SOAH DOCKET NO. 453-05-4883.M2
[TWCC MDR NO. M2-05-0691-01]

STATE OFFICE OF RISK MANAGEMENT, **Petitioner**	§	**BEFORE THE STATE OFFICE**
V.	§	**OF**
POSITIVE PAIN MANAGEMENT, **Respondent**	§	**ADMINISTRATIVE HEARINGS**

DECISION AND ORDER

Petitioner, the State Office of Risk Management (Petitioner), appealed a decision of an independent review organization (IRO) designated by the Texas Workers' Compensation Commission (Commission), in which an IRO doctor determined 15 additional sessions (120 hours) in a pain management program constituted medically necessary treatment for Claimant ___ (Claimant) and should be preauthorized. Positive Pain Management (Respondent) provided the services after receiving the IRO decision. The ALJ concludes Petitioner failed to prove the services were not medically necessary and should not have been preauthorized.[1]

[1] Though the preauthorization request technically is moot, the issue in this proceeding was whether preauthorization should have been granted, and thus, whether Petitioner should pay the reasonable cost of the services. In other, distinguishable contexts, State Office of Administrative Hearings (SOAH) Administrative Law Judges (ALJs), including this ALJ, have concluded that they could not order preauthorization after services requiring preauthorization have been provided. The basis for that conclusion lies in TEX. LABOR CODE ANN. § 413.014, which provides that a carrier is not liable for services requiring preauthorization unless the provider has obtained either preauthorization from the carrier or an order from the Commission. Here, Respondent performed the services at issue *after* the IRO issued its decision; thus, the IRO's decision (though not entitled "order") essentially triggered Claimant's entitlement to the services, subject to this appeal.

I. REASONS FOR DECISION

1. Summary of the Evidence

Claimant suffered a compensable injury on ___, when she struck the dorsum (the back) of her right hand on a metal cart. She developed pain in her right hand and arm, along with swelling, temperature change, discoloration, and allodynia of the arm.[2] In the years that followed, the pain occasionally spread to Claimant's chest and left arm, and she suffered from anxiety and depression.[3] She received extensive physical and psychological therapy, and she was treated with stellate ganglion blocks, but she continued to experience significant pain. The parties agree that Claimant suffers from a chronic pain syndrome known as Reflex Sympathetic Dystrophy (RSD), a difficult condition to treat.

On October 20, 2004, Respondent, a CARF-accredited provider, requested preauthorization for 20 sessions of a multidisciplinary chronic pain management program for Claimant.[4] On October 26, 2004, Petitioner preauthorized 10 sessions, and Claimant began participating in the program on October 28, 2004. On November 15, 2004, Petitioner preauthorized another five sessions. During the preauthorization process, the parties agreed that if Claimant was not progressing after 12 sessions, she would be discharged from the program. After 12 sessions, Respondent requested preauthorization for 15 additional sessions.[5] That preauthorization request is the subject of this proceeding.

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[2] Allodynia is defined as pain resulting from a non-noxious stimulus to normal skin. Dorland's *Illustrated Medical Dictionary*, p. 48 (28th ed. 1994).

[3] Claimant's diagnoses include depressive disorder, not classified elsewhere, and psychological disorder associated with a medical condition.

[4] Respondent's program included physical rehabilitation, individual psychotherapy, didactic group therapy, EMG biofeedback training, and medication management. (Pet. Ex. 1, pp. 440-443.)

[5] According to Scott Worsham, Ph.D., who testified on behalf of Respondent, Claimant participated in all 15 sessions that Petitioner preauthorized. The paperwork seeking preauthorization for an additional 15 sessions was submitted to Respondent about the time of the twelfth session. Claimant stopped participating in the program on November 24, 2004, after the preauthorization request was denied. She resumed participation in February 2005, after an IRO doctor determined 15 additional sessions should be preauthorized.

The essence of the parties' dispute is a difference of opinion as to whether Claimant made sufficient progress during the first 12 sessions to warrant preauthorization for 15 additional sessions. In support of their respective positions, the parties entered more than 900 pages of medical records into evidence and presented testimony from two psychologists who held opposing views. Haskel Hoine, Ph.D., a clinical psychologist in private practice in San Antonio, testified on behalf of Petitioner. Scott Worsham, Ph.D., one of the health care providers on Respondent's staff, testified for Respondent. Dr. Hoine reviewed Claimant's extensive medical records and conferred with Dr. Worsham, but he did not examine Claimant. Dr. Worsham conducted weekly individual psychotherapy sessions with Claimant and observed her most days she participated in the program.

Both Drs. Hoine and Worsham agreed, generally, that the goals of a pain management program are to help patients understand the origins of their pain, learn coping techniques, improve functionality and endurance, and optimize the effectiveness of their medications.

Claimant entered the program on or about October 28, 2004. At that time, she reported her pain at level 10 on a 10-point scale. She was unable to move her right hand at all and was sleeping only three hours a night. The short-term goal Respondent set for her was to gain the ability to touch the tip of her thumb to the tip of all fingers on her right hand within two weeks. Her long-term goals were to increase her right hand range of motion (ROM) to 20 percent of normal ROM, demonstrate the ability to cope with symptoms in an appropriate manner, increase endurance of repetitive activity without an increase in symptoms, and report pain in tolerable range, within six weeks. (Resp. Ex. A, p. 43.)

On November 8, 2004, Shea O'Harrow, D.C., another of Respondent's health care providers, performed a Physical Performance Evaluation (PPE) of Claimant. At that time, Claimant reported her pain at level 9.5 on a 10-point scale; she was still unable to perform basic tasks, such as writing, with her right hand, but she was able to touch her thumb to her other fingers repeatedly; and she was able to walk on a treadmill at .6 m.p.h. for 12 minutes. Dr. O'Harrow opined that Claimant still

needed to increase her right hand and wrist ROM "by 20 percent" and to increase her overall right limb strength; he recommended she participate in 20 additional sessions of pain management. (Resp. Ex. A, pp. 44.)

As of November 22, 2004, Dr. Harrow reported that Claimant rated her pain at a level 9 on a scale of 10 and could move her right wrist within 20 percent of normal ROM in all directions of movement. (Pet. Ex. 1, pp. 331-336.)[6] That same day, Respondent requested preauthorization for 15 additional sessions of chronic pain management. Respondent reported that Claimant had participated in 13 sessions and had shown dependable participation and dedicated effort; however, her reported pain level remained at 9 on a 10-point scale. Her anxiety and depression levels were at essentially the same levels as when she began the program, but Claimant's disposition and affect were improved. According to Respondent, Claimant was at a "critical juncture in her therapy" and needed to continue treatment for the following reasons: (1) the mix of her medications, including antidepressants, was being modified and needed to be monitored; (2) Claimant had a long history of dysfunctional relationships that had led to social isolation and "a need to maintain a sick role," and Respondent needed more time to work with Claimant on these issues; (3) Claimant only recently noted the likely relationship between her pain and her losses and griefs, and Respondent needed additional time to work with Claimant on these issues too; (4) Claimant was developing increased functionality in her right arm but needed to make more progress in this area; and (5) "[f]urther treatment is indicated to reduce subjective pain levels, reduce depression and anxiety levels, begin exploring vocational options, and to work through depression issues." (Pet. Ex. 2, pp. 11-12.)

In evaluating the preauthorization request for 15 additional sessions of pain management, Dr. Hoine looked for objective indicators that the program was effective. He concluded that it was not. Claimant's subject pain level remained high. Her depression level too remained high; each time Claimant was evaluated, her depression level, as reflected in Beck Depression Inventory (BDI)

[6] The meanings of Dr. O'Harrow's references to 20 percent ROM increases are not entirely clear. In Resp. Ex. A , p. 44 , for example, he stated Claimant needed to increase her hand/wrist ROM "by 20 percent"; in Pet. Exhibit 1, p. 336, he stated Claimant's right hand ROM had increased to "20% of normal." Lacking any evidence that these statements should not be taken literally, the ALJ has taken them at face value.

scores, remained constant or got worse.[7] She was taking more medications, whereas, according to Dr. Hoine, a pain management program should help a patient decrease the use of medications. The only objective measures Dr. Hoine found that Claimant's activity level had increased were that she had a 20 percent increase in right hand ROM and was able to touch her thumb to her finger tips. He did not consider these improvements significant enough to indicate that the program was effective and should be continued. In his opinion, Claimant should have shown significant improvement after the initial sessions or been shifted to another type of treatment.

Dr. Hoine also testified that chronic pain management is a "treatment of last resort, something you try when nothing else works." Moreover, Dr. Hoine testified, chronic pain management programs are designed to treat low back pain, not the acute kind of pain from which Claimant suffers.

The IRO doctor, a board-certified anesthesiologist, believed Claimant had only four realistic therapeutic choices: (1) titrated oral opioids, possibly in high doses; (2) implantation of an experimental spinal cord stimulator; (3) implantation of an intrathecal morphine pump; and (4) and participation in an intensive multidisciplinary pain management program. Reasoning that the pain management program was less risk-prone and invasive than the other possibilities, he concluded:

> [I]t is reasonable to afford an adequate trial of this before abandoning it. It is likely unreasonable to expect any more than minimal progress in 12 sessions. She will likely require prolonged treatment to receive maximal benefit. Therefore, another 15 sessions, for a total of 27 sessions, is reasonable and medically necessary at this time. (Resp. Ex. A, p. 12.)

Respondent's representative, Dr. Worsham, testified that when Claimant entered Respondent's pain management program, she was an extremely sick woman. She had an 11-year history of chronic pain and many psychological problems: she was severely depressed, had suicidal tendencies, could not use her right hand and arm at all, had edema, walked slowly, and, generally,

[7] Dr. Hoine testified, however, that the small differences in Claimant's BDI scores did not indicate a significant deterioration in her condition, though they did indicate that her depression level had not improved.

had a deconditioned body. Because Claimant was so depressed, Dr. Worsham had weekly individual sessions with her and observed her closely every day that she was in the program. Although Claimant's BDI score did not improve during the initial 12 or 15 sessions, Dr. Worsham observed that her demeanor and affect brightened. Additionally, she reported that the number of hours she was able to sleep at night increased from 3 to 3.5 hours. According to Dr. Worsham, Claimant had always had difficulty with her medications, and her participation in the program enabled her health care providers to adjust and monitor her medications, including antidepressants and muscle relaxants, to achieve an optimal mix. Claimant was beginning to understand the origins of her pain and the relationship between her mental state and her pain. Dr. Worsham considered it significant that Claimant was able to touch her thumb to the fingers of her right hand and that her right hand ROM increased to 20 percent of normal. Thus, in his opinion, both Claimant's ROM and endurance had improved enough after 15 sessions to warrant her continuing in the program.

When preauthorization for 15 additional sessions was denied, Claimant had to drop out of the program. After Respondent received the favorable IRO decision and Claimant returned to the program in February 2005, she had regressed somewhat, but she again put good effort into the program and continued to make progress. Dr. Worsham believes the program has helped Claimant and that she shares this belief. During Claimant's last visit to Respondent's facility before the hearing, she reported a pain level of seven.

2. ALJ's Analysis

The record reflects that Claimant made progress during the initial 12 to 15 sessions of Respondent's pain management program: she gained the ability to touch her right thumb to the tips of her fingers; she gained ROM in her hand and wrist; she was able to sleep longer at night; her demeanor and affect improved; and she began to understand the origins of her pain and the relationship between her mental state and her pain. Thus, the ALJ must decide whether Claimant made enough progress to warrant continuation in the program. Petitioner's expert witness, Dr. Hoine, expected to see substantial improvement in Claimant's condition after she completed the 15 initial sessions of the program. Both Dr. Worsham and the IRO doctor, however, believed that a

patient in Claimant's condition would make only slow progress at the beginning of such a program. Given that Dr. Worsham actually examined and treated Claimant, whereas Dr. Hoine did not, the ALJ believes Dr. Worsham's opinion was at least as credible as Dr. Hoine's. Moreover, the IRO doctor shared Dr. Worsham's opinion.

The ALJ was not persuaded by Dr. Hoine's testimony. Although Respondent approved 15 sessions in the pain management program, with Dr. Hoine's concurrence, he questioned the efficacy of a chronic pain management program for a patient, such as Claimant, who suffers from acute pain. The IRO doctor, in contrast, considered the program to be the most appropriate therapeutic option for Claimant, an option that should be tried before more risky and invasive procedures were considered. Additionally, Dr. Hoine appeared to contradict himself during his testimony: on the one hand, he testified that a chronic pain management program is a treatment of last resort, something that is tried when all else has failed; on the other hand, he also testified that a different course of treatment should have been tried after Claimant's first 12 or 15 sessions in Respondent's program.

Petitioner had the burden of proof by a preponderance of the evidence. Based on the record presented, the ALJ concludes Petitioner did not meet its burden of proving that the services at issue were not medically necessary and that preauthorization was not warranted. Therefore, Petitioner should pay for the reasonable cost of the services. Whether the specific amounts charged by Respondent were reasonable was not at issue, and is not decided, in this proceeding.

II. FINDINGS OF FACT

1. On ___, Claimant ___ sustained a work-related injury when she struck the dorsum of her hand against a metal cart.

2. On the date of injury, Claimant's employer was the Texas Alcoholic Beverage Commission, and its workers' compensation carrier was the State Office of Risk Management (Petitioner).

3. As a result of the compensable injury, Claimant developed pain in her right hand and arm, along with swelling, temperature change, discoloration, and allodynia of the arm.

4. In the years that followed her injury, Claimant's pain occasionally spread to her chest and left arm, and she suffered from anxiety and depression.

5. Claimant received extensive physical and psychological therapy, and she was treated with stellate ganglion blocks, but she continued to experience significant pain.

6. Claimant suffers a chronic pain syndrom known as Reflex Sympathetic Dystrophy (RSD).

7. RSD is a difficult condition to treat.

8. The goals of a pain management program are to help patients understand the origins of their pain, learn coping techniques, improve functionality and endurance, and optimize the effectiveness of their medications.

9. On October 20, 2004, Respondent, Positive Pain Management, a CARF-accredited provider, requested preauthorization for 20 sessions of a multidisciplinary chronic pain management program for Claimant.

10. On October 26, 2004, Petitioner preauthorized 10 sessions.

11. Claimant began the pain management program on or about October 28, 2004.

12. At the time Claimant entered the pain management program, she was an extremely sick woman. She had an 11-year history of chronic pain and many psychological problems; she was severely depressed, had suicidal tendencies, could not move her right hand and arm, had edema, walked slowly, and, generally, had a deconditioned body.

13. On November 15, 2004, Petitioner preauthorized another five sessions of the pain management program.

14. As of November 22, 2004, Claimant had made progress in the pain management program.

    A. She had gained increased range of motion (ROM) in her right hand and wrist.

    B. She could touch her right thumb to the tips of the fingers on her right hand.

    C. Her reported pain level had decreased slightly.

    D. Her demeanor and affect had improved.

    E. She could sleep longer at night.

    F. She had begun to understand the origins of her pain and the relationship between her mental state and her pain.

15. On or about November 23, 2004, Respondent requested preauthorization for another 15 sessions.

16. Petitioner denied Respondent's preauthorization request on the basis that the requested services were not reasonable and medically necessary.

17. Respondent timely filed a request for dispute resolution with the Texas Workers' Compensation Commission (Commission).

18. On February 8, 2005, an independent review organization (IRO) doctor, who is board-certified in anesthesiology, determined that the requested 15 additional sessions were reasonable and medically necessary and should be preauthorized.

19. Following receipt of the IRO doctor's decision, Respondent provided the 15 additional sessions to Claimant.

20. The additional sessions resulted in a reduction in Claimant's pain.

21. After the IRO decision was issued, Petitioner timely requested a contested case hearing by a State Office of Administrative Hearings Administrative Law Judge.

21. Notice of the hearing was sent March 23, 2005. The notice contained a statement of the time, place, and nature of the hearing; a statement of 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.

22. The hearing was held June 22, 2005, with Administrative Law Judge Renee M. Rusch presiding. Petitioner was represented by attorney J. Red Tripp, and Respondent was represented by Peter Rogers. The hearing adjourned and the record closed the same day.

III. CONCLUSIONS OF LAW

1. 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. LABOR CODE ANN. §§ 402.073(b) and 413.031(k) and TEX. GOV'T CODE ANN. ch. 2003.

2. The parties received adequate and timely notice of the hearing in accordance with TEX. GOV'T CODE ANN. §§ 2001.051 and 2001.052.

3. Petitioner had the burden of proof by a preponderance of the evidence in this matter. 28 TEX. ADMIN. CODE § 148.21 (h) and (i); 1 TEX. ADMIN. CODE § 155.41.

4. 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. TEX. LABOR CODE ANN. §408.021(a).

5. Health care includes all reasonable and necessary medical services. TEX. LABOR CODE ANN. § 401.011(19).

6. Pursuant to TEX. LABOR CODE ANN. §413.014, for a carrier to be liable for certain services and supplies, those services and supplies must be preauthorized. 28 TEX. LABOR CODE ANN. §134.600.

7. The 15 additional sessions of multidisciplinary chronic pain management Respondent requested required preauthorization. 28 TEX. ADMIN. CODE §134.600.

8. Petitioner failed to meet its burden of proving that the 15 additional sessions did not constitute reasonable and necessary medical services for Claimant and that preauthorization was not warranted.

9. Based on the foregoing Findings of Fact and Conclusions of Law, preauthorization for 15 additional sessions of multidisciplinary chronic pain management for Claimant was warranted. TEX. LABOR CODE ANN. §§ 408.021(a) and 413.014; 28 TEX. ADMIN. CODE § 134.600.

ORDER

IT IS, THEREFORE, ORDERED that the State Office of Risk Management shall reimburse Positive Pain Management for the reasonable cost of the 15 sessions of multidisciplinary chronic pain management at issue in this case.

SIGNED June 29, 2005.

RENEE M. RUSCH
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS