

**SOAH DOCKET NO. 453-04-5335.M2**  
**[TWCC MDR# M2-04-0250-01]**

<b>AMERICAN HOME ASSURANCE COMPANY,</b>	‘	<b>BEFORE THE STATE OFFICE</b>
	‘	
<b>Petitioner</b>	‘	
	‘	
<b>V.</b>	‘	<b>OF</b>
	‘	
<b>ADVANTAGE HEALTHCARE SYSTEMS,</b>	‘	
	‘	
<b>Respondent</b>		<b>ADMINISTRATIVE HEARINGS</b>

**DECISION AND ORDER**

American Home Assurance Company (Carrier) appeals the decision of an Independent Review Organization (IRO) granting preauthorization for a chronic pain management program to a worker ' s compensation Claimant. This decision finds that the Carrier failed to sustain its burden of proving that the program is not medically necessary and preauthorizes the treatment.

**I. PROCEDURAL HISTORY, NOTICE, AND JURISDICTION**

There are no contested issues of notice or jurisdiction in this proceeding. Accordingly, these matters are addressed only in the findings of fact and conclusions of law. The hearing was held August 18, 2004, before administrative law judge (ALJ) Kerry D. Sullivan. Attorney Jim Koriath represented the Carrier, and Nick Kempisty represented the Respondent service provider (Provider). The hearing concluded and the record closed on August 18, 2004.

## II. BASIS FOR DECISION

### 1. Background

The Claimant is a 50 year-old who was injured at work on \_\_\_\_ when she fell backward and hit a piece of machinery. The initial diagnosis made by a doctor to whom her employer referred her was of Aback/buttocks contusion and lumbar strain.@ The Claimant was treated with oral pain medications and anti-inflammatories, physical therapy, home exercise, TENS unit, a cold pack, a back brace, and was placed on light duty at work. An MRI performed on March 22, 2001, showed a mild posterior central disc protrusion at L5-SI that minimally contacted the cal sac. On August 22, 2001, her then doctor, Marvin Van Hal, M.D., determined the Claimant had reached maximum medical improvement as of that date. He assigned a zero percent impairment rating on the basis that the Claimant had returned to her baseline level of dysfunction. He also noted that she was not a surgical candidate.<sup>1</sup> The Claimant received no documented medical attention from August 22, 2001 until February 14, 2003, when she requested a new doctor. She provided the following reason for the requested transfer in the Worker's Compensation request form: This doctor (*i.e.*, the one she wanted to leave) is my company doctor and when I tell him I still hurting he tells me I fine. I'm not getting better only worse.<sup>2</sup>

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<sup>1</sup> Respondent Ex. 1, p. 12.

<sup>2</sup> Respondent Ex. 1, p. 13.

A week after requesting a new doctor, the Claimant was examined by John Pispidikis, a chiropractor with the Provider. She was given an Electromyogram and nerve conduction study that indicated radiculopathy at multiple levels. Dr. Pispidikis began a program of chiropractic manipulations and spinal traction. He also referred the Claimant to George Esterly, a licensed professional counselor. In a report dated January 16, 2004, Mr. Esterly found the Claimant to be a suitable candidate for a chronic pain management program.

## 2. Applicable Law

Employees have a right to necessary health treatment under TEX. LABOR CODE ANN. §§ 401.011 and 408.021. Section 408.021(a) provides:

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.

Section 401.011(19) of the Labor Code provides that health care includes all reasonable and necessary medical . . . services.

The Texas Workers' Compensation Commission (Commission) 1996 MFG defines and states entrance criteria for a chronic pain management program as follows:

Chronic Pain Management: 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.

1. Chronic pain syndrome is defined as any set of verbal and/or nonverbal behaviors that:
  1. involves the complaint of enduring pain;
  2. differs significantly from the injured worker's premorbid status;
  3. has not responded to previous appropriate medical, surgical, and/or injection treatments; and
  4. interferes with the injured worker ' s physical, psychological, social, and/or vocational functioning.
  
2. Entrance/admission criteria shall enable the program to admit persons:
  1. who are likely to benefit from this program design;
  - b. whose symptoms meet the above description of chronic pain syndrome; and
  3. whose medical, psychological, or other conditions do not prohibit participation in the program.<sup>3</sup>

Components of the program include individual and group psychotherapy, reduction of drug dependence, one-on-one time with the treating doctor, physical therapy, and occupational therapy.<sup>4</sup>

As the appellant, the Carrier has the burden of proof in this proceeding.<sup>5</sup>

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<sup>3</sup> MFG, Medicine Ground Rules, II.G.

<sup>4</sup> *Id.*

<sup>5</sup> 1 TEX. ADMIN. CODE (TAC) ' 155.41; 28 TAC ' 148(h).

## **C. Discussion**

### **1. Parties' Evidence and Positions**

The documentary record in this proceeding consists of approximately 200 pages of the Claimant's medical records presented to the IRO and 100 pages of medical literature assessing the potential usefulness of multi-disciplinary chronic pain management programs. In addition, Melissa Tonn, M.D., testified on behalf of the Carrier and Dr. Pispidikis testified on behalf of the Provider.

Carrier witness Dr. Tonn conducted a required medical examination of the Claimant on July 20, 2004. Based on this examination and her review of the Claimant's medical records, Dr. Tonn concluded the requested program is not medically necessary. She testified that the Claimant is in good physical condition and did very well on the functional capacity evaluation administered by her staff. She believed there were no obstacles to the Claimant returning to full, unrestricted employment. She understood, in fact, that the Claimant never left her employment in the optometry department of a \_\_\_\_.

Based on Dr. Tonn's testimony, the Carrier urges that the requested program is not medically necessary. It alternatively argues that, even if the program is needed, the Claimant's symptoms have not been shown to relate to the compensable injury in view of the documentation from 2001 and the gap in treatment from August 2001 until February 2003.

Dr. Pispidikis testified in support of the chronic pain management program he prescribed for the Claimant. Based on his February 21, 2003 evaluation, Dr. Pispidikis described the Claimant's symptoms as severe. He also defended his electromyogram and nerve conduction studies as providing objective proof of multiple radiculopathies indicating either compression of nerves at these areas or enough inflammation at the nerve roots to irritate the root. Dr. Pispidikis observed that the

Claimant continues to experience significant pain, has exhausted and been unresponsive to conservative care, and, based on Mr. Esterly's assessment, exhibits clinical signs of depression and significant psycho-social stressors including an inability to sleep more than about four hours each night.

#### 1. ALJ's Analysis

The ALJ finds that the Carrier has failed to prove that the prescribed chronic pain management program is not medically necessary. The Claimant remains at a consistently high level of pain that interferes with her activities of daily life. While she apparently continues to work, the Claimant's pain is persistent, objectively based,<sup>6</sup> and at times excruciating. It is significantly interfering with her sleep and, according to Mr. Esterly, has caused her to become angry over the loss of her quality of life.<sup>7</sup> Conservative treatment has been tried and failed, and the Claimant is not a surgical candidate. There has also been no showing that the Claimant suffers from any other conditions that would prohibit successful participation in the program.

The ALJ also does not find that the requested program should be denied based on the gap in documented medical treatment during 2002. The lack of treatment does not necessarily equate to a lack of symptoms during that period, and it is clear the Claimant was experiencing frustration with her company doctor@ who kept reassuring her she was fine in the face of her pain complaints. The ALJ also accepts Dr. Pispidikis's assessment that his findings of severe radiating pain in the Claimant were inconsistent with degenerative non-compensable changes suggested by the Carrier.

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<sup>6</sup> While Dr. Tonn believed Dr. Pispidikis' s electromyogram and nerve conduction velocity study was unreliable, she did not explain her rationale for this assessment, and Dr. Pispidikis testified in detail that the study is both reliable and objective.

<sup>7</sup> Prior to her injury, the Claimant enjoyed running and playing volleyball.

Based on the foregoing, the ALJ finds that the requested Chronic Pain Management Program should be preauthorized.

### **III. FINDINGS OF FACT**

1. On \_\_\_\_, a workers' compensation claimant sustained an injury to her back in a work-related injury.
2. At the time of the accident, American Home Assurance Company (the Carrier) was the worker's compensation carrier for the Claimant's employer.
3. The Claimant has been treated with oral pain medications and anti-inflammatories, physical therapy, home exercise, a TENS unit, cold pack, and a back brace, and was placed on light duty at work.
4. As a result of the injury, the Claimant suffered a mild posterior central disc protrusion at L5-SI that minimally contacts the thecal sac, as demonstrated by an MRI performed on March 22, 2001.
5. The Claimant continues to suffer severe levels of pain that interfere with her activities of daily living and allow her to sleep only about four hours each night.
6. The Claimant's radiating pain has been objectively documented by electromyogram and nerve conduction studies.
7. The Claimant's treating doctor, John Pispidikis, D.C., requests preauthorization for a 30-session chronic pain management program.
8. The Carrier timely denied the preauthorization request, and the Provider requested medical dispute resolution.
9. In a decision issued April 8, 2004, the Independent Review Organization reviewer (IRO) determined that the requested chronic pain management program is medically necessary and should be preauthorized.
10. The Carrier timely requested a hearing on the IRO decision, which the Commission had adopted.

11. The Commission sent notice of the hearing to all parties on May 5, 2004.
12. The notice of hearing 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.
13. The hearing was continued to August 18, 2004, at the agreement of the parties. The hearing was conducted on that date.
14. Based on Findings of Fact 3-5, extensive conservative care has failed to adequately relieve the Claimant's pain to this point.
15. Nothing was shown to medically or psychologically prohibit the Claimant from successfully participating in the requested chronic pain management program.
16. The Carrier failed to establish that the requested chronic pain management program is not medically necessary.

#### **IV. CONCLUSIONS OF LAW**

1. The State Office of Administrative Hearings has jurisdiction over this proceeding, including the authority to issue a decision and order, pursuant to TEX. LAB. CODE ANN. (The Code) ' 413.031(k) and TEX. GOV'T CODE ANN. ch. 2003.
2. The Carrier timely requested a hearing, as specified in 28 TEX. ADMIN. CODE (TAC) ' 148.3.
3. Proper and timely notice of the hearing was provided in accordance with TEX. GOV'T CODE ANN. ' ' 2001.051 and 2001.052, and 28 TAC ' 148.4.
4. The Carrier had the burden of proof in this matter pursuant to 28 TAC ' 148.21(h).
5. Section 413.014 of the code and 28 TAC ' 134.600 require that CPM programs be preauthorized, dependent on a showing of medical necessity.
6. The Carrier failed to establish that the chronic pain management sessions would not cure or relieve the effects naturally resulting from the Claimant's injury, promote his recovery, or enhance his ability to return to or retain employment.
7. The Carrier did not establish that the requested chronic pain management is not medically necessary to treat the Claimant's injury.

8. Based on the foregoing Findings of Fact and Conclusions of Law, preauthorization for the requested 30 sessions of chronic pain management should be approved, pursuant to TEX. LAB. CODE ANN. ' 413.014 and 28 TAC ' 134.600.

**ORDER**

It is ORDERED that 30 chronic pain management sessions with Advantage Healthcare Systems are preauthorized for the Claimant. All other pending motions or requests for relief, if any, not specifically granted herein are denied for want of merit.

**Signed September 17, 2004.**

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**KERRY D. SULLIVAN  
ADMINISTRATIVE LAW JUDGE  
STATE OFFICE OF ADMINISTRATIVE HEARINGS**