

<b>AMCOMP ASSURANCE CORP.,</b>	§	<b>BEFORE THE STATE OFFICE</b>
<b>Petitioner</b>	§	
	§	
<b>V.</b>	§	<b>OF</b>
	§	
<b>BUENA VISTA WORK SKILLS,</b>	§	
<b>Respondent</b>	§	<b>ADMINISTRATIVE HEARINGS</b>

**DECISION AND ORDER**

Amcomp Assurance Corporation (Amcomp) appealed the decision of the Texas Workers' Compensation Commission's (Commission's) designee, an independent review organization (IRO), which granted pre-authorization for chronic pain management for claimant\_\_. This decision concludes that pre-authorization should be denied.

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

Administrative Law Judge (ALJ) Shannon Kilgore convened the hearing on January 18, 2006, at the William P. Clements Building, 300 West 15<sup>th</sup> Street, Austin, Texas. Dan Kelley, an attorney, represented Amcomp. Buena Vista Work Skills (Buena Vista) was represented by an owner, Nat Mangum, who appeared by telephone. The record closed the day of the hearing. The parties did not contest notice or jurisdiction.

**II. BACKGROUND**

On\_\_\_\_ broke his right ankle while working at his job as a \_\_\_\_\_. In August 2004,\_\_\_\_ had surgery on his ankle that included the placement of hardware. The claimant had physical therapy and six to eight weeks of work hardening. He returned to his job at some point in the spring of 2005. Following a designated doctor exam in March 2005, the claimant was declared to be at maximum medical improvement, with a three per cent impairment rating.<sup>1</sup> The doctor who performed the exam noted that most of the claimant's pain was associated with the hardware.

Also in March 2005, consulting physician Dr. Donald Dultra recommended that S.P.M.

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<sup>1</sup> Petitioner Exhibit 2 at 16-18.

undergo chronic pain management therapy.<sup>2</sup> Dr. Frank Garcia, the claimant's orthopedic surgeon, saw the claimant in May 2005, noted his continued ankle pain, and endorsed the recommendation of a chronic pain management program.<sup>3</sup> The carrier denied pre-authorization for the program, noting that the claimant was back to work and that his pain seemed related to hardware, which had yet to be removed.<sup>4</sup> The carrier further asserted that any supposed mental health problems experienced by the claimant were poorly documented, and that he was benefitting from secondary gains that would be perpetuated by a chronic pain management program. A June 30, 2005 peer review concluded that the proposed chronic pain management program was unnecessary.<sup>5</sup>

After Buena Vista requested medical dispute resolution, an IRO reviewer determined in August 2005 that the requested chronic pain management program of 10 sessions was medically necessary because of \_\_\_ well-documented complaints of persistent pain, sleep disturbance, and muscle tension. Further, the reviewer stated that the possibility of secondary gains would not indicate that a chronic pain management program would necessarily be unsuccessful. According to the reviewer, such a program had the potential to produce significant improvements, and the majority of clinicians involved in \_\_\_ case supported administration of the proposed therapy. Following the issuance of the IRO decision, Amcomp requested a SOAH hearing.

In August 2005, \_\_\_ continued to report pain at a level of six on a scale of one to ten, and to take Darvocet for the pain.<sup>6</sup> An examination of August 1, 2005, resulted in a zero per cent impairment rating.<sup>7</sup> On August 18, 2005, Dr. Garcia seemed to suggest that most of \_\_\_ pain was related to the hardware from his earlier ankle surgery.<sup>8</sup> On September 19, 2005, the hardware was removed.<sup>9</sup> \_\_\_ underwent post-surgical physical therapy in the fall of 2005.<sup>10</sup>

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2 Petitioner Exhibit 2 at 19.

3 Petitioner Exhibit 2 at 26.

4 Petitioner Exhibit 8-10.

5 Petitioner Exhibit 2 at 18-20.

6 Petitioner Exhibit 3 at 5.

7 Petitioner Exhibit 3 at 2-3.

8 Petitioner Exhibit 4 at 9.

9 Petitioner Exhibit 4 at 13.

10 Petitioner Exhibit 4.

### III. DISCUSSION

#### 1. Parties' Positions

No party called witnesses. Amcomp offered documents in support of its position, including selected medical records and the September 2005 transcribed statements of \_\_\_ employers.<sup>11</sup> Buena Vista offered no documents or other evidence.

Amcomp argues that because the source of \_\_\_ pain - the hardware - had been removed, there is no longer a need for chronic pain management for this patient. Moreover, the carrier points to the fact that, even before the hardware removal, \_\_\_ was apparently able to perform his job satisfactorily. To the degree that the claimant may have depression and anxiety, asserts Amcomp, that psychological state can be traced to \_\_\_ tragic loss of his daughter at some point since his ankle injury, and is not a result of his work-related accident.<sup>12</sup>

Buena Vista notes that the physicians involved in \_\_\_ care supported the idea of chronic pain management therapy for him. Buena Vista also notes that while the claimant was back at work, he continued to report pain, and cessation of pain is a legitimate goal in the workers' compensation context.

#### 2. ALJ's Analysis

The ALJ concludes that Amcomp met its burden to show that 10 sessions of chronic pain management are not medically necessary at this time. The record indicates that when the therapy was requested (and when Dr. Garcia endorsed the idea), a significant source of the claimant's pain was the hardware that had been placed in surgery to address his fractured ankle. The carrier has shown that the hardware has since been removed. While it appears from the medical records that \_\_\_ has still experienced pain during his post-surgical physical therapy, the ALJ cannot tell from the record if that pain is greater than normal and whether \_\_\_ condition at this time warrants chronic pain management. The ALJ therefore concludes that this record supports a determination that the

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<sup>11</sup> The transcribed statements of \_\_\_ and \_\_\_, owners of \_\_\_, are at Petitioner Exhibit 3.

<sup>12</sup> The carrier has denied reimbursement for treatment and indemnity benefits related to depression. Petitioner Exhibit 4 at 36. According to counsel for Amcomp, a benefit review conference was held in September 2005, after which \_\_\_ has not pursued the matter, leaving the issue unresolved.

requested treatments are not reasonable and necessary, and pre-authorization should be denied.

#### **IV. FINDINGS OF FACT**

1. On \_\_\_\_, \_\_\_\_. broke his right ankle while working at his job as a \_\_\_\_.
2. At the time of the injury, Claimant's employer had its workers' compensation insurance through Amcomp Assurance Corporation (Amcomp).
3. \_\_ In August 2004, \_\_\_\_ had surgery on his ankle that included the placement of hardware.
4. Following the surgery, \_\_\_\_ had physical therapy and six to eight weeks of work hardening. He returned to his job at some point in the spring of 2005.
5. \_\_\_\_ continued to have ankle pain.
6. Buena Vista Work Skills (Buena Vista) requested pre-authorization to treat \_\_\_\_ with 10 sessions of chronic pain management.
7. Asserting a lack of medical necessity, Amcomp denied pre-authorization.
8. Buena Vista requested medical dispute resolution at the Texas Workers' Compensation Commission (Commission).
9. The Commission's designee, an independent review organization (IRO), granted the request for pre-authorization on August 8, 2005.
10. On August 11, 2005, Amcomp requested a hearing.
11. A notice of the hearing was sent to the parties on September 14, 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.
12. The hearing was held on January 18, 2006.
13. When the chronic pain management therapy was requested, a significant source of the claimant's pain was the hardware that had been placed in surgery to address his fractured ankle.
14. On September 19, 2005, the hardware was removed.

#### **V. CONCLUSIONS OF LAW**

1. The Commission has jurisdiction over this matter pursuant to the Texas Workers'

Compensation Act, TEX. LAB. CODE ANN. § 413.031.

2. Effective September 1, 2005, the functions of the Commission were transferred to the newly created Division of Workers' Compensation at the Texas Department of Insurance (TDI).
3. 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 §§ 402.073 and 413.031(k); TEX. GOV' T CODE ch. 2003.
4. Amcomp timely filed a notice of appeal of the IRO's decision. 28 TEX. ADMIN. CODE §148.3.
5. Proper and timely notice of the hearing was given to the parties. TEX. GOV' T CODE ch. 2001; 28 TEX. ADMIN. CODE §148.5.
6. Amcomp had the burden of proving its case by a preponderance of the evidence. 28 TEX. ADMIN. CODE § 148.14.
7. Reimbursement for chronic pain management requires pre-authorization of the services. 28 TEX. ADMIN. CODE § 134.600(h)(10).
8. An employee who sustains a compensable injury is entitled to health care reasonably required by the nature of the injury as and when needed. TEX. LAB. CODE §408.021.
9. Amcomp met its burden to show that 10 sessions of chronic pain management are not medically necessary health care for\_\_\_ at this time under TEX. LAB. CODE ANN. §§ 408.011 and 408.021(a).
10. Buena Vista's request for pre-authorization of 0 sessions of chronic pain management should be denied.

### **ORDER**

It is ordered that the request by Buena Vista Work Skills for pre-authorization of 10 sessions of chronic pain management for claimant \_\_\_\_is denied.

**SIGNED February 9, 2006.**

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**SHANNON KILGORE  
ADMINISTRATIVE LAW JUDGE  
STATE OFFICE OF ADMINISTRATIVE HEARING**