

**SOAH DOCKET NO. 453-03-4640.M2  
TWCC NO. M2-03-0764-01**

<b>POSITIVE PAIN MANAGEMENT,</b>	§	<b>BEFORE THE STATE OFFICE</b>
<b>Petitioner</b>	§	
	§	
<b>V.</b>	§	<b>OF</b>
	§	
<b>CHRISTUS HEALTH</b>	§	
<b>c/o CUNNINGHAM LINDSEY,</b>	§	
<b>Respondent</b>	§	<b>ADMINISTRATIVE HEARINGS</b>

**DECISION AND ORDER**

Positive Pain Management (Provider) appealed the decision of an Independent Review Organization (IRO) upholding the denial of preauthorization for a chronic pain management (CPM) program for an injured worker (Claimant). The Administrative Law Judge (ALJ) finds that Provider did not meet its burden of showing that the requested CPM program was reasonable and necessary medical care that should have been preauthorized by Christus Health c/o Cunningham Lindsey (Carrier). Therefore, the requested CPM program should not be preauthorized.

The hearing convened and closed on April 8, 2004, before Steven M. Rivas, ALJ. Provider was represented by Peter N. Rogers, attorney. Carrier was represented by Gerardo A. Camarillo, attorney.

**I. DISCUSSION**

**1. Background Facts**

Claimant sustained a compensable injury on \_\_\_\_\_. Following her injury, Claimant underwent extensive treatment by various treating doctors. Throughout her treatment, Claimant complained of neck and back pain and found some relief from the treatment rendered in the years following her injury. The various treatments rendered to Claimant included physical therapy, epidural steroid injections, nerve blocks, implantation devices, numerous diagnostic studies, and medication. Additionally, Claimant underwent a cervical fusion procedure in 1996. At some point, one of

Claimant's treating doctors recommended Claimant undergo a CPM program at Provider's facility, which Carrier denied as not medically necessary.

## 2. Applicable Law

Under the TEX. LAB. CODE ANN. § 408.021 (a), 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 the Act § 413.014 and 28 TEX. ADMIN. CODE (TAC) § 134.600. In this instance under 28 TAC § 134.600(h)(10)(b), preauthorization is required for the prescribed CPM program.

## 3. Evidence and Analysis

Provider acknowledged Claimant's onset of pain was not the result of any discernable event. The record indicated Claimant's first report of injury was in \_\_\_ for a right shoulder strain caused by repeated cooking, lifting and serving of food. In November 1994, Claimant began complaining of neck pain as well.

Julie Duncan, Ph.D., testified that Claimant was a good candidate for a CPM program because she believed Claimant had met the necessary criteria to be enrolled in such a program.<sup>1</sup> First, Dr. Duncan testified that Claimant experienced chronic and persistent pain more than six months following her injury. Next, based on the results of a global assessment of function (GAF)

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<sup>1</sup> Dr. Duncan is employed by Provider as Vice-President of Clinical Management.

test, Claimant was shown to have difficulty functioning. Dr. Duncan testified the GAF test also has a psychological component, which revealed Claimant did not have any significant psychological issues that needed to be addressed. Furthermore, Dr. Duncan testified Claimant had already exhausted all other “levels of care,” and still her condition had not improved.

According to Dr. Duncan, the CPM program requested in this case would be a 30-day, multi-disciplinary program consisting of including biofeedback, intervention, and aqua therapy. The benefits of the CPM program, according to Dr. Duncan are that Claimant would be taught the ability to cope with her pain and address any depression or anxiety issues that often accompany chronic pain. Another goal of the CPM program would have Claimant return to an appropriate functional status.

The ALJ is not convinced the CPM program is medically necessary for Claimant at this time. The record indicated Claimant had a history of neck and back problems before (and after) the date of her compensable injury. In 1990, Claimant underwent back surgery, but claimed she had completely healed. Dr. Duncan asserted Claimant must have healed from her 1990 surgery because she returned to work thereafter. The record also indicated that Claimant returned to work following her initial treatment in 1994 and her neck surgery in 1996. Additionally, following her 1996 operation, the record indicated Claimant did not seek any treatment for her neck and back for over two years.

Conversely, the ALJ was persuaded by Carrier’s argument that based on Claimant’s injury, she should have completely healed long ago. In support of its position, Claimant offered a peer review and medical record review. The peer review written by John G. Andrew, M.D., dated July 1, 1999, concluded that Claimant had reached maximum medical improvement (MMI) on September 19, 1994. Although Claimant had reached MMI, it did not mean that Claimant had completely healed. However, Dr. Andrew asserted that “all diagnostic studies, treatment and medications after that date cannot be justified.”

The medical record review, dated December 3, 2003, was done by Benjamin Agana, M.D. Dr. Agana found that there was enough evidence in the record to suggest Claimant had a substantial

condition preexisting her injury, and that it was very likely she was presently being treated for a preexisting condition not related to her compensable injury. Additionally, Dr. Agana asserted Claimant's present complaints of pain are related to a "progressive degenerative disease of life" rather than her \_\_\_ compensable injury, "given her history of preexisting problems." Dr. Agana concluded that Claimant's injury, a muscle strain, would likely have resolved over 10 years of treatment.

Because pain complaints are subjective in nature, the ALJ must consider the totality of the evidence relating to the medical necessity of the CPM program. The fact that no identifiable event caused Claimant's injury is very suspect when viewed in conjunction with Claimant's history of medical problems and ailments.<sup>2</sup> Additionally, Provider offered insufficient evidence explaining why Claimant's muscle strain had not healed after 10 years. Claimant's pain complaints may persist, but Provider offered insufficient evidence to show the proposed treatment would address the \_\_\_\_\_ compensable injury.

## II. FINDINGS OF FACTS

1. Claimant sustained a compensable injury on \_\_\_.
2. Claimant underwent extensive treatment for her injury, yet still complains of pain.
3. At some point, one of Claimant's treating doctors recommended Claimant undergo a chronic pain management (CPM) program at the Positive Pain Management (Provider).
4. Christus Health c/o Cunningham Lindsey (Carrier) denied preauthorization, maintaining that the requested treatment was not medically necessary.
5. Provider sought medical dispute resolution and an Independent Review Organization (IRO) affirmed the denial of preauthorization for the CPM program.
6. Provider timely requested a hearing before the State Office of Administrative Hearings (SOAH).

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<sup>2</sup> In addition to neck and back complaints, Claimant was also treated for carpal tunnel syndrome. Claimant's treatment for carpal tunnel included surgery.

7. Notice of the hearing in this case was mailed to the parties on September 2, 2003. 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. In the notice, the Commission's staff indicated that it would not participate in the hearing.
8. The hearing convened and closed on April 8, 2004, before Steven M. Rivas, Administrative Law Judge (ALJ). Provider was represented by Peter N. Rogers, attorney. Carrier was represented by Gerardo A. Camarillo, attorney.
9. Claimant has a history of preexisting medical conditions including back surgery in 1990.
10. Claimant's \_\_\_ injury was a muscle strain that should have healed by now.
11. Claimant's current pain complaints are not related to her \_\_\_ compensable injury.
12. The CPM program is not medically necessary to treat Claimant's compensable injury.

### **III. CONCLUSIONS OF LAW**

1. SOAH has jurisdiction over this proceeding, including the authority to issue a decision and order, pursuant to TEX. LAB. CODE ANN. §413.031(k) and TEX. GOV'T CODE ANN. ch. 2003.
2. Proper and timely notice of the hearing was effected upon the parties according to TEX. GOV'T CODE ANN. §§ 2001.051 and 2001.052 and 28 TEX. ADMIN. CODE § 148.4.
3. Provider had the burden of proof on its appeal by a preponderance of the evidence, pursuant to TEX. LAB. CODE ANN. § 413.031 and 28 TEX. ADMIN. CODE §148.21(h).
4. Under TEX. LABOR CODE § 408.021(a), an employee who sustains a compensable injury is entitled to all health care that cures, relieves, or enhances the employee's ability to obtain employment.
5. The CPM program will not address any issues associated with Claimant's \_\_\_ compensable injury.
6. Based on the above Findings of Fact and Conclusions of Law, Provider's request for preauthorization should be denied.

**ORDER**

IT IS **ORDERED** THAT the CPM program proposed by Positive Pain Management is denied.

**SIGNED May 6, 2004.**

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**STEVEN M. RIVAS  
ADMINISTRATIVE LAW JUDGE  
STATE OFFICE OF ADMINISTRATIVE HEARINGS**