

**DECISION AND ORDER**

This case is decided pursuant to Chapter 410 of the Texas Workers' Compensation Act and Rules of the Division of Workers' Compensation adopted thereunder.

**ISSUES**

A contested case hearing was held on February 5, 2009, to decide the following disputed issue:

1. Is the preponderance of the evidence contrary to the decision of the IRO that Claimant is not entitled to work hardening/conditioning for the dates of service of December 26, 2006, through December 29, 2006, for which the health care provider billed \$1,536.00?

**PARTIES PRESENT**

Petitioner/Subclaimant appeared and was represented by FP, lay representative.  
Respondent/Carrier appeared and was represented by PS, attorney.

**BACKGROUND INFORMATION**

Claimant was injured on \_\_\_\_\_, when she was working as a school custodian, taking trash out, and slipped and fell. Claimant had a prior workers' compensation injury from \_\_\_\_\_, with reported cervical spine pain, contusion in the right knee, and internal derangement of the right shoulder.

On December 27, 2006, designated doctor, Dr. JH, M.D., examined Claimant and opined that Claimant "has marked signs of symptom magnification." He further stated that Claimant had no abnormal neurological findings in either upper or lower extremities. The MRI was physiologically normal in both the cervical and lumbar areas. He then opined, "Putting all of this together (normal neurological, normal MRIs and symptom magnification) this lady would not benefit from any additional treatment directed toward the cervical or lumbar spine." He also opined that, "The right knee also needs no additional supervised treatment or prescription medicine." He also stated that if he gave her the benefit of the doubt, he would recommend MRI imaging of the right shoulder. He further opined that Claimant is not totally disabled for any employment and she could return to work with restrictions for the right upper extremity, but as far as the lumbar and cervical, there would be no restrictions.

On November 22, 2006, Dr. MM, D.O., referred Claimant to the (Healthcare Provider) for work hardening for the cervical and lumbar spine. (Healthcare Provider) was CARF accredited at the time the medical services in dispute were rendered. Therefore, pre-authorization was unnecessary. However, any subsequent billing is subject to retrospective review for medical necessity. That is the heart of the dispute, whether the medical services for work hardening for dates of service for December 26, through December 29, 2006, were medically necessary.

When the bills were submitted to the Carrier for payment for work hardening for dates of service from December 26, 2006, through December 29, 2006, Carrier denied as unnecessary medical treatment based on peer review. The peer review was by Dr. CC, D.O., who opined that Claimant should not be participating in a work hardening program because there was no objective data to support a work hardening program.

As a result of Carrier's denial reconsideration was requested, and the denial was upheld. Subclaimant then requested an IRO. In IRO Case 11279, which was for retrospective review of medical necessity, the case was reviewed by a chiropractor, and the denial was upheld.

In the "Analysis and Explanation" section of the IRO determination, it stated as follows:

The work hardening/conditioning and work hardening/conditioning each additional hour for the dates of 12/26/06 thru 12/29/06 are not reasonable or medically necessary according to the below referenced criteria. The medical records reveal that the patient met her current job demands and the peer review doctor also agreed that no further work hardening/conditioning are necessary. If a patient is at the current demand level of their job, then it is necessary to integrate them back into their work environment. There is no reason to continue work hardening/conditioning if the goals have been met. Therefore, the work hardening/conditioning and work hardening/conditioning each additional hour for the dates of 12/26/06 thru 12/29/06 are not reasonable or medically necessary.

Dr. K testified that he disagreed with the peer review report of Dr. CC because the lifting categories in the FCE were inappropriately stated and it was uncertain as to whether there had been any verification of Claimant's work duties/lifting requirements from the Employer.

As the parties recognized, the dates of service for the work hardening program were from December 26, 2006, through December 29, 2006, which is prior to the effective date of Rule 137.100(h) which provides that Rule 137.100 applies to all health care provided on or after May 1, 2007. Rule 137.100 provides that the health care providers shall provide treatment in accordance with the current edition of the ODG, excluding return to work pathways. See Appeal No. 071108-s.

The IRO determination noted that at the time of the dates of service, there were no applicable ODG Guidelines. Medical necessity disputes must be decided, in the absence of applicable ODG Guidelines on evidence based medicine. Texas Labor Code Sec. 408.021 provides that 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. Health care reasonably required is further defined in Texas Labor Code Section 401.011(22a) as health care that is clinically appropriate and considered effective for the injured employee's injury and provided in accordance with best practices consistent with evidence based medicine or, if evidence based medicine is not available, then generally accepted standards of medical practice recognized in the medical community. Health care under the Texas Workers' Compensation system must be consistent with evidence based medicine if that evidence is available. Evidence based medicine is further defined in Texas Labor Code Section 401.011(18a) to be the use of the current best quality scientific and medical evidence formulated from credible scientific studies, including peer-reviewed medical literature and other current scientifically based texts and treatment and practice guidelines.

At the February 5, 2009, CCH, no evidence based medicine was offered to overcome the IRO determination of non-entitlement.

Even though all the evidence presented was not discussed, it was considered. The Findings of Fact and Conclusions of Law are based on all of the evidence presented.

### **FINDINGS OF FACT**

1. The parties stipulated to the following facts:
  - A. Venue is proper in the (City) Field Office of the Texas Department of Insurance, Division of Workers' Compensation
  - B. On \_\_\_\_\_, Claimant was the employee of (Employer), and sustained a compensable injury.
2. Carrier delivered to Subclaimant a single document stating the true corporate name of Carrier, and the name and street address of Carrier's registered agent, which document was admitted into evidence as Hearing Officer's Exhibit Number 2.
3. Work hardening/conditioning for the dates of service of December 26, 2006, through December 29, 2006, is not health care reasonably required for the compensable injury of \_\_\_\_\_.

### **CONCLUSIONS OF LAW**

1. The Texas Department of Insurance, Division of Workers' Compensation, has jurisdiction to hear this case.
2. Venue is proper in the (City) Field Office.
3. The preponderance of the evidence is not contrary to the decision of the IRO that Claimant is not entitled to work hardening/conditioning for the dates of service of December 26, 2006, through December 29, 2006, for which the health care provider billed \$1,536.00.

### **DECISION**

Claimant is not entitled to work hardening/conditioning for the dates of service of December 26, 2006, through December 29, 2006, for which the health care provider billed \$1,536.00, as it is not reasonably required medical care for the compensable injury of \_\_\_\_\_.

### **ORDER**

Carrier is not liable for the benefits at issue in this hearing. Claimant remains entitled to medical benefits for the compensable injury in accordance with §408.021.

The true corporate name of the insurance carrier is **WORKERS COMPENSATION SOLUTIONS**, and the name and address of its registered agent for service of process is:

**JERRY EDWARDS  
1004 MARBLE HEIGHT DR.  
MARBLE FALLS, TX 78654**

Signed this 11th day of February, 2009

Cheryl Dean  
Hearing Officer