

**SOAH DOCKET NO. 453-05-2033.M2  
TWCC NO. M2-05-0080-01**

<b>HARTFORD INSURANCE COMPANY ,</b>	§	<b>BEFORE THE STATE OFFICE</b>
<b>Petitioner</b>	§	
	§	
<b>V.</b>	§	<b>OF</b>
	§	
<b>BEHAVIORAL HEALTHCARE ASSOCIATES,</b>	§	
<b>Respondent</b>	§	<b>ADMINISTRATIVE HEARINGS</b>

**DECISION AND ORDER**

After an Independent Review Organization (IRO) granted preauthorization for a chronic pain management (CPM) program, Hartford Insurance Company (Hartford) appealed. This decision finds that Hartford proved that the CPM program is not medically necessary healthcare for the Claimant \_\_\_\_.

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

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

The hearing in this matter convened January 31, 2005, at the State Office of Administrative Hearings, 300 W. 15<sup>th</sup> Street, Austin, Texas, with Administrative Law Judge (ALJ) Katherine L. Smith presiding. Hartford had the burden of proof in the proceeding.<sup>1</sup> Hartford was represented by David Swanson, an attorney. Respondent Behavioral Healthcare Associates (BHA) was represented by Terri Lynn Creamer, Ph.D., its designated representative. The record closed on February 2, 2005.

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<sup>1</sup> 1 TEX. ADMIN. CODE (TAC) § 155.41.

## **II. DISCUSSION**

### **A. Background**

Claimant sustained a compensable injury to his lower back on \_\_\_\_, as a result of picking up 100-pound metal bars. He was diagnosed with lumbar strain, lumbar radicular syndrome, myalgia, and paresthesia. Claimant received heat and ice treatments, electro-stimulation, physical therapy, chiropractic adjustments, steroid injections, facet joint and sacroiliac joint injections, and medications.

### **B. Hartford's motion for summary disposition**

On March 29, 2004, BHA requested preauthorization from Hartford for 30 sessions of CPM, five days a week for six weeks, for Claimant. Hartford denied the request. BHA requested reconsideration from Hartford on April 27, 2004. Hartford denied preauthorization again. Neither BHA nor Claimant sought medical dispute resolution from the Texas Workers' Compensation Commission (Commission) of the denial. On August 4, 2004, BHA requested preauthorization of 30 sessions of CPM again, which Hartford denied. BHA sought reconsideration on August 23, 2004. After Hartford denied the request for reconsideration, BHA sought medical dispute resolution from the Commission. The IRO appointed by the Commission granted five sessions of CPM on a trial basis, stating that multi-disciplinary bio-psycho-social rehabilitation with functional restoration has been found to be more effective than less intensive programs.

Hartford filed a motion for summary judgment arguing that BHA was barred from bringing its second request pursuant to 28 TAC § 134.600(g)(4), which states that: "A request for preauthorization for the same health care shall only be resubmitted when the requestor provides objective documentation to support that a substantial change in the employee's medical condition has occurred."

BHA responds that although there may not have been a substantial change in Claimant's

condition, it sought preauthorization again for the CPM only after it provided two weeks of work conditioning and six individual sessions of psychological counseling, which were of limited value, to Claimant in July 2004.

### **C. Preauthorization**

Pursuant to the Texas Workers' Compensation Act, 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 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.<sup>2</sup> For a carrier to be liable to reimburse a provider, certain services, including a CPM program, must be preauthorized by the carrier.<sup>3</sup> Although Hartford has the burden of proof in this proceeding, BHA has the burden under 28 TAC § 134.600(g) (4) of showing how Claimant's medical condition substantially worsened, justifying the resubmission of its request for CPM.

Relying on the testimony of its expert witness Samuel Bierner, M.D., who is board certified in physical medicine rehabilitation and pain medicine, Hartford asserts that CPM was not medically necessary because Claimant was proceeding well in the work conditioning program. Dr. Bierner testified that evidence of its success is shown in the progress notes indicating that Claimant had 100% attendance, exhibited minimal pain behaviors while performing the work conditioning tasks, and had met six out of the nine goals set for him.<sup>4</sup> Dr. Bierner also testified that Claimant was not a candidate for CPM because Claimant did not demonstrate progressive deterioration in functional ability and progressive increase in health care utilization and was not abusing medications. According to Dr. Bierner, the more appropriate course of treatment would have been two to four more weeks of work conditioning or work hardening, which provides for psychological counseling.

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<sup>2</sup> TEX. LAB. CODE ANN. § 408.021(a).

<sup>3</sup> 28 TAC 134.600(h).

<sup>4</sup> BHA Ex. 1 at 25-26.

Although Dr. Bierner recognized that Claimant's pain level did not decrease as a result of the work conditioning program, he noted that CPM programs also do not generally reduce a Claimant's pain level, but are successful if they can improve functional ability, which was occurring in the work conditioning program. Dr. Bierner noted further that a subsequent request for surgical evaluation in December 2004 indicates that CPM is not appropriate at this time because it is considered to be the last active care that should be given.

Dr. Creamer, who is a psychologist experienced in pain management, testified for BHA that an initial clinical interview of March 26, 2004, indicated that Claimant met most of the criteria for CPM. That assessment, however, is not pertinent. The issue is what was Claimant's status after the two weeks of work conditioning and six sessions of psychological counseling. To Dr. Creamer's point that the two weeks of work conditioning did not increase Claimant's work level from medium to very heavy, Dr. Bierner responded that it was unrealistic to expect that goal to be accomplished with only two weeks of work conditioning and that it was unrealistic to expect Claimant to be ready to return to work with only two weeks of work conditioning. And although Claimant still exhibited moderate to severe anxiety in August 2004, that was an improvement over the severe depression and anxiety that he exhibited in March 2004.<sup>5</sup>

The ALJ agrees with Dr. Bierner that BHA has not provided sufficient justification for CPM, and that the request is inconsistent with BHA's assessment of the work conditioning program. The only basis that Claimant's treating doctor gave for recommending CPM in July and August 2004 were cryptic statements, such as "I feel that he should participate in a chronic pain program" and that he needs "something more."<sup>6</sup> With no mention of specific issues or problems, justification was not provided.

The ALJ notes further that as a basis for its decision, the IRO reviewer noted that the clinical history included work hardening. That was not entirely correct. The program provided was work conditioning and only for two weeks. To abandon less intensive treatments that appeared to be working was not appropriate. Moreover, because BHA did not meet the

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<sup>5</sup> BHA Ex. 1 at 23, 73

requirements of 28 TAC 134.600(g) (4), preauthorization for CPM is not warranted and Hartford's appeal should be granted.

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

1. Claimant \_\_\_ sustained a compensable injury to his lower back under the Texas Workers' Compensation Act on \_\_\_, as a result of picking up 100-pound metal bars.
2. Claimant was diagnosed with lumbar strain, lumbar radicular syndrome, myalgia, and paresthesia. Claimant received heat and ice treatments, electro-stimulation, physical therapy, chiropractic adjustments, steroid injections, facet joint and sacroiliac joint injections, and medications.
3. On March 29, 2004, Behavioral Healthcare Associates (BHA) requested preauthorization from Hartford Insurance Company (Hartford) for 30 sessions of chronic pain management, five days a week for six weeks, for Claimant. Hartford denied the request.
4. BHA requested reconsideration from Hartford on April 27, 2004, which Hartford denied again. Neither BHA nor Claimant sought medical dispute resolution from the Texas Workers' Compensation Commission (Commission) of the denial.
5. In July 2004, BHA provided Claimant with two weeks of work conditioning and six individual psychological counseling sessions.
6. On August 4, 2004, BHA requested preauthorization of 30 sessions of chronic pain management, which Hartford denied. BHA sought reconsideration on August 23, 2004.
7. After Hartford denied the request for reconsideration, BHA sought medical dispute resolution from the Commission.
8. On October 11, 2004, the Commission's Medical Review Division issued the decision of its designee, an independent review organization (IRO), which granted five sessions of chronic pain management on a trial basis.
9. Hartford appealed the IRO decision on October 29, 2004.
10. The Commission sent notice of the hearing to the parties on April 9, 2003. 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.

11. Claimant progressed well in the work conditioning program. He had 100% attendance, exhibited minimal pain behaviors while performing the work conditioning tasks, exhibited decreased symptoms of anxiety and depression, and met six out of the nine goals set for him.
12. Claimant was not a candidate for chronic pain management because Claimant was not demonstrating progressive deterioration in functional ability and progressive increase in health care utilization and was not abusing medications.
13. A subsequent request for surgical evaluation in December 2004 indicates that chronic pain management was not appropriate because chronic pain management is meant to be the last active care provided.
14. The more appropriate course of treatment would have been to provide two to four more weeks of work conditioning or work hardening, which provides for psychological counseling.
15. BHA failed to show that Claimant's medical condition has substantially worsened to justify resubmission of its request for chronic pain management.

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

1. The Commission has jurisdiction over this matter 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. TEX. LAB. CODE ANN. §§ 402.073 and 413.031(k) and TEX. GOV'T CODE ANN. ch. 2003.
3. Hartford timely appealed the IRO decision. 28 TEX. ADMIN. CODE (TAC) § 148.3.
4. Adequate and timely notice of the hearing was provided. TEX. GOV'T CODE ANN. §§ 2001.051 and 2001.052.
5. Hartford had the burden of proof in the case. 28 TAC §148.21(h).
6. 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).
7. BHA had the burden of showing under 28 TAC § 134.600(g) (4) that Claimant's medical

condition had substantially worsened to justify resubmission of the request for chronic pain management.

8. Enrollment in a chronic pain management program was not reasonably required health care for Claimant under TEX. LAB. CODE ANN. § 408.021.
9. 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 is denied.

**SIGNED March 3, 2004.**

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**KATHERINE L. SMITH  
ADMINISTRATIVE LAW JUDGE  
STATE OFFICE OF ADMINISTRATIVE HEARINGS**