

**SOAH DOCKET NO. 453-04-6341.M2
TWCC NO. M2-04-1196-01**

**AMERICAN HOME ASSURANCE
COMPANY,
Petitioner**

V.

**JASMIN ERLICHMAN, M.D.
Respondent**

BEFORE THE STATE OFFICE

OF

ADMINISTRATIVE HEARINGS

DECISION AND ORDER

American Home Assurance Company (Carrier) is challenging the decision of the Texas Workers' Compensation Commission's (Commission's) designee, an independent review organization (IRO), to grant preauthorization for ____ (Claimant) to receive thirty sessions of a Chronic pain management program at the request of Jasmin Erlichman, M.D. (Provider). The Administrative Law Judge (ALJ) agrees with the IRO and concludes that preauthorization for the program should be granted.

I. PROCEDURAL HISTORY, NOTICE, AND JURISDICTION

ALJ Penny A. Wilkov conducted a hearing on July 21, 2004 at the State Office of Administrative Hearings (SOAH), William P. Clements Building, 300 West 15th Street, Austin, Texas. Attorney Jim Korioth appeared on behalf of Carrier. Mr. Dennis Moehr appeared on behalf of Provider. The record closed the day of the hearing. The parties did not contest notice or jurisdiction.

II. DISCUSSION

A. Background

Claimant, a thirty-five-year-old female, sustained a work-related injury to her lower back on ___, while employed at ___, when she unloaded a pallet and developed pain in her lower back and into her left side.

Claimant has been generally diagnosed with a L5/S1 moderately-advanced loss of disk signal with an underlying 2-3 mm., broad-based disk bulge and moderate facet hypertrophic changes at the L2/3, L3/4, and L4/5 levels of Claimant's spine.¹ Claimant describes symptoms of constant pain, with a subjective level of pain ranging from seven or eight on a scale of one to ten, with ten being the highest level of pain. The medical records indicate that she has been primarily under the care of Michael Peck, D.C.

Provider requested preauthorization of participation in a Chronic pain management program five times a week for six weeks for a total of thirty sessions. Carrier disputes that these services are medically necessary.

B. Medical Necessity of Chronic Pain Management Program

1. Carrier

Carrier presented Claimant's medical records and called Melissa Tonn, M.D., as a witness. Dr. Tonn is board-certified in Occupational Medicine and Pain Management and has been in practice for fifteen years. She graduated from the University of Texas Medical Branch in San Antonio and presently serves as an adjunct faculty member at the University of Texas Health Science Center in Houston. She also serves as an advisor to the Texas Workers' Compensation Commission.

Dr. Tonn has not examined Claimant but has reviewed all of her medical records and, in her opinion, Dr. Tonn does not believe that the request for chronic pain management therapy is appropriate or medically necessary. Dr. Tonn indicates, as the basis for her opinion, that various medical literature and guidelines provide that a chronic pain management program generally is considered the terminal end point of care.² In other words, once all other avenues of pain relief are exhausted through diagnostic methods to address pathologies, then it is appropriate for a patient to be

¹ Respondent's Exhibit 1, page 5 (Interdisciplinary Pain Management of Huntsville, February 13, 2004).

² Dr Tonn referred to a study published in the Journal of Occupational and Environmental Medicine, May 2004.

considered for a program on how to deal with chronic pain. Here, she notes the opposite is true. Since Provider's request for approval of a chronic pain management program on March 9, 2004, another physician, Stephen Michael Sims, M.D., performed left-sided lumbar facet joint injections on March 15, 2004, and suggested the necessity for a lumbar discogram, a treatment typically done on patients considered for a spinal fusion.³ Then, on March 25, 2004, as Claimant failed to positively respond to the injections, Dr. Sims stated that Claimant's only other option is a L5-S1 fusion or a discectomy.⁴ This, in Dr. Tonn's opinion, represents a circle of treatment where each treating doctor is recommending a continuation of their particular treatment, albeit injections, chiropractic treatment, surgery, or a chronic pain treatment program. Dr. Tonn also pointed out that Claimant has had extensive chiropractic treatments and supervised modalities but has never participated in work hardening or work conditioning, which Dr. Tonn believes would have returned her to work.

Further, Dr. Tonn points out that Claimant has mental health issues that include depression-related difficulties and other signs of mental illness that have not been sufficiently diagnostically identified.⁵

2. Provider

Jasmin Erlichman, M.D., a board-certified pain management specialist and psychiatrist, asserts that the chronic pain management program is particularly appropriate for Claimant for numerous reasons: Claimant's lack of improvement since her ___ injury, Claimant's express desire to return to work and a functional lifestyle, Carrier's denial of a discogram precluding any surgery, Claimant's ongoing acute pain that places limitations on daily living activities, and lastly, Claimant's exhaustion of other conservative therapies. Claimant also suffers from depression, sleeplessness, emotional outbursts, and difficulties with pain perception that are, in Provider's

³Petitioner's Exhibit 1, page 57 (Huntsville Surgery Center).

⁴Petitioner's Exhibit , page 59 (Pain Management Clinic).

⁵Petitioner's Exhibit 1, page 8 (Unimed Direct, LLC, dated March 16, 2004).

medical opinion, symptomatic

of the pain, frustration over limitations, and inability to work.⁶ Dr. Erlichman states that the goals of the chronic pain management program would benefit Claimant by decreasing pain from average of seven out of ten to an average of four out of ten, increasing strength and endurance, improving relationship skills, stabilizing mood, and improving sleep patterns.⁷ Specifically, the treatment offered by the program would include six components: individual therapy, biofeedback, group therapy, medication management, physical conditioning, and massage therapy.

Provider concurs that the disputed chronic pain management program is the terminal end point of care in this case, as Carrier has precluded the opportunity for any future surgery, if any need did exist. First, Provider disagrees that Claimant is seeking a surgical resolution of her condition, relying on the medical opinion of orthopedic spine surgeon, Christian I. Fras, M.D., who recommended that Claimant continue to pursue an aggressive course of non-operative treatment, with physical therapy and anti-inflammatory drugs rather than surgery.⁸ Second, as to Dr. Sim's recommendation of surgical options, Provider points out that Carrier has denied coverage of any type of lumbar discography, an important diagnostic device prior to surgery, and thus, effectively foreclosed any surgical option.⁹

Lastly, Provider argues that work hardening and work conditioning, which Dr. Tonn recommends to return Claimant to work, is a component of the disputed chronic pain management program.

3. Applicable Law

Under the workers' compensation system, an employee who sustains a compensable injury is

⁶ Respondent's Exhibit 1, page 5.

⁷ Respondent's Exhibit 1, page 6.

⁸ Respondent's Exhibit 1, page 12 (November 24, 2004).

⁹ Respondent's Exhibit 1a, page 20 (Unimed Direct LLC, April 5, 2004).

entitled to all health care reasonably required by the nature of the injury. The employee is

specifically entitled to health care that: (1) cures or relieves the effects naturally resulting from the injury; (2) promotes recovery; or (3) enhances the ability to return to or retain employment. TEX. LAB. CODE ANN. § 408.021. "Health care" includes "all reasonable and necessary medical . . . services." TEX. LAB. CODE ANN. § 401.011(19). Certain healthcare, however, must be preauthorized before it can be provided and such preauthorization will be granted only if there is a prospective showing of medical necessity. TEX. LAB. CODE ANN. § 413.014. Chronic pain management is included in the type of treatment which requires preauthorization. 28 TEX. ADMIN. CODE § 134.600(h)(10)(b).

4. Analysis

After considering the documentary evidence and the testimony, the ALJ concludes that Carrier has not shown that the chronic pain management program is not medically necessary for Claimant's work-related injury. Both Dr. Tonn and Provider concur that a chronic pain management program is ordinarily the end point of therapy. The testimony has established that the chronic pain management program is essentially the end point of care in this case given that Carrier disputes the medical necessity for a pre-surgical diagnostic test and that other therapies have been tried unsuccessfully.

Furthermore, the testimony of Dr. Tonn was that Claimant could benefit from a work hardening and work conditioning program, which is a component of the chronic pain management program offered by Provider. It also appears that the disputed services will promote recovery and the ability to return to work since the program has various components designed to help Claimant develop pain coping skills, gain physical strength to resume daily living activities, and deal with depression, anxiety, and sleeplessness. Presumably a program specifically designed to return Claimant, a thirty-five- year-old, to a more productive life both physically and psychologically would promote recovery and enable her to return to work.

5. Conclusion

The chronic pain management program is medically necessary for the treatment of Claimant's injury and should be preauthorized.

III. FINDINGS OF FACT

1. Claimant, a thirty-five-year-old female, sustained a work-related injury to her lower back on ___, while employed at ___, when she unloaded a pallet and developed pain in her lower back and into her left side.
2. Claimant has been generally diagnosed with a L5/S1 moderately advanced loss of disk signal with an underlying 2-3 mm., broad-based disk bulge and moderate facet hypertrophic changes at the L2/3, L3/4, and L4/5 levels of Claimant's spine.
3. Claimant describes symptoms of constant pain, with a subjective level of pain ranging from seven or eight on a scale of one to ten, with ten being the highest level of pain.
4. Claimant suffers from depression, sleeplessness, emotional outbursts, and difficulties with pain perception, which are symptomatic of her pain, limitations on daily activities, and inability to work.
5. At the time of the injury, Claimant's employer had its workers' compensation insurance through American Home Assurance Company (Carrier).
6. Jasmin Erlichman, M.D., (Provider) requested preauthorization to treat Claimant with thirty sessions of chronic pain management.
7. Carrier denied Provider's request for preauthorization.
8. Provider requested medical dispute resolution before the Texas Workers' Compensation Commission (Commission).
9. The Commission's designee, an independent review organization (IRO), reversed the Carrier's decision and granted Provider's request for preauthorization.
10. Carrier requested a contested case hearing before the State Office of Administrative Hearings and requested denial of preauthorization for the chronic pain management program.

11. The Commission sent notice of the hearing to the parties on June 7, 2004. The hearing notice informed the parties of the time, place, and nature of the hearing; the legal authority and jurisdiction under which the hearing was to be held; the statutes and rules involved; and the matters asserted.
12. The hearing on the merits convened on July 21, 2004, before Penny A. Wilkov, Administrative Law Judge. Attorney Jim Korioth appeared on behalf of Carrier. Mr. Dennis Moehr appeared on behalf of Provider. The record closed on July 21, 2004.
13. The chronic pain management program at issue will promote recovery and the ability to return to work since the program has various components designed to help Claimant develop pain coping skills, gain physical strength to resume daily living activities, and deal with the depression, anxiety, and sleeplessness.
14. The Claimant could benefit from a work hardening and work conditioning program which is a component of the chronic pain management program offered by Provider.

IV. CONCLUSIONS OF LAW

1. The Texas Workers' Compensation Commission has jurisdiction to decide the issue presented, pursuant to the Texas Workers' Compensation Act, TEX. LAB. 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 TEX. LAB. CODE ANN. ' 402.073 and 413.031(k) and TEX. GOV'T CODE ANN. ch. 2003.
3. Carrier timely requested a hearing on the IRO decision, as specified in 28 TEX. ADMIN. CODE (TAC) ' 148.3.
4. Proper and timely notice of the hearing was effected upon the parties according to TEX. GOV'T CODE ANN. ch. 2001 and 28 TAC ' 148.4(b).
5. Carrier had the burden of proving the case by a preponderance of the evidence, pursuant to 28 TAC ' 148.21(h) and (i).
6. An employee who sustains a compensable injury is entitled to all health care reasonably required by the nature of the compensable 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. As provided by TEX. LAB. CODE ANN. ' 413.014 and 28 TAC 134.600(h)(10)(B),

- preauthorization is required for a chronic pain management treatment program.
8. Based on Findings of Fact Nos. 13 and 14, the requested chronic pain management program is medically necessary.
 9. Based on the foregoing findings of fact and conclusions of law, Claimant is entitled to preauthorization for the medically necessary treatment.

ORDER

It is hereby ordered that Provider's request for preauthorization of thirty sessions of the chronic pain management program is granted.

SIGNED August 9, 2004.

**PENNY WILKOV
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS**