

MDR Tracking Number: M5-02-2440-01

Under the provisions of Section 413.031 of the Texas Workers' Compensation Act, Title 5, Subtitle A of the Texas Labor Code, effective January 1, 2002 and Commission Rule 133.305 and 133.308 titled Medical Dispute Resolution by Independent Review Organizations, the Medical Review Division (Division) assigned an IRO to conduct a review of the disputed medical necessity issues between the requestor and the respondent.

The Division has reviewed the enclosed IRO decision and determined that **the requestor did not prevail** on the issues of medical necessity. The IRO agrees with the previous determination that the work hardening program rendered was not medically necessary.

Based on review of the disputed issues within the request, the Division has determined that work hardening fees were the only fees involved in the medical dispute to be resolved. As the treatment, (work hardening) was not found to be medically necessary, reimbursement for dates of service from 8/24/01 through 10/5/01 is denied and the Division declines to issue an Order in this dispute.

This Decision is hereby issued this 8<sup>th</sup> day of October 2002.

Carol R. Lawrence  
Medical Dispute Resolution Officer  
Medical Review Division

CRL/crl

October 4, 2002

Re: Medical Dispute Resolution  
MDR#: M5.02.2440.01  
IRO Certificate No.: IRO 5055

Dear

\_\_\_ has performed an independent review of the medical records of the above-named case to determine medical necessity. In performing this review, \_\_\_ reviewed relevant medical records, any documents provided by the parties referenced above, and any documentation and written information submitted in support of the dispute.

The independent review was performed by a matched peer with the treating health care provider. Your case was reviewed by a physician who is Board Certified in Physical, Rehabilitation and Electrodiagnostic Medicine.

The physician reviewer **AGREES** with the determination of the insurance carrier in this case. The reviewer is of the opinion that the work hardening program from 08.24.01 through 10.05.01 **WAS NOT MEDICALLY NECESSARY**.

I am the Secretary and General Counsel of \_\_\_ and I certify that the reviewing healthcare professional in this case has certified to our organization that there are no known conflicts of interest that exist between him and any of the treating physicians or other health care providers or any of the physicians or other health care providers who reviewed this case for determination prior to referral to the Independent Review Organization.

We are forwarding herewith a copy of the referenced Medical Case Review with reviewer's name redacted.

Sincerely,

### **MEDICAL CASE REVIEW**

This is for \_\_\_\_. I have reviewed the medical information forwarded to me concerning MDR #M5-02-2440-01, in the area of Physical Medicine and Rehabilitation. The following documents were presented and reviewed:

A. MEDICAL INFORMATION REVIEWED:

1. A massive amount of data outlining the work hardening program, with detailed breakdown of costs per day.
2. An evaluation by \_\_\_ whose evaluation indicates that this gentleman had a tremendous amount of Waddell signs and functional overlay in the examination. Most of the testing was invalid during his second evaluation of the patient.
3. A note by the physical therapist, \_\_\_, emphasizing the four criteria for the program. I will get back to this in my Rationale.
4. The work hardening weekly progress report.
5. Notes by his treating physicians, I believe, on the progress which he is not making in the work hardening program; and the fact that he is on both McKenzie and Williams' flexion exercises during the program and the scales used and each day's progress.
6. Functional capacity assessment done on 8/17/01 at the \_\_\_.

B. BRIEF CLINICAL HISTORY:

As best I can tell, this gentleman, while at work, was lifting some tubes and hurt his back. Apparently, he had a herniated disk with lumbar radicular syndrome, and there may have been some findings on the diagnostic studies indicating that there was some pathology near one of the nerves.

There are different physical examinations, done at different times, but the conclusion of all the examinations, including the functional capacity evaluation, is that there are considerable Waddell signs present.

C. DISPUTED SERVICES:

The disputed service is the work hardening program performed from 8/24/01 through 10/05/01, after the functional capacity evaluation which was done on 8/17/01, the week before the work hardening program was started.

D. DECISION:

I AGREE WITH THE DETERMINATION OF THE INSURANCE CARRIER IN THIS CASE. THE WORK HARDENING PROGRAM FROM 8/24/01 THROUGH 10/05/01 WAS NOT MEDICALLY NECESSARY.

E. RATIONALE OR BASIS FOR DECISION:

In looking at the chart in its entirety, which probably was not available to each examiner, it seems that this gentleman is either hysterical or malingering.

The functional capacity evaluation, for example, indicates there were problems with the upper extremities. This is a low back injury. He was treated for back pain, but then eventually he was noted to have upper extremity weakness on the functional capacity evaluation.

Nerve conduction/EMG was done on 10/05/99 by \_\_\_\_, and this is noted by the functional capacity evaluator; I do not have a report. It is suggestive of an L5-S1 radiculopathy.

The patient has had intradiskal thermal ablation of this area.

Also, as noted by previous examiners, there are no heart rate changes while he is demonstrating weakness in upper extremity testing during the functional capacity evaluation.

It is also noted that he was getting worse during the work hardening program. His treating physician alludes to his progress, and by about the sixth week of work hardening, he claims that his low back pain was coming back. This is the visit of 10/02/01.

After six weeks of work hardening, he was still on Norco 10-325. He was on hydrocodone 7.5 mg and Tylenol 500 mg b.i.d. He was on trazodone, Arthrotec, Soma and Ambien.

Thus, he was certainly not getting better during the work hardening program. I really do not see any indication in the notes that he was improving. The notes are mostly subjective rather than objective.

The overall picture of this patient is that something is not exactly correct, with what the patient is experiencing and what the patient is demonstrating, even on the treating physician's examination of the back, so his impairment rating is invalid. This is verified by the RME doctor during his examination and his impairment rating. The functional capacity evaluation also verifies that this gentleman is either hysterical or malingering.

Unfortunately, there is no way to differentiate a malingerer from a hysterical patient. I would have to agree that psychological follow-up, which was recommended, may well have been useful in working with this individual, but apparently it did not prove to be so during the work hardening program.

The pain apparently was better before the work hardening program started. He got worse near the end of the program, and he continued to get worse during the program. The treatment he was receiving probably was antithetical, i.e., the Williams' flexion exercises and the McKenzie protocol program with back stabilization do not make good medical sense, unless it just so happened that flexion was the position of best function for this individual. This seems not to have been borne out by the physical examination in which it is noted by many examiners that he resisted flexion at the hips and resisted straight-leg raising. Thus, I would think the Williams' flexion exercises would have been contraindicated, and the extension part of the McKenzie protocol would have been used.

At any rate, he got worse during the work hardening program, and this is noted by his primary care doctor, and at some point probably the work hardening program should have been discontinued since he was getting worse. Second, the large amount of data indicating the possibility of tremendous psychological overlay should have been a clue that a work hardening program would not benefit this individual.

I have to disagree with the physical therapist that he met the criteria. In my opinion, if we grant that the four criteria which he gives are, in fact, governing criteria for placing the patient in a work hardening program, then we have to disagree just on that basis, i.e.:

1. *Is he likely to benefit from the program?*  
It was rather obvious that he would not.
2. *Is he a person whose level of functioning due to illness or injury interferes with his ability to carry out specific tasks?*  
Once the functional capacity evaluation was done, it should have been clear that the injury that was covered was not the determining factor in his not working.

3. *Is there a medical or psychological condition which would prohibit him?*  
I believe that a psychological condition was present which would prohibit him from participating.
4. *Is he a person capable of obtaining specific employment upon completion of the program?*  
This is an unknown, but when it was determined that he had upper extremity difficulties and his heart would not respond to exercise, then probably that last question should have also been answered with a “no,” a work hardening program would not allow him to obtain specific employment upon completion of the program.

F. DISCLAIMER:

The opinions rendered in this case are the opinions of this evaluator. This medical evaluation has been conducted on the basis of the documentation as provided to me with the assumption that the material is true, complete and correct. If more information becomes available at a later date, then additional service, reports or consideration may be requested. Such information may or may not change the opinions rendered in this evaluation. My opinion is based on the clinical assessment from the documentation provided.

I certify that I have no past or present relationship with the patient and no significant past or present relationship with the attending physician. I further certify that there is no professional, familial, financial, or other affiliation, relationship, or interest with the developer or manufacturer of the principal drug, device, procedure, or other treatment being recommended for the patient whose treatment is the subject of this review. Any affiliation that I may have with this insurance carrier, or as a participating provider in this insurance carrier’s network, at no time constitutes more than 10% of my gross annual income.

Date: 30 September 2002