SOAH DOCKET NO. 453-04-5977M2
TWCC NO. M2-04-1123-01

BEHAVIORAL HEALTHCARE ASSOCIATES, **Petitioner**	:	**BEFORE THE STATE OFFICE**
V.	:	**OF**
TRAVELERS INDEMNITY COMPANY, **Respondent**	:	**ADMINISTRATIVE HEARINGS**

DECISION AND ORDER

After an Independent Review Organization (IRO) denied preauthorization for a chronic pain management program, Behavioral Healthcare Associates (Petitioner) appealed. This decision finds that Petitioner did not prove that the chronic pain management (CPM) program is medically necessary healthcare for Claimant.

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 July 7, 2004, at the State Office of Administrative Hearings (SOAH), 300 W. 15th Street, Austin, Texas, with Administrative Law Judge (ALJ) Charles Homer III presiding. The record was closed that date. Petitioner was represented by Pamela Jones, its designated representative, and Respondent Traveler's Indemnity Company (Carrier) was represented by counsel, Daniel J. Flanagan. The Commission did not participate in the hearing.

II. DISCUSSION

A. Background

On____, Claimant sustained a back injury compensable under the Texas Workers' Compensation Act. While lifting heavy boxes on his job as manager at a retail store, Claimant suffered sudden, stabbing pain in his lower back that radiated into his left leg.

After an initial diagnosis of intervertebral disc disorder with myelopathy, Claimant was treated with physical therapy, and received medication (Ibuprofen, an early and short course of morphine, Elavil, Zoloft, Valium, and hydrocodone), steroid injections, and osteopathic manipulations. An MRI in June, 2002, was essentially normal, with protrusion at L5-S1 without impingement on the spinal canal. However, an EMG performed on the same date indicated radiculopathy at S1.

In June of 2003, Claimant began a six-week work conditioning program, which he completed. In August of 2003, he began a six-week work hardening program, which he also completed. Claimant's initial treating physician was a Dr. Nix; Dr. Douglas Wood, D.O. began treating Claimant in June, 2003. Dr. Wood continued to treat Claimant from June, 2003, at least through the request for CPM that led to this proceeding.

Claimant continued to report pain, depressive symptoms, and fear of re-injury if he returned to work. According to Petitioner's records, Dr. Wood referred Claimant to Petitioner in January, 2004, for a clinical interview to assess Claimant's behavioral, social, and emotional symptoms to determine their relatedness to the work injury and to make appropriate recommendations.

B. IRO Decision

As a basis for its decision, the IRO reviewer[1] wrote:

> The patient has received extensive therapy, including psychotherapy. It is not reasonable and necessary to continue with behavioral therapy when he has had similar treatment modalities in the past without marked improvement in his functional status.[2]

[1] Res. Exh. 1, p. 11.

[2] *Id.,* p. 11.

C. Legal Standards

Petitioner has the burden of proof in this proceeding.[3]

Employees have a right to medically necessary health treatment under TEX. LABOR CODE ANN. ' 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.

For a carrier to be liable to reimburse a provider, certain services, including CPM programs, must be preauthorized by the carrier. 28 TAC 134.600(h).

4. Preliminary Issues

In addition to the medical necessity of the requested CPM, correspondence between Carrier and Provider[4] discloses two issues. Because the parties have discussed these matters between themselves and raised one of them in the hearing, the ALJ believes he should discuss them. However, neither issue affects the outcome, so both will be discussed here rather than with the evidence or analysis.

1. Compensability of Claimant's Depression

The correspondence, testimony, and summation by counsel all address the issue of whether any depression suffered by Claimant is part of his compensable injury. Provider urges that it is, Carrier believes not. In fact, compensability of Claimant's depression is the issue in a separate proceeding. Compensability of any component of CPM that addresses Claimant's behavioral and

[3] 1 TEX. ADMIN. CODE (TAC) ' 155.41.

[4] Pet. Exh. 1, pp. 31, 70-74.

psychological needs is *not* an issue in this proceeding: the issue before this ALJ is whether a CPM program, taken as a whole, is medically necessary for Claimant. The ALJ will refer to Claimant's behavioral and psychological problems in this decision, but it should be understood that this decision does not address compensability issues.

2. Applicability of a Cited SOAH Decision to This Case

The ALJ notes that correspondence from Petitioner (written by Dr. Jennifer Hankins, a psychologist who works for the Petitioner) refers to a prior SOAH decision in another proceeding that involved Petitioner.[5] Dr. Hankins wrote that the SOAH decision and order established guidelines for the current case.

That prior decision is not of use in determining this case. The prior case was, like this one, an appeal by Petitioner Behavioral Healthcare Associates (BHA) from an adverse determination by an IRO concerning the medical necessity for CPM.

However, the issue in the prior case was whether BHA had shown enough connection between the work-related knee injury and claimant's subsequent pain syndrome.[6] There was no dispute between Carrier and BHA that the claimant needed CPM.[7] Further, even the IRO agreed, and stated in its decision that claimant does need a comprehensive program of treatment.[8]

In this present case, Carrier argues that Claimant would *not* benefit from CPM, which is the same conclusion reached by the IRO, and Carrier has produced considerable documentary evidence to show that he would not. Therefore, the decision and order issued in SOAH Docket No. 453-04-0148.M2 is not part of the analysis in this case.

[5] Pet. Exh. 1, p. 31. The case referred to is SOAH Docket No. 453-04-0148.M2.

[6] SOAH decision in 453-04-0182.M2, p. 4.

[7] *Id.,* p. 4.

[8] *Id.,* p. 4.

E. Petitioner's Evidence

Petitioner presented testimony from a staff psychologist, Jonnalee Barta, Ph.D., who testified that Claimant suffers from a chronic pain syndrome. She described Claimant's healthcare for his lower back injury up to the date of the Claimant's interview by Petitioner, and summarized by saying that his care had involved only primary and secondary levels of care, and had not significantly reduced his chronic pain syndrome. She stated that Claimant's injury-related medical and behavioral care has been exhaustive, so that he is at this time an appropriate candidate for a CPM program. In fact, she testified that Claimant's treatment profile is "exactly what we want" in a candidate for such a program. Petitioner had met all worker's compensation guidelines[9] in assessing the Claimant and requesting CPM, Dr. Barta stated. She described CPM as a more intense, interdisciplinary pain management program than serial or parallel referrals for different treatment modalities.

Petitioner also presented documentary evidence, including reports of Dr. Jennifer Hankins's initial interview with Claimant and her evaluation of Claimant, and correspondence between Petitioner and Respondent concerning Respondent's initial denial of preauthorization for CPM and Petitioner's efforts to gain preauthorization thereafter.[10]

F. Respondent's Evidence

Respondent offered documentary evidence in the form of reports by various reviewers, summarized as follows:

X A. Brylowski, M.D. B There is no medical necessity for CPM because Claimant has no objective findings. Treating the patient further would only enhance claimant's dependence on medical providers for a non-medical problem.[11]

[9] This may have been a reference to the Texas Workers' Compensation Commission Medical Fee Guideline (MFG) 1996. If so, Petitioner should be aware that the Commission has adopted, with exceptions as provided in its rules, the Medicare reimbursement methodologies to replace the MFG. 28 TAC ' 134.202. This section applies to all services provided on or after August 1, 2003. Texas AFL-CIO, *et al* v. Texas Worker's Compensation Commission, *et al* No. GN 202203 (126th Dist. Court, Travis County, Tex. June 11, 2003.)

[10] Pet. Exh. 1, pp. 1-99.

[11] Res. Exh. 1, p. 4.

X Douglas O. Brady, Ph.D. CPM is not medically necessary because Claimant has depression and anxiety issues, and there is no evidence that Claimant has had intensive behavioral therapy. He should have such therapy before he is admitted to CPM. Claimant was approved for pain management with Dr. Wright, but only attended two sessions.[12]

X George M. Cole. D.O. Claimant suffered a lumbar sprain but has progressed, and would need no further treatment for his injury after he completed the work hardening program.[13]

X Samuel Bierner, M.D. Claimant's treatment has already exceeded what was necessary for his injury, and more treatment is not called for.[14]

X the IRO decision.[15]

III. Analysis

The ALJ concludes that Petitioner did not meet its burden of proving that a CPM program is medically necessary for Claimant. The evidence, including Claimant's response to past therapies, his own attitude towards modalities that would be part of any CPM program, and the providers' opinions offered by Respondent, does not show a reasonable likelihood that Claimant would benefit from such a program. While the ALJ does not interpret the words "reasonably required in TEX. LABOR CODE ANN. ' 408.021(a)[16] to require a certainty, or necessarily a probability that Claimant will benefit from the requested health care, he believes those words do mean that a proposed treatment or program must offer more than a mere possibility of benefit.

The evidence contains no records from the treating physician, Douglas Wood, D.O. Jennifer Hankins, Psy.D., assessed Claimant for Petitioner via an interview and subsequent evaluation, and wrote extensively about the results of her evaluation.[17] Indeed, her evaluation and conclusion,

[12] Res. Exh. 1, pp. 6-7.

[13] Res. Exh. 1, pp. 13-16.

[14] Res. Exh. 1, pp. 17-27.

[15] Res. Exh. 1, pp. 9-11.

[16] 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.

[17] Pet. Exh. 1, pp. 34-38, 41-44.

together with her prior clinical evaluation of Claimant, is the sole documentary evidence that directly supports Petitioner's position. Dr. Barta, although she earnestly and credibly spoke about the benefits *in general* of CPM programs, relied almost exclusively on the Hankins reports to support her belief that CPM is medically necessary for Claimant.

Dr. Hankins's findings do indeed state that Claimant exhibits most behaviors that comprise chronic pain syndrome: long-term pain, failure of treatments, and a decline from his pre-injury status. However, weighed against the considerable negative opinion expressed by other health care professionals, Dr. Hankins's reports do not show that Claimant is likely to benefit from CPM.

Nothing in the record suggests that a CPM program offers Claimant a specific treatment modality that has not already been tried with him. In addition to an interdisciplinary approach, CPM affords patients one-on-one time with the treating doctor. However, Claimant had the opportunity for one-on-one help with pain management (limited to psychotherapy), and abandoned therapy after two sessions. Claimant has completed work conditioning, work hardening, and two sessions of pain management,[18] all of which share elements with CPM. During his work hardening program, Claimant's attitude towards a positive rehabilitation outcome was only fair on two of three reported assessments, and good on the third.[19]

The ALJ gives due weight to Dr. Barta's testimony about the efficacy in general of approaching patients in a coordinated way across the various disciplines involved in treatment. Her testimony establishes that CPM is a more tightly focused and better-coordinated program than serial referrals to different specialists, but her testimony together with the evidence of failures of primary and secondary care in Claimant's case do not amount to affirmative evidence that Claimant will likely benefit from the requested care.

[18] Pet. Exh. 1, p. 41. Although the writer, Dr. Hankins, was uncertain whether Claimant's pain management meant a CPM program or medical management of pain, from the record as a whole, the ALJ infers that Claimant was talking about a form of pain management other than CPM. Whatever the nature of the program, Claimant stopped attending it after two days, although he was authorized more time than that.

[19] Pet. Exh. 1, pp. 47-49.

The only disinterested reviewer in the record before the ALJ, the IRO reviewer, concluded that CPM was not medically necessary for Claimant. The evidence presented does not demonstrate that CPM is likely to accomplish any of the mandated treatment goals.[20]

Petitioner failed to meet its burden of proof. Petitioner's appeal should be denied.

IV. FINDINGS OF FACT

1. In____, Claimant sustained a back injury compensable under the Texas Workers' Compensation Act.

2. After Respondent Traveler's Indemnity Company denied Petitioner's (Behavioral Healthcare Associates) request for a chronic pain management (CPM) program for Claimant as being medically unnecessary, Petitioner requested the Texas Workers' Compensation Commission to review the denial. That review produced the Independent Review Organization's (IRO) decision, dated May 3, 2004, which denied preauthorization for the CPM program.

3. On May 7, 2004, Petitioner appealed the May 3, 2004, IRO decision.

4. Claimant has completed a work conditioning program and a work hardening program.

5. Work conditioning and work hardening programs are interdisciplinary.

6. Claimant has had psychological counseling for his behavioral problems and depression.

7. Claimant has not benefitted significantly from work hardening, work conditioning, or psychological counseling.

8. In addition to an interdisciplinary approach, CPM affords patients one-on-one time with the treating doctor.

9. Claimant had the opportunity for one-on-one help with pain management (limited to psychotherapy), and abandoned therapy after two sessions.

10. During his work hardening program, Claimant's attitude towards a positive rehabilitation outcome was fair on two of three reported assessments, and good on the third.

[20] Medically necessary health care is treatment 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. TEX. LABOR CODE ANN. '' 408.021

11. A CPM program does not offer Claimant a specific treatment modality that has not already been tried with him.

12. No evidence shows that Claimant's treating physician recommends CPM for him.

13. Petitioner failed to show that Claimant will likely benefit by participation in a multidisciplinary program (CPM program).

V. CONCLUSIONS OF LAW

1. Petitioner timely appealed the IRO decision.

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 Texas Worker's Compensation Act and TEX. GOV'T CODE ANN. ch. 2003.

3. Adequate and timely notice of the hearing was provided in accordance with TEX. GOV'T CODE ANN. '' 2001.051 and 2001.052.

4. Petitioner Behavioral Healthcare Associates had the burden of proof in this proceeding. 1 TEX. ADMIN. CODE (TAC) ' 155.41.

5. For a carrier to be liable to reimburse a provider for a chronic pain management program, the service must be preauthorized. TEX. LABOR CODE ANN. ' 413.014 and 28 TAC ' 134.600(h).

6. Petitioner did not show that a chronic pain management program is medically necessary healthcare for Claimant.

7. Based on the foregoing Findings of Fact and Conclusions of Law, preauthorization for the requested 30 sessions of chronic pain management should not be granted.

ORDER

It is **ORDERED** that the request of Behavioral Healthcare Associates for preauthorization of a chronic pain management program for Claimant be, and the same is hereby, denied.

SIGNED August 3, 2004.

CHARLES HOMER III
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS