

**SOAH DOCKET NO. 453B04-4476.M2
MR NO. M2-04-0733-01**

TEXAS MUTUAL INSURANCE CO.,	§	BEFORE THE STATE OFFICE
Petitioner	§	
	§	
V.	§	
	§	OF
SHANTI PAIN MANAGEMENT	§	
CLINIC, P.A.,	§	
Respondent	§	
	§	ADMINISTRATIVE HEARINGS

DECISION AND ORDER

I. Introduction

Texas Mutual Insurance Co. (Carrier) has appealed a decision of an independent review organization (IRO), on behalf of the Texas Workers' Compensation Commission (TWCC), regarding medical services for (Claimant). The Carrier was asked by Shanti Pain Management Clinic, P.A. (Provider) to pre-authorize the Claimant's participation in 30 sessions in a chronic pain management program. The Carrier denied the request, claiming the Provider had failed to furnish sufficient documentation to show that participation in a chronic pain management program was reasonably medically necessitated by the Claimant's compensable injury. The IRO found that Claimant's participation in the chronic pain management program was reasonably medically necessary.

Thereafter, the Provider furnished 19 sessions in its chronic pain management program to the Claimant, for which he billed the Carrier. The maximum allowable reimbursement (MAR) amount for each of those sessions was \$800. The Carrier denied the requested reimbursement, claiming those sessions were not reasonably medically necessitated by the Claimant's compensable injury.

The Parties agree that the only disputed issues are whether the Claimant's participation in the chronic pain management program for 30 sessions, including the 19 already furnished, was and is reasonably necessitated by his compensable injury and whether the Provider has adequately documented that need. They also agree that the Carrier has the burden of proof.

As set out below, the Administrative Law Judge (ALJ) finds that the documentation provided to the Carrier when pre-authorization was requested and the evidence introduced at the hearing show that the Claimant did not then and does not now reasonably medically need to participate in a chronic pain management program. Accordingly, the Provider's request for pre-authorization of the Claimant's participation in that program is denied, and the Provider's request for reimbursement for the 19 sessions in which the Claimant has already participated is denied.

II. Findings of Fact

1. On (Date of Injury), (Claimant) sustained a work-related injury to his neck, lower back, and teeth as a result of his work activities.
2. On the date of injury, the Claimant's employer was Walltech and its workers' compensation insurance carrier was Texas Mutual Insurance Co. (Carrier).
3. Since he was injured approximately __ months ago, the Claimant:
 - a. Has continuously complained of pain in his neck and lower back pain;
 - b. Has been depressed;
 - c. Has not worked;
 - d. Received therapeutic-exercise and various passive-therapy services several times a week, nearly every week, for approximately six months;
 - e. Received several epidural and other injections for pain from July 31, 2003, through November 20, 2003;
 - f. Taken Hydrocodone and Carisoprodol for pain each day from April 10, 2003, through at least March 24, 2004; and
 - g. Periodically taken diazepam for anxiety and Neurontin for pain.
4. The Claimant has a disc herniation at lumbar vertebrae (L) 5 and sacral vertebrae (S) 1 that is degenerative rather than injury-related.
5. Psychological testing indicates that the Claimant is moderately preoccupied with somatic complaints and is suffering from anger, frustration, tension, anxiety, depression, and pain at least partly due to his not working, poor physical condition, and not being able to financially support his family.
6. Work hardening is an interdisciplinary program that addresses the functional, physical, behavioral, and vocational needs of the injured worker.
7. On February 5, 2004, the Claimant's treating doctor, Joe L. Garza, D.C., found that the Claimant was a good candidate for and prescribed a ten-session, two-week work hardening

program to restore his physical condition, resolve his psychological difficulties, and return him to work.

8. On February 11, 2004, the Carrier's representative agreed that such a work hardening program for the Claimant was reasonably medically necessary and pre-authorized it.
9. Participation in such a work hardening program and returning to work more likely than not will reduce or eliminate the Claimant's pain and perception of pain.
10. The Claimant never participated in the pre-authorized work-hardening program.
11. Shanti Pain Management Clinic, P.A. (Provider) sought pre-authorization from the Carrier for the Claimant to participate in 30 sessions in the Provider's chronic pain management program.
12. The Carrier timely sent an explanation of benefit (EOB) to the Provider denying the requested pre-authorization for the Claimant's participation in the chronic pain management program and claiming that the provided documentation did not show it was reasonably medically necessary.
13. The Provider filed a request for medical dispute resolution with the TWCC concerning the Carrier's denial of pre-authorization for the chronic pain management program.
14. The Provider's own medical-dispute documentation states that a chronic pain management program:

. . . is usually one of your last resorts for treatment when everything else seems to fail to promote return to work on a particular patient. Candidates for the program are patients that have complaints of enduring pain no longer responsive to conventional treatment (including but not limited to . . . work hardening . . .).
15. The TWCC Medical Fee Guidelines that were effective at the time of the requested pre-authorization provided that: Chronic pain syndrome is defined as any set of verbal and/or nonverbal behaviors that [among other things] has not responded to previous appropriate medical . . . treatments . . .
16. An independent review organization (IRO) reviewed the medical dispute concerning the chronic pain management program, and on February 13, 2004, on behalf of TWCC, pre-authorized the Claimant's participation in that program.
17. After the IRO's decision, the Provider furnished 19 sessions in its chronic pain management program to the Claimant and billed the Carrier for them. The maximum allowable reimbursement (MAR) amount for each of those sessions was \$800.
18. After the IRO decision was issued, the Carrier timely asked for a contested-case hearing by a

State Office of Administrative Hearings (SOAH) Administrative Law Judge (ALJ) concerning the chronic-pain-management-program pre-authorization dispute.

19. On March 29, 2004, notice of an April 28, 2004, contested-case hearing concerning the chronic-pain-management-program pre-authorization dispute was mailed to the Carrier, the Provider, and the Claimant.
20. On April 28, 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.
21. The Claimant did not appear at the hearing.
22. The Carrier appeared at the hearing through its attorney, Patricia Eads.
23. The Provider appeared at the hearing through Ihsan Shanti, M.D.

III. Conclusions of Law

24. 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).
25. Adequate and timely notice of the hearing was provided in accordance with Gov't Code §§ 2001.051 and 2001.052.
26. 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.
27. 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).
28. 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
29. Pre-authorization is required for chronic pain management. 28 TAC § 134.600(h)(10)(B).
30. Based on the above Findings of Fact, the Claimant does not reasonably need to participate in

a chronic pain management program unless a work hardening program is not likely to be or has not been effective in treating the Claimant's remaining symptoms stemming from his compensable injury.

31. Based on the above Findings of Fact, a work hardening program is likely to effectively treat the Claimant's remaining symptoms stemming from his compensable injury.
32. Based on the above Findings of Fact and Conclusions of Law, the Claimant did not reasonably need to participate in a chronic pain management program when the Provider requested pre-authorization for it or when the Claimant participated in the 19 sessions of that program.
33. Based on the above Findings of Fact and Conclusions of Law, the Claimant does not reasonably need to participate in a chronic pain management program at this time.

ORDER

IT IS ORDERED THAT the Provider's request for pre-authorization of the Claimant's participation in 30 sessions of a chronic pain management program is denied, and the Provider's request for reimbursement for the 19 sessions of that program in which the Claimant has already participated is denied.

Signed May 7, 2004.

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