TEX. GOV'T CODE ANN. ch. 2003.
2. Adequate and timely notice of the hearing was provided. TEX. GOV'T CODE ANN. §§ 2001.051 and 2001.052.
3. For a carrier to be liable to reimburse a provider for a chronic pain management program, the service must be preauthorized. TEX. LAB. CODE ANN. § 413.014 and 28 TEX. ADMIN. CODE (TAC) §134.600(h).
4. Dr. Overman failed to provide sufficient objective documentation under 28 TAC § 134.600(g)(4) showing that Claimant's medical condition had substantially worsened to justify resubmission of the request for chronic pain management.
5. Enrollment in a chronic pain management program was not reasonably required health care

for Claimant under TEX. LAB. CODE ANN. § 408.021.

6. Based on the foregoing Findings of Fact and Conclusions of Law, preauthorization for the requested 10 sessions of chronic pain management should not be granted.

**ORDER**

It is **ORDERED** that the request for preauthorization of a chronic pain management program for Claimant is denied.

**SIGNED October 26, 2005.**

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**KATHERINE L. SMITH  
ADMINISTRATIVE LAW JUDGE  
STATE OFFICE OF ADMINISTRATIVE HEARINGS**