

**SOAH DOCKET NO. 453-05-9245.M2
TWCC NO. M2-05-2024-01**

DECISION AND ORDER

American Home Assurance Co. (Carrier) challenged the decision of an Independent Review Organization (IRO) granting preauthorization for ten sessions of a chronic pain management (CPM) program requested by Bexar County Healthcare Systems (Provider) for _____ (Claimant). In this decision, the Administrative Law Judge (ALJ) finds that Carrier met its burden of proving the requested CPM program is not reasonable and necessary medical care that should be preauthorized. Therefore, the ALJ orders that Carrier is not required to preauthorize the requested CPM program.

The hearing convened and the record closed on March 29, 2006, before ALJ Ami L. Larson. Carrier appeared and was represented by attorney Steve Tipton. Provider did not appear and was not represented at the hearing.

I. DISCUSSION

A. Background Facts

Claimant sustained a compensable back injury in _____. Following her injury, Claimant had X-rays taken and was treated with prescription medications. She remained off work from the time of the injury until approximately two and one-half years later, at which time she returned to work but experienced some back pain. In 2001, Claimant moved to Florida, where she worked for some period of time but again stopped working due to escalating back pain.

According to the evidence presented, Claimant is currently receiving physical therapy. Claimant continues to complain of pain in the high lumbar area with radiation into her thoracic area. She is currently not working.

B. Applicable Law

Pursuant to the Texas Workers' Compensation Act ("the Act"), TEX. LAB. CODE ANN. § 408.021 *et seq.*, an employee who sustains a compensable injury is entitled to all 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.

Under TEX. LAB. CODE ANN. § 401.011(19), health care includes all reasonable and necessary medical aid, medical examinations, medical treatment, medical diagnoses, medical evaluations, and medical services.

Certain categories of health care identified by the Commission require preauthorization, which is dependent upon a prospective showing of medical necessity under § 413.014 of the Act and 28 TEX. ADMIN. CODE (TAC) § 134.600. In this instance, under 28 TAC § 134.600(h) preauthorization is required for the requested CPM program.

C. Evidence and Analysis

The requested CPM program should not be preauthorized. There is no evidence in the record whatsoever to support the need for Claimant to undergo a CPM program. Even if the ALJ were to consider the IRO decision, which was not admitted into evidence, the IRO doctor merely makes conclusory statements that the literature supports the fact that CPM programs can be effective for improving pain and function and that less intensive therapy did not show improvements in clinically relevant outcomes. Such conclusions, without specific evidence to show why a CPM program is appropriate and medically necessary for this particular Claimant, are insufficient.

The documentary evidence presented by Carrier shows that a peer review of Claimant's case was conducted on April 27, 2005.¹ That peer review did not support the medical necessity of the requested CPM sessions due to the lack of information regarding Claimant's treatment history and any less intensive treatment options that may not have been tried, but may be effective.

¹ Carrier's Exhibit, page 12.

Claimant underwent an independent medical evaluation (IME) by Charles F. Xeller, M.D., on May 4, 2005. Dr. Xeller reviewed Claimant's prior medical history and performed an evaluation of Claimant. He diagnosed her with soft tissue strain, thoracic area, with underlying spondylosis,² and opined that she did not need any further treatment with respect to her ___injury.

An additional peer review of Claimant's case was conducted by a similar-specialty reviewer on May 11, 2005. That reviewer also noted the absence of psychological testing and lack of evidence of an adequate trial of lesser level care, possibly including cognitive-behavioral and biofeedback techniques. That peer review also determined that the request for CPM should be denied.

Having no evidence to dispute the conclusions of the IME or either peer review that CPM is not medically necessary, the ALJ concludes the requested CPM program is not medically necessary to treat Claimant's compensable injury. Therefore, the requested CPM program should not be preauthorized.

II. FINDINGS OF FACT

1. ___ (Claimant) sustained a compensable back injury on____.
2. Following her injury, Claimant had X-rays taken and was treated with medications.
3. Claimant remained off work from the time of the injury until approximately two and one-half years later, at which time she returned to work but experienced some back pain.
4. In 2001, Claimant moved to Florida, where she worked for some period of time but again discontinued working due to escalating back pain.
5. Claimant was receiving physical therapy in 2005.
6. Claimant continues to complain of pain in the high lumbar area with radiation into her thoracic area.
7. Claimant is not currently working.
8. There is no evidence that Claimant has undergone any psychological testing to determine what, if any, needs she has in that area.

² Carrier's Exhibit 1, page 9.

9. There is no evidence of what, if any, less intensive therapies were tried other than medication and physical therapy, the results of which are not contained in the record.
10. An April 27, 2005 peer review found that the requested CPM sessions were not medically necessary treatment for Claimant's compensable injury.
11. A May 4, 2005 independent medical review by Dr. Charles F. Xeller found that no further treatment was medically necessary for Claimant's compensable injury.
12. A May 11, 2005 peer review conducted by a similar-specialty reviewer concluded that the request for CPM should be denied since it is not medically necessary treatment for Claimant.
13. Bexar County Healthcare Systems (Provider) sought preauthorization for the CPM program from American Home Assurance Co. (Carrier), which was denied on the basis that it was not medically necessary.
14. The dispute was referred to an Independent Review Organization (IRO), which ordered Carrier to preauthorize the CPM program.
15. Carrier timely requested a hearing before the State Office of Administrative Hearings (SOAH).
16. Notice of the hearing in this case was mailed to the parties on September 14, 2005. The notice contained a statement of the time, place, and nature of the hearing; a statement of the legal authority and jurisdiction under which the hearing was to be held; a reference to the particular sections of the statutes and rules involved; and a short, plain statement of the matters asserted.
17. The hearing was continued several times. Notice of the March 29, 2006 hearing was successfully faxed to the parties on January 9, 2006.
18. The hearing convened on March 29, 2006, before ALJ Ami L. Larson. Carrier appeared and was represented by Steve Tipton, attorney. Provider did not appear. The hearing was adjourned and the record closed the same day.
19. There is no evidence in the record to support Claimant's need for further medical treatment to address the 1997 compensable injury to her back.

III. CONCLUSIONS OF LAW

1. The Commission has jurisdiction over this matter pursuant to Section 413.031 of the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* ("the Act").
2. SOAH has jurisdiction over this proceeding, including the authority to issue a decision and order, pursuant to § 413.031(k) of the Act and TEX. GOV'T CODE ANN. ch. 2003.
3. Adequate and timely notice of the hearing was provided in accordance with TEX. GOV'T CODE ANN. §§ 2001.051 and 2001.052.

4. The Carrier, as Petitioner, had the burden of proof on appeal by a preponderance of the evidence under §413.031 of the Act, and 28 TEX. ADMIN. CODE §148.21(h).
5. Carrier proved by a preponderance of the evidence that the requested CPM program is not medically necessary to treat Claimant's compensable injury under TEX. LAB. CODE ANN. §408.021, *et seq.*

ORDER

IT IS, THEREFORE, ORDERED that preauthorization for the CPM program is denied.

SIGNED April 11, 2005.

**AMI L. LARSON
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS**