

CONNECTICUT INDEMNITY COMPANY,	§	BEFORE THE
	§	
Petitioner	§	
VS.	§	STATE OFFICE OF
	§	
POSITIVE PAIN MANAGEMENT,	§	
Respondent	§	ADMINISTRATIVE HEARINGS

DECISION AND ORDER

Connecticut Indemnity Company (Carrier) contested the decision of an Independent Review Organization (IRO) granting preauthorization for a chronic pain management program to a worker's compensation Claimant. This decision finds that the Carrier failed to sustain its burden of proving that the program is not medically necessary; consequently, the treatments should be preauthorized.

I. PROCEDURAL HISTORY

A hearing convened in this matter on January 13, 2005, before the undersigned Administrative Law Judge (ALJ) at the State Office of Administrative Hearings (SOAH), Austin, Texas. Positive Pain Management (Provider) appeared and was represented by Peter Rogers. Carrier appeared and was represented by its counsel, Mark Sickles. The hearing adjourned and closed on January 13, 2005.

As there were no issues concerning notice or jurisdiction, those matters are set forth in the fact findings and legal conclusions without further discussion here.

II. DISCUSSION

1. Background

The Claimant, a forty-one year-old male, sustained an at-work injury to his back on _____. He was injured when he attempted to lift a piece of steel, and it fell on him. Claimant's current diagnoses are failed back surgery syndrome, lumbar radiculopathy, and myofascial pain syndrom. He has received a variety of treatments, including active and passive physical therapy, rehabilitation, epidural steroid injections, medication management, and six surgeries, but has continued to have severe pain. On July 9, 2004, Claimant had a psychological evaluation. He was diagnosed with depressive disorder, psychological disorder associated with a medical condition, chronic pain and

moderate ongoing physical and psychological difficulties producing a disruption in his lifestyle. He was referred by his treating doctor, Jose Reyes, M.D., to Provider for a chronic pain management program. Dr. Reyes recommended Provider because it is a CARF¹ approved facility. Provider requested preauthorization for a chronic pain management program, but Carrier denied the request.

Carrier's rationale for denial was lack of documentation indicating that Claimant had exhausted all other appropriate forms of treatment for this problem. Claimant's injury is ten years old and his prognosis for return to work was poor. According to Carrier, more information is necessary. Claimant's education, work history, and social security benefits are vital in determining what incentives he may have for changing his behavior.

Employees have a right to necessary health treatment under TEX. LABOR CODE ANN. §§ 408.021 and 401.011. 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." Section 401.011(19) of the Labor Code provides that health care includes "all reasonable and necessary medical . . . services."

As Appellant, the Carrier has the burden of proof.²

1. Medical Fee Guideline (MFG)–Chronic Pain Management Program³

The Texas Workers' Compensation Commission's (Commission) MFG, though not longer in effect, provides a reasonable resource for determining the purpose of and the criteria for chronic pain management. The MFG defines and states entrance criteria for a chronic pain management program as follows:

1. Chronic Pain Management: A program which provides coordinated, goal-oriented, interdisciplinary team services to reduce pain, improve functioning, and decrease the dependence on the health care system of persons with chronic pain syndrome.

¹ CARF is an acronym for Commission of Accreditation of Rehabilitation Facilities.

² TEX. ADMIN. CODE (TAC) § 155.41; 28 TAC § 148(h).

³ 28 TAC § 134.201. A part of the MFG was admitted as part of Provider's Exhibit No. 1 in section 10.

2. Chronic pain syndrome is defined as any set of verbal and/or nonverbal behaviors that:
 - 1 involves the complaint of enduring pain;
 - 2 differs significantly from the injured worker's premorbid status;
 - 3 has not responded to previous appropriate medical, surgical, and/or injection treatments; and
 - 4 interferes with the injured worker's physical, psychological, social, and/or vocational functioning.

3. Entrance/admission criteria shall enable the program to admit persons:
 1. who are likely to benefit from this program design;
 2. whose symptoms meet the above description of chronic pain syndrome; and
 3. whose medical, psychological, or other conditions do not prohibit participation in the program.⁴

Components of the program include individual and group psychotherapy, reduction of drug dependence, one-on-one time with the treating doctor, physical therapy, and vocational and occupational therapy.⁵

4. Testimony of Ron R. Ziegler, Ph.D.

Dr. Ziegler testified for Provider that the Claimant's need for a chronic pain management program is based on the following history: he sustained a back injury nearly twelve years ago; although he has had six surgeries, he still has significant pain and cannot return to work; he has gone through lower levels of treatment, including physical therapy, steroid injections, anti-inflammatory drugs and other medications; he has completed the secondary level of care by having surgery; and he is now in the tertiary level.

Dr. Ziegler indicated that Claimant meets the following criteria:

1. Claimant has not responded to primary or secondary stages of treatment within a reasonable period of time.

2. He exhibits pain behavior, functional limitations and emotional dysfunction disrupting daily living.

3. Claimant is facing significant permanent loss of functioning that will require major physical, vocational and psychological readjustment.

⁴ MFG, Medicine Ground Rules, II.G.

⁵ *Id.*

- a. Claimant's pain has persisted beyond tissue healing time.
- b. Claimant has physical impairment greater than expected on the basis of the diagnosed medical condition and treatment is required in a more structured setting.
- c. Claimant is at risk for developing an excessively lifestyle and remaining off work.

Dr. Ziegler believes that a chronic pain management program is justified in this case based largely on the Claimant's having experienced severe pain for an extended period. As a result, he has had depression and anxiety secondary to his injury. He has also had lack of concentration, and loss of sleep, which are symptoms of this depression/anxiety. His pain has touched every aspect of his life, and he has been on narcotics. Dr. Ziegler said that the program may not return Claimant to his welding job, but it will restore some of Claimant's functional ability. The multi-disciplined approach is also designed to manage medication for pain with an emphasis on the downward titration of narcotics.

Dr. Ziegler said the chronic pain management program will include physical training, psychotherapy and psychological counseling with an emphasis on pain control, medication usage and vocational goal development. He believes that the functional restoration program's style and approach to the treatment of Claimant's chronic pain is appropriate and there is a reasonable expectation that Claimant would benefit from it.

4. Analysis

This decision concludes the chronic pain management program is reasonably required by the nature of Claimant's injury. Claimant's situation clearly meets the program entrance criteria: He is likely to benefit from the program design; his symptoms meet the definition of chronic pain syndrome in that they involve a complaint of enduring pain; his status is significantly different from his pre-injury situation; he has not adequately responded to previous appropriate medical, surgical, and injection treatments; and his symptoms interfere with his physical, psychological, social, and vocational functioning. In addition, his medical, psychological, and other conditions do not prohibit participation in the program.

Carrier's arguments against the program were not persuasive. It contended that there was no

documentation in the record that the treating physician exhausted all other appropriate forms of treatment for Claimant's pain. Dr. Reyes, Claimant's treating physician, is a pain specialist who referred Claimant to Provider for a chronic pain program. This was part of Dr. Reyes's treatment plan because all other forms of treatment had failed to relieve Claimant's pain. Dr. Reyes's opinion is supported by a psychological evaluation. All conservative care has had little positive impact on Claimant's subjective perception of pain. The medical reports indicate that Claimant's pain condition is chronic and persistent and in need of a tertiary level of care at this time. Ground Rule description of a chronic pain management program amply demonstrate that a multi-discipline approach is appropriate.

On the basis of the above-stated considerations, the ALJ concludes that the chronic pain management program is reasonably required by the nature of the Claimant's pain.

III. FINDINGS OF FACT

1. Claimant sustained an at-work injury to his back on ____.
2. Claimant has received a variety of treatments, including active and passive physical therapy, rehabilitation, epidural steroid injections, medication management, and six surgeries, but has continued to have severe pain.
3. Claimant was referred by his treating doctor to Positive Pain Management (Provider), who requested a pain management program.
4. Connecticut Indemnity Company (Carrier) denied the request.
5. Provider requested medical dispute resolution.
6. An Independent Review Organization (IRO) determined that the chronic pain management program was medically necessary and should be preauthorized.
7. Because of his severe pain, Claimant has had depression and anxiety secondary to his injury.
8. On July 9, 2004, Claimant had a psychological evaluation
9. Claimant was diagnosed with depressive disorder, psychological disorder associated with a medical condition, chronic pain, and moderate ongoing physical and psychological difficulties producing a disruption in his lifestyle.
10. Claimant has been prescribed narcotics to control his pain.
11. The chronic pain management program will include physical training, psychotherapy and psychological counseling with an emphasis on pain control, medication usage, and

vocational goal development.

12. Claimant needs a multi-dimensional approach because he has multiple problems secondary to his injury.
13. Claimant's situation meets the following chronic pain management program entrance criteria
 - Claimant is likely to benefit from the program design;
 - Claimant's symptoms meet the definition of chronic pain syndrome in that they involve a complaint of enduring pain; his status is significantly different from his pre-injury situation; he has not adequately responded to previous appropriate medical, surgical, and injection treatments; and his symptoms interfere with his physical, psychological, social, and vocational functioning; and
 - Claimant's medical, psychological, and other conditions do not prohibit participation in the program.
14. The chronic pain management program is reasonably required by the nature of the Claimant's injury.
15. All parties received not less than ten days' notice of the time, place, and nature of the hearing; the legal authority and jurisdiction under which the hearing was to be held; the particular sections of the statutes and rules involved; and a short, plain statement of the matters asserted.
16. The hearing was convened on January 13, 2005.
17. All parties had an opportunity to respond and present evidence and argument on each issue involved in the case.

V. CONCLUSIONS OF LAW

1. The State Office of Administrative Hearings (SOAH) has jurisdiction over this proceeding, including the authority to issue a decision and order. TEX. LAB. CODE ANN. §413.031(k) and TEX. GOV'T CODE ANN. ch. 2003.
2. All parties received adequate and timely notice of the hearing. TEX. GOV'T CODE ANN. §§ 2001.051 and 2001.052.
3. Connecticut Indemnity Company (Carrier) has the burden of proof. 1 TEX. ADMIN. CODE (TAC) § 155.41(b); 28 TEX. ADMIN. CODE § 148.21(h).
4. The requested chronic pain management program is medically reasonable and

necessary for the Claimant's injury and should be preauthorized. TEX. LAB.
CODE ANN. § 408.021.

5. Carrier should pay the costs of the chronic pain management program.

ORDER

IT IS THEREFORE ORDERED that a chronic pain management program provided to Claimant is preauthorized, and Carrier must pay the costs of the program.

SIGNED January 26, 2005.

STEPHEN J. PACEY
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS