

SOAH DOCKET NO. 453-05-0537.M2
MDR Tracking No. M2-04-1540-01

**VALLEY INTEGRATED PAIN
ASSESSMENT AND CARE,
Petitioner**

VS.

**CRUM & FORSTER
INDEMNITY COMPANY
Respondent**

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BEFORE THE STATE OFFICE

OF

ADMINISTRATIVE HEARINGS

DECISION AND ORDER
I. INTRODUCTION

Valley Integrated Pain Assessment and Care (“Provider”) challenged a decision by an Independent Review Organization (“IRO”), issued on behalf of the Texas Workers’ Compensation Commission (“Commission”) in a preauthorization dispute. The IRO found that Crum & Forster Indemnity Company (“Carrier”) properly denied preauthorization for a chronic pain management program (“CPMP”), intended to provide therapy for a claimant suffering from a compensable injury under the workers’ compensation laws of Texas.

Contrary to the IRO’s position, Provider urges that the requested program is medically reasonable and necessary for the claimant’s treatment, within the meaning of §§ 408.021 and 401.011(19) of the Texas Workers’ Compensation Act (“the Act”), TEX. LABOR CODE ANN. ch. 401 *et seq.*

This decision agrees with that of the IRO, finding that the requested CPMP is not medically reasonable and necessary under the circumstances of this case.

II. JURISDICTION, NOTICE, AND VENUE

The Commission has jurisdiction over this matter pursuant to § 413.031 of the Act. The State Office of Administrative Hearings (“SOAH”) has jurisdiction over matters related to the hearing in this proceeding, including the authority to issue a decision and order, pursuant to § 413.031(k) of the Act and TEX. GOV'T CODE ANN. ch. 2003. No party challenged jurisdiction, notice, or venue.

III. STATEMENT OF THE CASE

The hearing in this docket was convened on October 25, 2004, at SOAH facilities in Austin, Texas. Administrative Law Judge (“ALJ”) Mike Rogan presided. Petitioner appeared via telephone, represented by Johnny Oliva, Director of Operations. Respondent was represented by Dan Kelley, Attorney. After presentation of evidence and argument, the hearing was adjourned and the record closed on the same date.¹

The record developed at the hearing revealed that the claimant , on ____, suffered a compensable injury to her shoulder and to her cervical and lumbar spine. The shoulder subsequently received surgical treatment. The spine received conservative care, including a 10-day CPMP. When the claimant’s severe pain persisted, Provider proposed to enroll her in a further CPMP of 20 sessions (five days a week for four weeks) – for which Provider sought required preauthorization from Carrier, the insurer for the claimant’s employer.

On March 9, 2004, Carrier initially denied preauthorization for the requested care, on the basis that it was not medically necessary. The denial noted a lack of “objective measures of improvement” in the claimant’s condition during her first, 10-day CPMP, which negated prospects that another CPMP would be “potentially effective.” Provider then sought dispute resolution review before the Commission.

¹The staff of the Commission formally elected not to participate in this proceeding, although it filed a general “Statement of Matters Asserted” with the notice of the hearing.

The IRO to which the Commission referred the dispute issued a decision on August 10, 2004, agreeing with Carrier that the requested program was not reasonable or medically necessary. According to the IRO, the claimant's case failed to meet nationally published standards for entrance into a CPMP, inasmuch as Provider failed to set realistic goals for the proposed program and the patient had already failed to make any progress during earlier participation in a similar program. Provider then made a timely request for review of the IRO decision before SOAH.

IV. THE PARTIES' EVIDENCE AND ARGUMENTS

Neither party presented any witnesses in this case, relying only upon documentary evidence, which consisted mainly of summaries of opinion directed to the Commission from physicians and other professionals who had treated the claimant or reviewed her medical records.

Provider's primary evidence was a response to the IRO's decision written by Yolanda Herrera, M. Ed LPC, who attempted a point-by-point refutation of the reviewing physician's rationale. However, on the central issue of whether the claimant's case satisfies applicable standards for initiating a CPMP, Ms. Herrera's discussion invokes the Commission's treatment guidelines, which were abolished on January 1, 2002, and thus can have no direct application in this case.

Provider also submitted letters from Marilyn Asistores-Quilon, M.D.P.A., who initially treated the claimant after her injury, and from Fred Perez, M.D., to whom Dr. Asistores-Quilon referred the patient in September of 2003. Both doctors produced letters, dated August of, 2004, that somewhat disjointedly discuss the actual physical extent of the claimant's injuries and appear to have little direct bearing upon issues related to the CPMP. Dr. Asistores-Quilon also wrote a brief letter, dated May 4, 2004, expressing (with little elaboration) the conclusion that the claimant was then suffering significant stress and "claims her condition has not improved because her insurance company has not been approving any test being ordered and pain management courses."

The record also includes a letter of August 16, 2004, from the claimant's psychiatrist, Elisa Sanchez, M.D., contending that the insurer's failure to approve medications prescribed for the

claimant had resulted in “a relapse of symptoms of depression.” The letter concludes that need for “continued treatment” is indicated by the patient's “progressive deterioration in mental and emotional functioning” but it does not specifically address what type of treatment is needed.

Carrier primarily cited a position paper by Joel Wilk, M.D., dated July 8, 2004, which addresses other “utilization review decisions” related to the claimant's care. The report notes that the claimant was hampered in meeting the demands of her first, 10-day CPMP, because of her excess weight, along with asthma and knee problems that were exacerbated by that weight. Since that 10-day program, the claimant has gained 50 more pounds despite the program's inclusion of nutritional and exercise counseling. This, Dr. Wilk contends, would make her participation in any further CPMP even more problematic. He also observes that the claimant declined to return to work with light duty after being cleared by one of her physicians to do so. Carrier also submitted voluminous excerpts from medical literature addressing the standards for properly admitting a patient to a CPMP.

V. ANALYSIS

In the ALJ's view, Provider has failed to discharge its burden of proof to demonstrate that the requested CPMP is medically necessary or consistent with the governing statutes and regulations. Dr. Wilk's discussion of the case (presenting Carrier's position) was markedly more coherent and convincing than the material relied upon by Provider. Provider's principal critique of the IRO's decision was written by a non-physician, while the comments it presented from the claimant's treating physician's are notably sketchy and conclusory.

As a whole, the record in this case supports the IRO's conclusion that the claimant's enrollment in another CPMP is unjustified, based upon a lack of demonstrated results from the claimant's first CPMP and an apparent lack of ability and commitment on her part to benefit from another such program

VI. CONCLUSION

The ALJ finds that, under the record provided in this case, the IRO's previous decision should be confirmed, and Carrier thus should not be required to provide the chronic pain management program sought by Provider.

VII. FINDINGS OF FACT

1. On ____, a claimant suffered a compensable injury to her shoulder and to her cervical and lumbar spine, which was a compensable injury under the Texas Workers' Compensation Act ("the Act"), TEX. LABOR CODE ANN. ch. 401 *et seq.*
2. Subsequent to the injury, the claimant received surgical treatment for the shoulder and conservative care for the spine, including a 10-day comprehensive pain management program ("CPMP").
3. Following the treatment noted in Finding of Fact No. 2, when claimant continued to experience severe pain, particularly in the lumbar spine area (for which medical examination has been unable to determine an objective cause), Valley Integrated Pain Assessment and Care ("Provider") proposed to enroll claimant in a second, 20-day CPMP.
4. Provider requested preauthorization from Crum & Forster Indemnity Company ("Carrier")-the insurer for the claimant's employer-to enroll the claimant in a second CPMP.
5. Carrier denied the preauthorization request on March 9, 2004, and denied subsequent requests for reconsideration.
6. Provider made a timely request to the Medical Review Division ("MRD") of the Texas Workers' Compensation Commission ("Commission") for medical dispute resolution with respect to the requested CPMP.
7. In a decision dated August 10, 2004, in dispute resolution docket No. M2-04-1540-01, the Independent Review Organization ("IRO") to which the MRD referred the dispute approved Carrier's denial of preauthorization, concluding that the requested program was not reasonable or medically necessary. The IRO determined that the claimant's case failed to meet nationally published standards for entrance into a CPMP, inasmuch as Provider failed to set realistic goals for the proposed program and the patient had already failed to make any progress during earlier participation in a similar program.
8. Provider requested in timely manner a hearing with the State Office of Administrative Hearings, seeking review and reversal of the IRO decision regarding preauthorization.

9. The Commission mailed notice of the hearing's setting to the parties at their addresses on September 23, 2004.
10. A hearing in this matter was convened on October, 25, 2004, in Austin, Texas, before Mike Rogan, an Administrative Law Judge with the State Office of Administrative Hearings. Both parties were represented.
11. The claimant was hampered in meeting the demands of her first CPMP (noted in Finding of Fact No. 2, because of her excess weight, along with asthma and knee problems that were exacerbated by that weight. Since that CPMP, the claimant has gained 50 more pounds- despite the program's inclusion of nutritional and exercise counseling. This would make her participation in any further CPMP even more problematic.
12. After a functional capacity examination on May 3, 2004, indicated that the claimant could function at a sedentary level, she was cleared by one of her physicians to return to work with light duty but declined to do so.

VIII. CONCLUSIONS OF LAW

1. The Commission has jurisdiction related to this matter pursuant to § 413.031 of the Act.
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(k) of the 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. Provider, the party seeking relief, bore the burden of proof in this case, pursuant to 28 TEX. ADMIN. CODE §148.21(h).
5. Based upon the foregoing Findings of Fact, claimant's lack of demonstrated results from her first CPMP (noted in Finding of Fact No. 2) and an apparent lack of ability and commitment on her part to benefit from another such program represent a failure to satisfy nationally published standards for enrollment in an additional CPMP.
6. Based upon the foregoing Findings of Fact and Conclusions of Law, the enrollment of the claimant in the CPMP requested by Provider does not represent an element of health care that is medically necessary under § 408.021 of the Act.
7. Based upon the foregoing Findings of Fact and Conclusions of Law, the Findings and Decision of the IRO, issued in this matter on August 10, 2004, are correct; Carrier should not be required to preauthorize the CPMP sought by Provider.

ORDER

IT IS THEREFORE, ORDERED that preauthorization for a 20-session chronic pain management program, as sought by Valley Integrated Pain Assessment and Care from Crum & Forster Indemnity Company, is denied.

SIGNED November 9, 2004.

**MIKE ROGAN
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS**