DOCKET NO. 453-04-6352.M2

TEXAS MUTUAL INSURANCE COMPANY,	§	**BEFORE THE STATE OFFICE**
Petitioner	§	
	§	
VS.	§	**OF**
	§	
FAMILY PHYSICAL THERAPY & REHAB,	§	
	§	
Respondent	§	**ADMINISTRATIVE HEARINGS**

DECISION AND ORDER

Texas Mutual Insurance Company (TMI or Carrier) has appealed the decision by an Independent Review Organization (IRO) to grant preauthorization for Claimant ___ to receive 40 sessions of chronic pain management services. TMI disputes the IRO's conclusion that these services are medically necessary. This decision agrees with TMI and finds that the chronic pain management services are not medically reasonable and necessary for ___ at this time. Therefore, TMI's appeal is granted, the decision of the IRO is set aside, and preauthorization is denied.

I. JURISDICTION & HEARING

There were no challenges to notice or jurisdiction, and those matters are set forth in the findings of fact and conclusions of law without further discussion here. Administrative Law Judge (ALJ) Thomas H. Walston conducted a hearing in this case on July 7, 2004, at the State Office of Administrative Hearings (SOAH), William P. Clements State Office Building, 300 West 15th Street, Austin, Texas. Attorney Katie Kidd appeared on behalf of TMI. Ms. Jeanie K. Schlueter appeared on behalf of Family Physical Therapy and Rehab (FPTR). The hearing concluded and the record closed the same day.

II. DISCUSSION

1. Background

Claimant ___ is a ___year-old male who previously worked as a foreman for ___, Texas. On ___, ___ injured himself when his work truck rear-ended another vehicle. After the accident, ___ complained of back, chest, neck, and knee pain.

___. has undergone an extensive course of medical care for his injury, including X-rays, EEG, EMG, nerve conduction study, lumbar MRI, cervical MRI, two lumbar discograms, nerve blocks, facet injections, chiropractic care, physical therapy, psychological evaluation and counseling, two eight-week work hardening programs, multiple functional capacity evaluations (FCE), surgery (laminectomy, foraminotomies, and fusion at L4-5 and L5-S1), medication, physician office visits, and many other services.

This proceeding involves FPTR's preauthorization request to provide ___ with a 40-day, 8-hours-per day, chronic pain management program. TMI denied the request as medically unnecessary and FPTR appealed the decision to an IRO. On April 27, 2004, the IRO (Texas Medical Foundation) determined that the pain management program was medically necessary and ordered preauthorization. The IRO stated its rationale as follows:

> This ___ year old male who sustained a work related injury on ___ had a post[ero]lateral lumbar fusion of the L4-5 and L5-S1. The patient went through the work hardening program with improvement; however, he still requires additional treatment. Therefore, the chronic pain management program for 40 days are [sic] necessary.

TMI timely appealed the IRO decision.

B. Parties' Evidence and Arguments

1. TMI

TMI contends that a chronic pain management program is not medically necessary for ___ at this time. It emphasizes that ___ has undergone extensive treatment and therapy, including two work hardening programs, and that he has become psychologically dependent on the healthcare system. TMI also states that ___ does not have a pain medication dependency problem, which is normally a condition treated by a pain management program; that ___ has not reported severe pain; and that his treating doctor is still considering further surgery to remove fusion hardware, which would make a pain management program premature at this time. TMI introduced ___'s available medical records into evidence and it called Drs. Metzger, Tsormas, and Joyner as witnesses.

Daniel N. Metzger, D.O.: Dr. Metzger is ___'s treating physician at FPTR. TMI called

Dr. Metzger as an adverse witness. He began treating ___ in January 2003. Previously, a

Dr. Hannah treated ___, but he switched to Dr. Metzger upon the recommendation of a rehabilitation nurse.

Dr. Metzger testified that FPTR will provide the pain management program to ___ if it is preauthorized. FPTR also provided the two work hardening programs ___ has completed, one in early 2003, before ___'s back surgery, and the other between December 2003 and February 13, 2004, after the surgery. Although he was not sure of the specifics of these two programs, Dr. Metzger stated that they included both passive and active modalities of physical therapy, as well as physical, mental, and occupational components. ___ was also instructed on a home exercise program.

Dr. Metzger explained that a chronic pain management program runs eight hours per day. The program stresses the psychological aspect of pain and includes physical therapy, meetings with a dietician, group counseling sessions, biofeedback, medication management, and assistance from an anesthesiologist/pain management doctor. He testified that medication abuse has not been a problem with ___ At the present time, ___'s only prescription is 10 mg per day of Bextra, a relatively mild drug for pain and inflammation. Dr. Metzger agreed that ___ appears to have a psychological dependence on the healthcare system. In other words, he has a psychological need to continue seeing doctors and receiving treatment. He also agreed that ___ could receive psychological counseling without going through a pain management program.

Dr. Metzger testified that ___ continues to complain of back pain and has also reported erectile dysfunction (ED). He stated that ___ is too young for ED, and it may be caused by psychological issues. He is waiting for a report from a urologist on whether the ED is caused by physical problems or is related to ___'s compensable injury. Dr. Metzger also testified that on June 18, 2004, Dr. Robert Henderson (___'s surgeon) recommended a hardware block to determine whether surgical removal of ___'s fusion hardware would relieve his pain.

N.F. Tsourmas, M.D.: Dr. Tsourmas is a board-certified orthopedic surgeon from Austin who has been in private practice since 1983. He is also TMI's medical director. He reviewed ___'s medical records but has not seen or treated ___ Dr. Tsourmas noted that at FPTR, ___ went through a work hardening program from January - April 2003, had surgery in August 2003, received physical

therapy from October - December 2003, and underwent a second work hardening program from December 2003 - February 13, 2004. During these programs, ___ received psychological counseling, along with vocational and physical training on how to properly use his muscles and body.

Dr. Tsourmas explained that a chronic pain management program is "end point treatment" given when a patient has residual pain problems after all other treatment is completed. He also stated that much of the physical training and psychological counseling in a chronic pain management program would duplicate the training ___ has already received in his two work hardening programs. He further pointed out that chronic pain management programs are designed to help patients who are addicted to or take excessive pain medications, but this is not a problem with ___ Thus, in Dr. Tsourmas' opinion, ___ does not need the physical training because he has already received this in his two work hardening programs, and ___ does not need medication management because he does not have a drug-abuse or addiction problem. Instead, ___ only needs relatively low-level psychological counseling and a home exercise program, for which he has already received training.

Dr. Tsourmas reiterated that a chronic pain management program is an "end point treatment" that should not occur until everything is stable with a patient except for persistent pain. In other words, if further diagnostics or treatment are necessary, a chronic pain management program is not appropriate. Dr. Tsourmas pointed out that Dr. Henderson is considering a hardware block and possible surgical removal of hardware for ___.

Thus, in his opinion, a chronic pain management program is not appropriate for ___ until those procedures are completed or ruled out. Robert W. Joyner, M.D.: Dr. Joyner is a board-certified anesthesiologist / pain management physician from San Antonio who testified for TMI. He reviewed ___'s records but has not examined or treated ___ Dr. Joyner summarized ___'s treatment from the records, including his physical therapy, spinal fusion, and two work hardening programs. He stressed that much of a chronic pain management program repeats and is redundant of the training ___ has already received in his two work hardening programs, and ___ does not have a pain medication dependency that needs treatment. Further, Dr. Joyner believes that ___'s doctors have tremendously over-utilized healthcare under workers' compensation, and they have caused ___ to become psychologically dependent on the healthcare system. In his opinion, ___ needs to be weaned from the healthcare system rather than placed into another eight-week full-time pain management

program, which would only create more dependency and a sense of disability in the

patient. Further, Dr. Joyner repeated Dr. Tsourmas' testimony that a chronic pain management program is not appropriate for ___ at this time, due to the unresolved medical issue about removal of the fusion hardware. In short, Dr. Joyner disagreed with the IRO and stated that an eight-week chronic pain management program is not medically reasonable or necessary for ___

2. FPTR

FPTR contends that a chronic pain management program is medically reasonable and necessary for ___ It points out that ___ has not improved with his current home exercise program and it stresses that the IRO decision has presumptive weight. FPTR offered into evidence the documents it submitted to the IRO, and it called Gordon Loomis (Physical Therapist) and Richard Truhill (Psychologist/Counselor) as witnesses. It also relied on the testimony of its physician, Dr. Metzger, who was called by TMI as an adverse witness (summarized above).

Gordon Loomis: Mr. Gordon Loomis is a licensed Physical Therapist. He stated that ___ had a 360 degree fusion and that up to one year of rehabilitation is normally expected after such a procedure. This rehabilitation typically includes physical therapy, work hardening, and pain management. Mr. Loomis testified that after surgery, ___ was limited in all aspects of strength and motion. In his opinion, ___ needs slow but consistent rehabilitation that will make the most of his abilities. As a physical therapist, Mr. Loomis' ultimate objective was to return ___ to work.

On cross-examination, Mr. Loomis acknowledged that ___ had been released to return to work with restrictions. But he stated that his prior job was too severe and that ___ will never return to his prior employment. In his opinion, it would be difficult for ___ to perform any employment at this time. Mr. Loomis also agreed that pain is subjective and is partly a psychological issue when it exists over such a long period of time. He stated that ___ could receive psychological counseling outside a pain management program, but he thought such a program is necessary to provide the best outcome.

Mr. Loomis testified that the physical therapy ___ received prior to his surgery should not be considered in evaluating ___'s current needs because his condition changed after surgery. He did

acknowledge, however, that ___ received training in dealing with pain in the prior physical therapy and work hardening programs, and that this training is still applicable. Mr. Loomis also stated that a home exercise program is important for ___ and aids in rehabilitation, but he added that such programs are very limited because exercise equipment is not available.

Richard Truhill: Mr. Truhill holds a Masters degree in psychology and has worked in counseling patients for pain management since 1999. Mr. Truhill performed a mental health examination on ___ and concluded that ___ would benefit from a pain management program. He stated that ___'s attitude improved during his work hardening program, but ___ has become frustrated and has regressed due to aggravation and frustration over the delay in obtaining approval for the pain management program. ___ wants to continue treatment with a pain management program and Mr. Truhill believes that ___'s condition will improve with participation in the program.

Mr. Truhill also testified that on March 4, 2004, he received a telephone call from Dr. Tsourmas in connection with a peer review. He stated that Dr. Tsourmas was very abrupt and did not discuss the case, and Mr. Truhill thought Dr. Tsourmas did not give the case fair consideration.

On cross-examination, Mr. Truhill testified that he participated in ___'s prior work hardening programs and he performed the psychological evaluation for the pain management program. He would also provide counseling and participate in ___'s pain management program, if approved. Mr. Truhill also stated that ___ has several stressors in his life. These include headaches from a prior head injury, an inability to drive, marital problems, and others. He agreed that psychological counseling could be provided to ___ outside a pain management program, but he did not believe it would be as effective. Mr. Truhill explained that ___'s physical and psychological problems are related and feed off each other, requiring a multidisciplinary approach.

Mr. Truhill acknowledged that ___ has become dependent on the healthcare system and that this problem needs to be addressed. He also agreed with the other witnesses that ___ does not have a pain medication dependency problem, the treatment of which is usually a component of a pain management program.

3. ALJ's Analysis

The ALJ finds that a chronic pain management program is not medically reasonable or necessary for ___ at this time. Therefore, the ALJ grants TMI's appeal, sets aside the IRO decision, and denies the requested preauthorization.

First, the evidence established that a chronic pain management program should not be utilized until a patient has stabilized and all treatment options have been completed. Here, however, Dr. Henderson has recommended a hardware block to determine whether surgical removal of ___'s fusion hardware would relieve his pain. Until that surgical issue is resolved, a chronic pain management program would be premature. Second, ___ has already participated in two work hardening programs, one before and one after his surgery, and much of the therapy and training in a chronic pain management program would duplicate the therapy and training ___ has already received. And third, one of the primary purposes of a pain management program is to reduce a patient's dependency or addiction to pain medications, but ___ has no such problem that needs treatment. Under these circumstances, the ALJ finds that an eight-week, eight-hours-per-day pain management program simply is not medically reasonable or necessary for ___ In addition, all of the witnesses agreed that ___ has received extensive medical care and has become psychologically dependent on the healthcare system. Authorizing a comprehensive and lengthy but unnecessary pain management program will only exacerbate and prolong that problem.

FPTR argues that the IRO decision has presumptive weight. However, the IRO gave only a cursory rationale for its decision. It simply stated that ___ received some improvement from his work hardening but still needed additional treatment. But the IRO gave no explanation of how an extensive chronic pain management program is reasonable or necessary for ___ Thus, the evidence presented at hearing prevailed over the presumptive weight of the IRO decision.

Therefore, the ALJ grants TMI's appeal, sets aside the IRO decision, and denies preauthorization for a chronic pain management program for ___

III. FINDINGS OF FACT

1. Claimant ___ suffered a compensable injury under the Texas Workers' Compensation Act on___, when his work truck rear-ended another vehicle.

2. At the time of ___'s compensable injury, Texas Mutual Insurance Company provided workers' compensation insurance coverage for ___'s employer

3. ___ received extensive medical care for his compensable injury between the date of his injury and February 2004, including X-rays, EEG, EMG, nerve conduction study, lumbar MRI, cervical MRI, two lumbar discograms, nerve blocks, facet injections, chiropractic care, physical therapy, psychological evaluation and counseling, two eight-week work hardening programs, multiple functional capacity evaluations (FCE), surgery (laminectomy, foraminotomies, and fusion at L4-5 and L5-S1), medication, and physician office visits.

4. In January 2003, Dr. Daniel Metzger became ___'s treating physician at Family Physical Therapy and Rehab (FPTR).

5. Dr. Robert Henderson performed a spinal fusion on ___'s back in August 2003.

6. ___ participated in a work hardening program at FPTR between December 2003 and February 13, 2004.

7. On March 5, 2004, Dr. Metzger, requested preauthorization for 40 sessions of chronic pain management services for ___

8. Texas Mutual Insurance Company, the Carrier, denied Dr. Metzger's request.

9. FPTR requested medical dispute resolution.

10. The Independent Review Organization (IRO) reversed the Carrier's decision and granted FPTR's request for preauthorization.

11. Carrier requested a contested case hearing before the State Office of Administrative Hearings and requested denial of preauthorization for the chronic pain management program.

12. A chronic pain management program is designed to deal with a patient's psychological problems, to provide physical and exercise training, and to treat a patient's dependence on or addiction to pain medication.

13. ___ is not dependent on or addicted to pain medication.

14. In his two prior work hardening programs, ___ received the same physical and exercise training that he would receive in a chronic pain management program.

15. A patient should not undergo a chronic pain management program until his medical conditions related to his pain have stabilized and other treatments for the pain have been exhausted.

16. Dr. Henderson plans to perform a hardware block on ___ to determine if removal of the fusion hardware in ___'s low back will relieve his pain.

17. ___'s medical conditions related to his pain have not stabilized and additional treatment for his pain is planned by Dr. Henderson.

18. ___ has become psychologically dependent on the healthcare system.

19. A chronic pain management program for ___ is not medically reasonable or necessary at this time.

20. Administrative Law Judge Thomas H. Walston conducted a hearing in this case on July 7, 2004.

21. FPTR and the Carrier attended the hearing.

22. All parties received not less than 10 days notice of the time, place, and nature of the hearing; 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.

23. All parties were allowed to respond and present evidence and argument on each issue involved in the case.

IV. CONCLUSIONS OF LAW

1. The Texas Workers' Compensation Commission has jurisdiction over this matter. TEX. LABOR CODE ANN. § 413.031.

2. The State Office of Administrative Hearings has jurisdiction over matters related to the hearing, including the authority to issue a decision and order. TEX. LABOR CODE ANN. § 413.031(k).

3. All parties received proper and timely notice of the hearing. TEX. GOV'T CODE ANN. §§ 2001.051 and 2001.052.

4. Carrier has the burden of proof by a preponderance of the evidence.

5. Carrier established by a preponderance of the evidence that a chronic pain management program is not medically reasonable or necessary for the proper treatment of ___ TEX. LABOR CODE ANN. §§ 401.011(19) and 408.021.

6. Carrier's appeal is granted and the decision of the Independent Review Organization is reversed. Carrier is not required to pay for chronic pain management services for ___

ORDER

IT IS, THEREFORE, ORDERED that Texas Mutual Insurance Company's appeal is GRANTED; that the decision of the Independent Review Organization is REVERSED and set aside; and that preauthorization is hereby DENIED for chronic pain management services for Claimant ___

SIGNED July 30, 2004.

_____

THOMAS H. WALSTON
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS