

**SOAH DOCKET NO. 454-09-0522.M5  
MDR NO. M5-06-1820-01**

<b>CONTINENTAL CASUALTY COMPANY,</b>	§	<b>BEFORE THE STATE OFFICE</b>
	§	
<b>Petitioner</b>	§	
<b>V.</b>	§	<b>OF</b>
	§	
<b>DENNIS GUTZMAN, M.D.,</b>	§	
<b>Respondent</b>	§	<b>ADMINISTRATIVE HEARINGS</b>

**DECISION AND ORDER**

Continental Casualty Company (Carrier) appealed the decision of the Medical Dispute Resolution Division (MDR) of the Texas Department of Insurance, Division of Workers' Compensation (Division), ordering payment for a chronic pain management (CPM) program that Dennis Gutzman, M.D., provided to an injured worker (Claimant) from January 4, 2005, through March 2, 2005. This decision reverses a portion of the MDR's decision, but otherwise orders Carrier to reimburse Dr. Gutzman \$21,600 for the treatment provided.

**I. NOTICE AND HEARING**

There were no contested issues regarding notice of the hearing. Therefore, those matters are addressed in the Findings of Fact and Conclusions of Law without further discussion here.

The hearing convened on December 3, 2008, at the facilities of the State Office of Administrative Hearings (SOAH) before Administrative Law Judge (ALJ) Bill Zukauckas. Carrier was represented by Shelley D. Gatlin, an attorney. Dr. Gutzman was represented by Art Gonzalez, a workers' compensation insurance coordinator. The record closed on December 23, 2008, with the filing of closing briefs.

**II. ANALYSIS**

**A. Background**

The MDR decision, issued on July 7, 2006, awarded Dr. Gutzman \$28,000 for providing 35 eight-hour sessions of CPM to Claimant because Dr. Gutzman had obtained preauthorization for the treatment. Carrier had first denied reimbursement based on extent of injury, but that issue was

resolved by March 6, 2006. Carrier also denied reimbursement based upon lack of medical necessity. In this proceeding, Carrier contends that Dr. Gutzman should be denied reimbursement because he did not file the required financial disclosure information and because he billed for services that were not provided or did not promote recovery. Carrier also noted that only 30 sessions of CPM were preauthorized.

## **B. Financial Disclosure**

Carrier's first argument is that Dr. Gutzman did not file financial disclosure information with the Division prior to providing the services at issue and, thus, he forfeited his right to reimbursement in violation of 28 Tex. Admin. Code (TAC) § 180.24. According to the rule, a health care provider is required to file financial-disclosure-interest information with the Division within 30 days of the treatment being provided. The penalty for failing to comply with the requirement is forfeiture of the right to reimbursement for services provided during the period of noncompliance.

According to the Carrier, it notified MDR on March 23, 2006, that Dr. Gutzman had not filed the requisite financial disclosure with the Division. Carrier's Ex. 1 at 3-4. The Division dismissed Dr. Gutzman's request for dispute resolution on April 17, 2006, pursuant to 28 TAC § 180.24. Carrier's Ex. 2. Carrier complains that, without notice, MDR revisited the dispute and issued its second opinion on July 7, 2006, ordering reimbursement of \$28,000 and stating that, "A review of information on file with DWC (TXCOMP) revealed that the provider did have a financial disclosure history on file." Carrier's Ex. 1 at 1-2. Carrier asserts that because the TXCOMP system first revealed that Dr. Gutzman had not filed a disclosure as of March 23, 2006, and April 17, 2006, it is evident that Dr. Gutzman did not file his financial disclosure information until after the first dismissal was issued, and, therefore, he forfeited all right to reimbursement.

The only evidence submitted in support of Carrier's position is Carrier's Exhibit 1 at page 8, the significance of which is not apparent to the ALJ. Therefore, the ALJ has no basis for overturning MDR's finding that Dr. Gutzman's financial disclosure history was on file.

## **C. Legitimacy of CPM Provided**

## **1. Carrier's Position**

Carrier first argues that, with the exception of four dates of service: January 10-14, 2005,<sup>1</sup> when Dr. Gutzman billed for six or seven hours of chronic pain management, he consistently billed for eight hours of treatment even though the documentation indicates that no more than four to six hours of services were provided per day. Carrier asserts that after evaluating the treatment records provided by Dr. Gutzman, it came to the conclusion that no more than 164 hours of treatment were provided, so that Dr. Gutzman should be reimbursed no more than \$16,400.

Carrier then asserts that even those 164 hours were not provided because the treatment records indicate that on four days Claimant was only present a half day--January 4 and 12 and February 4 and 24, 2005.

Carrier argues next that many of the treatments provided have no part in a chronic pain management program. Relying on two prior SOAH decisions, Carrier cited to nutrition sessions, parenting skill training, and developing communication skills training. Carrier also complained that some of the documented notes were repeated verbatim. Carrier's Ex. 1 at 125, 132.

Finally, the Carrier noted that although the MDR awarded reimbursement for 35 dates of service, only 30 days of CPM were preauthorized. Provider's Ex. 1 at 7, 9-11. Carrier points out that the additional five days of treatment were for "mental health therapy." Provider's Ex. 1 at 8.

## **2. Analysis**

The ALJ concludes that the record does not generally support the Carrier's position. Pursuant to TEX. LAB. CODE ANN. 413.014(e)<sup>2</sup> and 28 TAC § 134.600(c)(1)(B),<sup>3</sup> Carrier's

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<sup>1</sup> Carrier's Ex. 1 at 58, 67, 75, and 88.

<sup>2</sup> This section provides, "If a specified health care treatment or service is preauthorized . . . that treatment or service is not subject to retrospective review of the medical necessity of the treatment or service."

<sup>3</sup> According to the rule, the carrier "is liable for all reasonable and necessary medical costs relating to the [preauthorized] health care . . . listed in subsection (p) of this section that was approved prior to providing the health care." Subsection (p)(10) refers to chronic pain management.

preauthorization of the CPM program generally precludes it from challenging the medical necessity of services that were provided. As indicated above, however, Carrier argued that even if it is precluded from retrospectively challenging medical necessity, it may review the program to determine whether the services that were preauthorized were actually provided. According to Carrier, because the CPM program did not meet the necessary standards, it failed to provide the health care that was preauthorized.

The ALJ agrees that an insurance carrier is permitted to challenge a preauthorized service on the ground that the service provided was not the one preauthorized. However, in doing so, it is required to comply with TEX. LAB. CODE ANN §408.027(e). Section 408.027(e) states that an insurance carrier that disputes the amount of payment or the health care provider's entitlement to payment shall send to MDR, the provider, and the injured employee a report that sufficiently explains the reasons for the reduction or denial of payment. Carrier did not claim, either in its explanation of benefits or in its March 23, 2006, letter in response to Dr. Gutzman's request for medical dispute resolution, that the CPM treatment was not sufficiently documented and did not meet the treatment requirements of a CPM program.

Furthermore, Carrier's reliance upon two prior SOAH decisions in support of its position is misplaced.<sup>4</sup> As Dr. Gutzman noted, in those decisions the insurance carriers denied the payments based upon lack of documentation, not medical necessity. Therefore, the providers were put on sufficient notice that their treatments needed to be defended, and they were given the opportunity to do so. In this case, Carrier did not raise this point until the day of the hearing. Furthermore, at the hearing in Docket Nos. 453-02-1809.M4/453-02-1937.M4, the carrier provided the expert testimony of a psychiatrist, the medical director of a CARF-accredited pain management clinic, who stated that the documentation failed to tie the treatment to the claimant's injury. And at the hearing in Docket No. 453-04-6064.M4, the provider did not appear. In this case, Carrier had no expert. In addition, Carrier did not cite to any guideline or medical opinion stating that counseling and dietary advice were not reasonably part of a pain management program.

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<sup>4</sup> *IMA v. TWCC & SFF&CC*, 453-02-1809.M4/453-02-1937.M4 (June 11, 2002). *CIC v. PPM*, 453-04-6064M.4, (Dec. 13, 2004).

Nevertheless, because Dr. Gutzman admitted in response to requests for admissions that only 30 days of chronic pain management were preauthorized, reimbursement shall be provided for no more than 30 days of treatment, which spans January 4 through February 23, 2005. Carrier's Ex. 3 at 5. Although the ALJ might have considered awarding payment for mental health treatment on five days, the burden was on the Dr. Gutzman to point out in the record where such treatment was documented and medically necessary, and he did not do so.

Furthermore, to award payment for eight hours of treatment is not justified because Dr. Gutzman's own records indicate that Claimant was, based on the clocking-in-and-out records, not always at the facilities for eight hours a day. And unlike the issue of lack of documentation, Carrier did put Dr. Gutzman on notice in its March 23, 2006, letter to the Division that his billing eight hours a day was questionable. Carrier's Ex. 1 at 3, 5. Nevertheless, although Carrier charges that its evaluation of the documentation revealed that no more than 164 hours of the program were documented over 30 days, it provided no basis for the ALJ to make the same conclusion from the record, except for the four dates of service when Claimant was absent a half day. The total amount of time clocked for the 30 dates in question--January 4 through February 23, 2005--adds up to 230 hours. Carrier's Ex. 1 at 13, 55, 104, 119, 155, 193, 230, and 267. Deducting 14 hours for the four half-days of treatment that Claimant missed produces 216 total hours, resulting in a payment due of \$21,600. Carrier's Ex. 1 at 13, 23, 55, 79, 104, 191, 193, and 291.

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

1. On July 7, 2006, the Medical Dispute Resolution Division (MDR) of the Texas Department of Insurance, Division of Workers' Compensation instructed Continental Casualty Company (Carrier) to pay \$28,000 to Dr. Gutzman, M.D., for chronic pain management (CPM) treatment provided to an injured worker (Claimant) from January 4, 2005, through March 2, 2005.
2. Carrier requested a hearing before the State Office of Administrative Hearings (SOAH) not later than the 20<sup>th</sup> day after receiving notice of the MDR decision.
3. Notice of the hearing was sent to both parties and 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.

4. The hearing on the merits was held on December 3, 2008, at SOAH's facilities before Administrative Law Judge Bill Zukauckas.
5. In its July 7, 2006, decision MDR found that information on file with DWC (TXCOMP) revealed that Dr. Gutzman had a financial disclosure history on file.
6. Carrier provided no basis for overturning MDR's finding that Dr. Gutzman's financial disclosure history was on file.
7. Carrier preauthorized the CPM program referred to in Finding of Fact No. 1.
8. Carrier denied reimbursement in its explanation of benefits (EOBs) based upon extent of injury and lack of medical necessity.
9. Carrier did not claim in its EOBs or in its March 23, 2006, letter in response to Dr. Gutzman's request for medical dispute resolution from MDR that the CPM treatment was not sufficiently documented and did not meet the requirements of a CPM program.
10. Carrier did notify Dr. Gutzman in its March 23, 2006, letter that it was disputing the number of dates of service that had been preauthorized and questioning the billing of eight hours of treatment per day.
11. Only 30 days of CPM were preauthorized.
12. Carrier put Dr. Gutzman on notice in its March 23, 2006, letter to the Division that his billing eight hours a day was questionable.
13. Dr. Gutzman's records indicate that Claimant was frequently not at the facilities for eight hours a day.
14. Thirty of CPM was provided to Claimant from January 4 through February 23, 2005.
15. Dr. Gutzman's records indicate that 230 hours of treatment were provided over a 30 day period. Deducting 14 hours for the four half-days of treatment that the medical records indicate Claimant missed produces a total of 216 hours of treatment.
16. Carrier is due reimbursement of \$21,600.

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

1. SOAH has jurisdiction over this proceeding, including the authority to issue a decision and order. TEX. LAB. CODE ANN. § 413.031(k) and TEX. GOV'T CODE ANN. ch. 2003.

2. Adequate and timely notice of the hearing was provided in accordance with TEX. GOV'T CODE ANN. §§ 2001.051 and 2001.052.
3. Carrier had the burden of proof in this matter, pursuant to 28 TEX. ADMIN. CODE § 148.14.
4. Carrier's preauthorization of treatment precludes a challenge to payment based on medical necessity. TEX. LAB. CODE ANN. § 413.014(e) and 28 TEX. ADMIN. CODE § 134.600(c)(1)(B).
5. If an insurance carrier disputes the amount of payment or the health care provider's entitlement to payment, it must send to MRD, the health care provider, and the injured employee a report that sufficiently explains the reasons for the reduction or denial of payment for health care services provided to the employee. TEX. LAB. CODE ANN. § 408.027(e).
6. Based on the Findings of Fact and Conclusions of Law, Carrier's appeal of the MDR decision of the Texas Department of Insurance, Division of Workers' Compensation, should be granted in limited part, and otherwise denied.

### **ORDER**

**IT IS, THEREFORE, ORDERED** that the appeal of Continental Casualty Company from the decision of the Medical Dispute Resolution Division of the Texas Department of Insurance, Division of Workers' Compensation, on the medical necessity of a chronic pain management program provided to Claimant from January 4 through March 2, 2005, is granted in part and denied in part. Continental Casualty Company is **ORDERED** to reimburse Dennis Gutzman, M.D., in the amount of \$21,600 for the chronic pain management provided to Claimant from January 4 through February 23, 2005.

**SIGNED February 20, 2008.**

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**BILL ZUKAUCKAS  
ADMINISTRATIVE LAW JUDGE  
STATE OFFICE OF ADMINISTRATIVE HEARINGS**