STATE OFFICE OF ADMINISTRATIVE HEARINGS
300 West 15th Street, Suite 502
Austin, Texas 78701

DOCKET NO. 453-02-3636.M2
TWCC NO. M2-02-0746

___ Petitioner	§	**BEFORE THE STATE OFFICE**
v.	§	**OF**
TPCIGA FOR UNITED PACIFIC INSURANCE COMPANY, Respondent	§	**ADMINISTRATIVE HEARINGS**

DECISION AND ORDER

I. SUMMARY

Petitioner ___seeks preauthorization for outpatient methadone drug rehabilitation treatment associated with pain medication addiction, relating to a compensable injury that occurred on January 13, 2000. The decision issued by the Texas Medical Foundation's independent review organization (IRO), pursuant to the Texas Workers' Compensation Commission (TWCC) rules, found that outpatient methadone drug rehabilitation treatment is not medically necessary. Petitioner challenges this finding.

On August 20, 2002, Administrative Law Judge (ALJ) Lilo D. Pomerleau convened a hearing on this matter. The hearing was concluded and the record closed that date. Petitioner___ appeared and was assisted by TWCC Ombudsman Juan Mireles and Carrier TPCIGA for United Pacific Insurance Company was represented by Steven M. Tipton. The Commission is not a party to this proceeding.

The ALJ find that the requested treatment should not be preauthorized.

II. DISCUSSION

A. Background and Parties' Argument

Petitioner__ suffered a work-related injury to his knee on_____. Despite arthroscopic surgery on March 2, 2000, his pain persisted. On August 7, 2000, Dr. Jan Garrett performed a second surgery: a total knee replacement.[1] Petitioner's physical history further indicated he also suffers from severe arthritis in the lateral joint compartment of his knee.[2] At the hearing, Dr. Garrett testified that the initial injury and subsequent surgeries caused Petitioner to suffer from chronic pain, which Dr. Garrett treated with oral narcotics, namely Vicodin.

[1]Petitioner's Ex. 1 at 15.

[2]*Id* at 14.

Dr. Garrett further testified that he believes Petitioner became addicted to the narcotics used to treat his chronic pain. However, he admitted that___ had some drug use history before he became his patient, but did not know the details of this "drug use." Dr. Garrett stated he would prescribe a certain amount of Vicodin, but Petitioner would begin calling his staff for more medications well before the prescribed drugs should have been depleted. He calculated that Petitioner was using up to 10 tablets of Vicodin per day. Around the first of December 2001, he referred Petitioner to the methadone clinic.

In response to cross-examination, Dr. Garrett indicated that the treatment plan for a methadone clinic is generally to slowly wean a person off drugs, whereas a traditional drug rehabilitation is a more intensive means of eliminating drug dependence. He did not know the specific protocol for a methadone clinic; for instance, he did not know how the methadone clinic would treat Petitioner (i.e. whether it would move the patient towards substituting one drug−methadone−for another or if it would eliminate drug dependence). Morever, Dr. Garrett was unable to comment on the efficacy of using a methadone clinic versus a traditional drug rehabilitation. In particular, he could not state why a methadone drug rehabilitation was medically necessary for addiction to pain medication, rather than heroin.

Petitioner argues he has suffered from a serious knee injury, resulting in chronic pain. Oral medications were prescribed for that pain for a number of months. Consequently, Petitioner needs relief from the pain, but also a treatment to wean him off the pain medication.

In response, Carrier argues there is no documentation or evidence as to: (1) the quantity of pain medication that Petitioner is currently being prescribed; (2) the length of time Petitioner will be dependent upon the methadone clinic; and (3) why Petitioner is not a candidate for prescribing reduced pain medication dosages that a 24-hour pharmacy could dispense daily.

An independent peer review of the requested medical treatment provided relevant evidence plus a persuasive analysis raising strong questions as to the need for methadone drug treatment. The following information from the peer review[3] supports Carrier's argument that the requested treatment is not medically necessary:

< On November 20, 2000, three months after the August 7, 2000 knee replacement surgery, Dr. Garrett's documents state "I have not had to prescribe any pain medications since he ____ has used the TENS unit."
< On March 22, 2001, Petitioner had a psychiatric evaluation, with no documentation of problems with excessive use of pain medication.
< From May 16 to November 20, 2001, Petitioner's had eight visits with a psychiatrist. There is no mention of pain medication abuse in the psychiatrist's notes. The psychiatrist does not recommend referral to a methadone clinic.
< Methadone treatment programs are mainly devised as a mechanism to treat the heroin user. Such an individual is different from the prescription opiate abuser, whose problem began

[3] *See* Carrier's Ex. 3.

with the medical necessity to treat pain.

< If a drug problem is related to pain relief, there should not be the psychological dependence of heroin usage.

< There is no support in medical literature for the use of methadone to treat chronic pain.

< The amount of Vicodin ES used by Petitioner (approximately 10 tablets per day) is excessive.

< The amount of Vicodin ES that Petitioner was taking in December of 2001 compared to the amount of methadone Petitioner is currently taking suggests that Petitioner's problem is not solely related to an addiction to Vicodin.

At the hearing, Carrier also raised a secondary issue concerning the request for preauthorization. According to the record, Petitioner has been undergoing methadone treatment since December 2001. Carrier argues that once a program is entered into, a claimant cannot get retrospective reimbursement. As this decision finds the treatment is not medically necessary, the ALJ does not address this issue.

B. Analysis

Workers' compensation insurance covers all medically necessary health care, which includes all reasonable and necessary medical aid, examinations, treatments, diagnoses, evaluations and services.[4] Section 408.021 of the Act provides:

> (9) 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:
>
> (1) cures or relieves the effects naturally resulting from the compensable injury;
>
> (2) promotes recovery; or
>
> (3) enhances the ability of the employee to return to or retain employment.

[4]Texas Workers Compensation Act (Act), TEX. LAB. CODE ANN. § 401.011.

Health care treatments and services, including chemical dependancy programs, are among certain categories of health care identified by the Commission that require preauthorization; these are dependent upon a prospective showing of medical necessity.[5] Petitioner has the burden of proof in this instance.[6]

The ALJ concludes that Petitioner failed to meet his burden of proving that methadone drug rehabilitation treatment is medically necessary to treat addiction to the pain medication Vicodin.[7] Dr. Garrett was unable to address why a methadone treatment program generally used to slowly wean a person from using heroin is medically necessary for Petitioner's addiction to the prescription drug Vicodin. Further, as Dr. Garrett admitted that ___had some drug use history in the past, there is a strong need for persuasive evidence that the methadone drug rehabilitation treatment is medically necessary to cure or relieve the effects naturally resulting from the initial knee injury (an addiction to pain medication). Dr. Garrett's testimony was unpersuasive on this issue as he demonstrated little expertise on the subjects of drug dependence and chemical dependency programs, plus he had little knowledge of Petitioner's past drug history. More importantly, he did not offer a rationale as to why a treatment program used for heroin addiction is necessary for Petitioner's pain medication addiction. Also, he did not testify or document how the treatment will address Petitioner's ongoing pain.

[5] TEX. LABOR CODE ANN. § 413.014; 28 TEX. ADMIN. CODE § 134.600.

[6] 28 TEX. ADMIN. CODE § 148.21(h).

[7] The ALJ's conclusion that outpatient drug rehabilitation is not medically necessary does not address the possibility that other drug treatment programs would be appropriate to treat an addition to pain medication.

Petitioner further failed to rebut the peer review findings, which raised questions about Petitioner's pain medication usage. For instance, the evidence indicates Petitioner was not taking pain medication for a period of time after the second surgery. When and why did he begin to need Vicodin? Why was Petitioner taking an "excessive" amount of Vicodin? Why did his psychiatrist fail to document pain medication abuse as late as the month before he began methadone drug rehabilitation treatment? Petitioner failed to address any of these questions, leaving issues relating to pain relief unanswered. The ALJ also notes that there is no evidence about the methadone clinic's treatment to date, although Petitioner began attending the clinic in December 2001. Some indication as to how the current treatment is addressing Petitioner's addiction to Vicodin would have been useful.

In sum, the ALJ finds that Petitioner failed to meet his burden of proof to put forth critical and persuasive evidence to support authorization for methadone drug treatment rehabilitation. Petitioner also failed to respond to the issues raised by Carrier. Thus, the ALJ concludes preauthorization for a methadone drug rehabilitation should be denied.

III. FINDINGS OF FACT

1. Petitioner ___suffered a work-related injury to his right knee on_____.

2. Petitioner's injury is covered by worker's compensation insurance written for his employer by TPCIGA for United Pacific Insurance Company (the Carrier).

3. Petitioner seeks preauthorization for outpatient methadone drug rehabilitation treatment.

4. Carrier denied preauthorization of the treatment program identified in Finding of Fact No. 3.

5. Petitioner timely requested an independent review by the Texas Medical Foundation's independent review organization (IRO) as specified by the Texas Workers' Compensation Commission's rules.

6. The IRO issued its decision on June 13, 2002, concluding that requested outpatient methadone drug rehabilitation treatment should be denied. Petitioner timely appealed this decision.

7. On August 7, 2000, Jan Garrett, M. D., performed a second operation on Petitioner's right knee, a total knee replacement. Subsequent to this operation, he treated Petitioner's pain, in part, with a prescription for Vicodin.

8. Petitioner has a history of drug use before becoming a patient of Dr. Garrett.

9. There is scant documentation about Petitioner's addiction to pain medication.

10. For some period of time before or during December 2001, Petitioner may have taken up to 10 tablets of Vicodin ES per day. Such an amount of medication is excessive.

11. On March 22, 2001, Petitioner had a psychiatric evaluation, with no documentation of

problems with excessive pain medication.

12. Multiple notes by Petitioner's psychiatrist from May 16 to November 20, 2001, fail to document prescription drug abuse as an ongoing problem.

13. There is no evidence of the efficacy of a methadone drug treatment program for treatment of pain medication addiction.

14. Methadone treatment programs are mainly devised as a mechanism to treat the heroin user. Such an individual is different from the prescription opiate abuser, whose problem began with the medical necessity to treat pain.

15. The amount of Vicodin ES used by Petitioner compared to the amount of methadone currently used by Petitioner suggests Petitioner's drug addiction is not solely related to the use or abuse of Vicodin.

IV. CONCLUSIONS OF LAW

1. The Texas Workers' Compensation Commission (Commission) has jurisdiction to decide the issues presented pursuant to TEX. LABOR CODE §413.031.

2. 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, pursuant to TEX. LABOR CODE §413.031(d) and TEX. GOV'T CODE ch. 2003.

3. The notice of hearing conformed to the requirements of TEX. GOV'T CODE §2001.052 in that it 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 section of the statutes and rules involved; and a short plain statement of the matters asserted.

4. Petitioner has the burden of proving by a preponderance of the evidence that it should prevail in this matter. 28 TEX. ADMIN. CODE 148.21(h).

5. Petitioner did not adequately demonstrate the need for outpatient methadone drug rehabilitation based on the above findings of fact.

6. Petitioner did not meet his burden of showing the request for outpatient methadone drug rehabilitation treatment is medically necessary in that it would cure or relieve the effects naturally resulting from the compensable injury. TEX. LABOR CODE §§ 413.011 and 413.014.

7. Petitioner's request for preauthorization of outpatient methadone drug rehabilitation treatment should be denied.

ORDER

IT IS THEREFORE, ORDERED that the request of Petitioner____ for preauthorization of outpatient methadone drug rehabilitation treatment is denied.

ISSUED September 6, 2002.

STATE OFFICE OF ADMINISTRATIVE HEARINGS

LILO D. POMERLEAU
ADMINISTRATIVE LAW JUDGE