

**SOAH DOCKET NO. 453-04-3629M2R**  
**AMERICAN HOME ASSURANCE**  
**COMPANY,**  
**Petitioner**

**BEFORE THE STATE OFFICE**  
**OF**  
**ADMINISTRATIVE HEARINGS**

**V.**

**ADVANTAGE HEALTHCARE**  
**SYSTEMS,**  
**Respondent**

## **DECISION AND ORDER**

### **I. INTRODUCTION**

American Home Assurance Company (Carrier) disputes a decision of an independent review organization (IRO) on behalf of the Texas Workers= Compensation Commission (TWCC) regarding a medical service for \_\_\_ (Claimant). Advantage Healthcare Systems (Provider) sought pre-authorization from the Carrier for the Claimant to participate in 30 sessions of a chronic-pain-management program. The Carrier denied that request, asserting that it was not shown to be reasonably medically necessary; however, the IRO found that it was.

The only disputed issue is whether the requested chronic-pain-management program is reasonably medically necessitated by the compensable injury. The Carrier has the burden of proof.

As set out below, the Administrative Law Judge (ALJ) finds that the chronic-pain-management program is not reasonably medically necessitated by the compensable injury. Hence, the Provider=s request for pre-authorization is denied.

### **II. FINDINGS OF FACT**

1. On \_\_\_, the Claimant sustained a compensable work-related injury to his left foot and back when a pallet jack ran over his foot.
2. On the date of injury, the Claimant's employer was \_\_\_, Inc., and the Carrier was its workers= compensation insurance carrier.
3. Since his injury, the Claimant has complained of constant aching, sharp, and shooting spasms of pain in his back and left foot at an eight or nine level on a one to ten scale.
4. The Claimant has complained that he has not been able to walk without pain or comfortably sleep since his compensable injury.
5. The Claimant claims to be depressed and anxious due to his pain.

6. The Claimant has received extensive passive physical therapy from his treating physician, a chiropractor, since his compensable injury.
7. The Claimant has engaged in an active exercise program and has improved his range of motion, strength, mobility, and endurance since his injury.
8. Since his compensable injury, the Claimant has had two epidural steroid injection and taken Darvocet and Lortab for pain.
9. Since his compensable injury, the Claimant has used crutches on many but not all occasions when walking outside his home.
10. On October 10, 2002, magnetic resonance images (MRIs) of the Claimant ' s left foot showed that it was normal.
11. In the third week of November 2002, the Claimant ' s then Treating Doctor released him to return to work with modified duties.
12. When the Claimant returned to work on crutches on \_\_\_\_, he fell and claimed another work-related injury to his back.
13. Since then, the Claimant has claimed a third work-related injury.
14. On November 27, 2002, x-rays of the Claimant ' s spine showed no fractures, except an old compression fracture at thoracic vertebrae (T) 11, mild degenerative disc disease in the thoracic and cervical spine, and no soft tissue or other abnormalities.
15. On December 6, 2002, the Claimant used his crutches when walking on some occasions in very public places but also drove a motor vehicle, exited it without using crutches, bent at the waist, hammered a wooden stake into the ground to hang a sign, operated a riding lawnmower, and reentered the vehicle and departed.
16. On December 9, 2002, the Claimant used his crutches when walking on some occasions in very public places but on another occasion walked down a flight of stair carrying a full plastic bag of garbage and tossed the bag into a dumpster without using crutches or a handrail and without apparent difficulty.
17. On December 20, 2002, a bone scan of the Claimant ' s left foot showed that it was normal.

18. When examined by a required-medical-evaluation physician on December 27, 2002, the Claimant complained of pain in his left foot, but he put weight on it on several occasions, had no difference in temperature between his right and left feet, had good range of motion at all digits, and had no color changes, abrasions, edema, or erythema in his left foot.
19. Chronic pain syndrome is any set of verbal or nonverbal behaviors that involves the complaint of enduring pain; differs significantly from the injured worker= pre-morbid status; has not responded to previous appropriate medical, surgical, and/or injection treatments; and interferes with the injured worker=s physical, psychological, social, and/or vocational functioning.
20. The Provider furnishes a chronic-pain-management program to injured claimants to train them to cope with that type of pain. The program is multi-disciplinary and includes physical therapy, various types of counseling, and other services designed to return claimants to work.
21. On October 28, 2003, and November 13, 2003, the Provider sought pre-authorization from the Carrier for the Claimant to participate in 30 sessions of the Provider=s chronic-pain-management program.
22. On November 3 and 26, 2003 the Carrier timely sent explanations of benefit (EOBs) to the Provider denying the requested pre-authorization, claiming that it was not reasonably medically necessary.
23. The Provider timely filed a request for medical dispute resolution with TWCC.
24. TWCC referred the dispute to the IRO, which found that the requested chronic-pain-management services medically were necessary and should be pre-authorized.
25. After the IRO issued its decision, the Carrier asked for a contested-case hearing by a State Office of Administrative Hearings (SOAH) ALJ.
26. Required notice of a contested-case hearing concerning the dispute was mailed to the Carrier and the Provider.
27. On May 27, 2004, SOAH ALJ William G. Newchurch held a contested-case hearing concerning the dispute at the William P. Clements Office Building, Fourth Floor, 300 West 15th Street, Austin, Texas. The hearing concluded and the record closed on that same day.
28. The Carrier appeared at the hearing through its attorney, Peter Macaulay.
29. The Provider appeared at the hearing through its attorney, Nick Kempisty.

### III. CONCLUSIONS OF LAW

1. 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 ANN. (Labor Code) ' ' 402.073(b) and 413.031(k) (West 2004) and TEX. GOV=T CODE ANN. (Gov=t Code) ch. 2003 (West 2004).
2. Adequate and timely notice of the hearing was provided in accordance with Gov=t Code ' ' 2001.051 and 2001.052.
3. Based on the above Findings of Fact and Gov't Code ' 2003.050 (a) and (b), 1 TEX. ADMIN. CODE (TAC) ' 155.41(b) (2004), and 28 TAC ' ' 133.308(v) and 148.21(h) (2004), the Carrier has the burden of proof in this case.
4. 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 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. Labor Code ' 408.021 (a).
5. TWCC must specify by rule which health care treatments and services require express pre-authorization by a carrier. A carrier is not liable for those specified treatments and services unless pre-authorization is sought by the claimant or a health care provider and either obtained from the carrier or ordered by TWCC. Labor Code ' 413.014
6. Pre-authorization is required for a claimant ' s participation in a chronic-pain-management program. 28 TAC ' 134.600(h)(10)(B).
7. Based on the above Findings of Fact and Conclusions of Law, the Claimant more likely than not does not have chronic pain that limits his functioning and stems from the compensable injury to his left foot.
8. Based on the above Findings of Fact, the Claimant more likely than not does not reasonably need to participate in a chronic-pain-management program.
9. Based on the above Findings of Fact and Conclusions of Law, the Provider=s request for pre-authorization for the Claimant to participate in a chronic pain management program should be denied.

**ORDER**

**IT IS ORDERED THAT** the Provider=s request for pre-authorization for the Claimant to participate in a chronic pain management program is denied.

**SIGNED June 9, 2004.**

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**WILLIAM G. NEWCHURCH  
ADMINISTRATIVE LAW JUDGE  
STATE OFFICE OF ADMINISTRATIVE HEARINGS**