

SOAH DOCKET NUMBER # 453-04-4637.M2R

ADVANTAGE HEALTHCARE SYSTEMS, § **BEFORE THE STATE OFFICE**
Petitioner §
V. §
§
DALLAS COUNTY HOSPITAL DISTRICT, § **OF**
Respondent §
§
§ **ADMINISTRATIVE HEARINGS**

DECISION AND ORDER

Advantage Healthcare Systems (Petitioner) appealed the decision of the Texas Workers' Compensation Commission's (Commission) designee, an independent review organization (IRO), which denied preauthorization for a chronic pain management (CPM) program for a workers' compensation claimant (Claimant). The Petitioner's request for the CPM had been denied by Dallas County Hospital District (Carrier) as not being medically necessary healthcare. This decision finds preauthorization for the CPM should be denied.

I. JURISDICTION, NOTICE, AND PROCEDURAL HISTORY

There were no contested issues of jurisdiction, notice or venue. Therefore, those issues are addressed in the findings of fact and conclusions of law without further discussion here.

The hearing in this matter convened and closed May 6, 2004, at the State Office of Administrative Hearings, 300 W. 15th Street, Austin, Texas, with Administrative Law Judge (ALJ) Bill Zukaukas presiding. The Petitioner was represented by its Chief Compliance Officer, Nick Kempisty. Carrier was represented by its attorney, Robert R. Graves, Jr.

II. DISCUSSION

A. Legal Standards

Petitioner has the burden of proof in this proceeding. 28 TEX. ADMIN. CODE (TAC) § 148.21(h) and (i); 1 TAC § 155.41. Pursuant to the Texas Workers' Compensation Act, an employee who has sustained 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 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. TEX. LAB. CODE ANN. § 408.021(a). Health care includes all reasonable and necessary medical services including a medical appliance or supply. TEX. LAB. CODE ANN. §401.011(19)(A). A medical benefit is a payment for health care reasonably required by the nature of the compensable injury. TEX. LAB. CODE ANN.

§ 401.011(31). The decision of an IRO is to be given presumptive weight. 28 TAC §133.308(v).

Certain types of healthcare, including chronic pain management programs require preauthorization from the carrier. 28 TAC § 134.600(h).

B. Claimant's Medical History and Summary of Evidence

Claimant sustained a back injury on ___, while pulling a linen cart. She has undergone extensive medical care, including medical and chiropractic treatment, physical therapy, work hardening, injections, multiple surgeries, and therapy. She was found to be at maximum medical improvement (MMI) on August 13, 2001, and was given a 10% impairment rating by the TWCC appointed designated doctor, Jack A. Kern, M.D.

The dispute in this case concerns CPM, which may be defined as “a program which provides coordinated, goal-oriented, interdisciplinary team services to reduce pain, improve functioning, and decrease the dependence on the health care system of persons with chronic pain syndrome.” Petitioner seeks preauthorization for 30 sessions of CPM at 8 hours per session.

On December 8, 2003, Petitioner made a preauthorization request for the CPM. On December 11, 2003, Carrier denied Petitioner’s preauthorization request, explaining the CPM was not reasonable or necessary. Carrier timely sought medical dispute resolution through the TWCC. Pursuant to Texas Labor Code Section 413.031(d), the TWCC appointed an Independent Review Organization (IRO) to review this matter. On March 15, 2004, the IRO physician determined that the evidence failed to establish the medical necessity of CPM. The IRO found that CPM was excessive and that less elaborate care was appropriate. On March 18, 2004, Petitioner requested a hearing before SOAH on the denial.

The Carrier relies on the designated doctor, Jack A Kern, M.D., appointed by the TWCC to resolve the dispute regarding Claimant’s impairment rating. He examined Claimant on February 3, 2004, and explained that:

As far as the examinee’s recent surgery, her rehabilitation, her work hardening, it is my opinion that no further treatment, chiropractic care, or pain management injections or surgical care is likely to be of help for examinee in regard to her original work injury and her recovery from her surgeries.

At this time, the examinee would be wise to get involved at the local YMCA, make an effort to lose weight and continue in her physical stamina strengthening and rehabilitation program on the basis of personal responsibility.

The Carrier further relies on the written report of E. Floyd Robinson, M.D., a neurosurgeon who in a written report dated April 27, 2004, stated that “[it] would appear that this claimant has had adequate medical treatment, and any additional medical treatment such as physical therapy and medications are not necessary at this time.”

The Carrier similarly notes that Brad M. Hayes, D.C. analyzed Claimant’s medical history and concluded that further care was not reasonable or necessary. The Carrier also notes that two separate physicians, Rodney J. Simonsen, M.D. and R.A. Buczek, D.O., D.C., agreed that the CPM was not reasonable or necessary.

At hearing, the Carrier also presented Anthony Hicks, M.D., as a witness in this matter. Dr. Hicks has a full-time practice in occupational medicine. He reviewed the records for Claimant and concluded that CPM would not be helpful to this chronic patient. Specifically, Dr. Hicks testified, Claimant was morbidly obese and likely suffers undiagnosed major depression and a dependent developmental disorder. Dr. Hicks concluded that she had too many factors that would weigh against a successful outcome in a CPM program.

Finally, the Carrier notes the IRO decision similarly relied on the Claimant’s previous treatments in concluding the requested CPM program was duplicative, excessive, and medically unnecessary.

Petitioner’s evidence for this Claimant basically indicated that Claimant was very exuberant and believed that an 8 hour-per-day multi-disciplined pain program would benefit almost any patient, including Claimant, who is very work oriented. Petitioner’s witness emphasized that the program would help Claimant’s self-esteem.

C. Analysis

The ALJ concludes that the preponderance of the credible evidence supports Carrier’s position that the Claimant is not a suitable candidate for a CPM program. Each of the experts referenced by the Carrier, and in particular the persuasive analysis articulated by Dr. Anthony Hicks, indicated the multiple co-morbidities for Claimant would likely render a CPM program unsuccessful. The ALJ finds that the Petitioner has failed to meet its burden to show that a CPM program is medically necessary healthcare for Claimant.

III. FINDINGS OF FACT

1. A worker (Claimant) sustained a compensable injury on ___, while pulling a linen cart.
2. At the time of the injury, Dallas County Hospital District (Carrier) was responsible for the Claimant’s workers’ compensation insurance coverage.

3. She has undergone extensive medical care, including medical and chiropractic treatment, physical therapy, work hardening, injections, multiple surgeries, and therapy. She was found to be at maximum medical improvement (MMI) on August 13, 2001, and was given a 10 percent impairment rating by the TWCC appointed designated doctor, Jack A. Kern, M.D.
4. On December 8, 2003, Advantage Healthcare Systems (Petitioner) made a preauthorization request for 30 8-hour sessions of chronic pain management.
5. On December 11, 2003, the Carrier denied the Petitioner's request to preauthorize the Claimant's participation in the CPM program.
6. After the Carrier denied preauthorization as medically unnecessary, the Petitioner requested medical dispute resolution from the Commission. Pursuant to 28 TEX. ADMIN. CODE (TAC)' 133.308, an IRO selected by the Commission rendered a decision on the medical review dispute
7. On March 18, 2004, the IRO upheld the Carrier's denial of preauthorization as duplicative of earlier treatment and medically unnecessary.
8. Petitioner timely appealed the IRO decision.
9. Pursuant to a notice of hearing sent by Commission staff, the Petitioner and the Respondent appeared and were represented at the hearing held in this matter on May 6, 2004.
10. Based on the preponderance of the evidence, CPM would likely not be helpful to this Claimant because she has too many negative co-morbidities. Claimant was morbidly obese when evaluated, likely suffers undiagnosed major depression and a dependent developmental disorder, and has tried, without success, many of the individual modalities that would make up a CPM program.
11. Petitioner has not shown Claimant is a suitable candidate for a CPM program.

IV. CONCLUSIONS OF LAW

1. The Texas Workers' Compensation Commission (Commission) has jurisdiction related to this matter pursuant to the Texas Workers' Compensation Act (Act), TEX. LABOR CODE ANN. § 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 § 413.031(d) of the Act and TEX. GOVT CODE ANN. ch. 2003.

3. The hearing was conducted pursuant to the Administrative Procedure Act, TEX. GOVT CODE ANN. ch. 2001 and the Commission's rules, 28 TEX. ADMIN. CODE (TAC) § 133.305(g) and 133.308.
4. Adequate and timely notice of the hearing was provided in accordance with TEX. GOVT CODE ANN. §§ 2001.051 and 2001.052.
5. Petitioner had the burden of proof in this proceeding. 28 TAC §§ 148.21(h) and (i); 1 TAC § 155.41.
6. Pursuant to the Act, an employee who has sustained 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 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. TEX. LAB. CODE ANN. § 408.021(a).
7. Health care includes all reasonable and necessary medical services, including a medical appliance or supply. TEX. LAB. CODE ANN. §401.011(19) (A). A medical benefit is a payment for health care reasonably required by the nature of the compensable injury. TEX. LAB. CODE ANN. § 401.011(31).
8. For a carrier to be liable for reimbursement, it must preauthorize a claimant's participation in a chronic pain management program. 28 TAC § 134.600(h).
9. The Petitioner failed to meet its burden of proof to show that a chronic pain management program is reasonable and medically necessary healthcare for Claimant.
10. The Petitioner's request for preauthorization for Claimant to participate in its chronic pain management program should not be preauthorized.

ORDER

It is ORDERED that Advantage Healthcare Systems' request for preauthorization of a chronic pain management program for Claimant is denied.

SIGNED this 8th day of June 2004.

**BILL ZUKAUCKAS
ADMINISTRATIVE LAW JUDGE**

STATE OFFICE OF ADMINISTRATIVE HEARINGS