

**THIS DECISION HAS BEEN APPEALED. THE FOLLOWING IS THE RELATED SOAH DECISION NUMBER:**

**SOAH DOCKET NO. 453-05-0939.M5**

MDR Tracking Number: M5-04-3096-01

Under the provisions of Section 413.031 of the Texas Workers' Compensation Act, Title 5, Subtitle A of the Texas Labor Code, effective June 17, 2001 and Commission Rule 133.305 titled Medical Dispute Resolution - General and 133.308 titled Medical Dispute Resolution by Independent Review Organizations, the Medical Review Division assigned an IRO to conduct a review of the disputed medical necessity issues between the requestor and the respondent. The dispute was received on 05-18-04. Dates of service 05-12-03 through 05-16-03 were not timely filed per Rule 133.308(e)(1).

The Medical Review 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 was not medically necessary. Therefore, the requestor is not entitled to reimbursement of the IRO fee.

Based on review of the disputed issues within the request, the Medical Review Division has determined that medical necessity fees were the only fees involved in the medical dispute to be resolved. As the services listed above were not found to be medically necessary, reimbursement for dates of service from 05-28-03 through 07-09-03 is denied and the Medical Review Division declines to issue an Order in this dispute.

This Findings and Decision is hereby issued this 9<sup>th</sup> day of August 2004.

Debra L. Hewitt  
Medical Dispute Resolution Officer  
Medical Review Division  
DLH/dlh

**NOTICE OF INDEPENDENT REVIEW DECISION**

**Date:** August 4, 2004

**MDR Tracking #:** M5-04-3096-01

**IRO Certificate #:** 5242

\_\_\_ has been certified by the Texas Department of Insurance (TDI) as an independent review organization (IRO). The Texas Workers' Compensation Commission (TWCC) has assigned the above referenced case to \_\_\_ for independent review in accordance with TWCC Rule §133.308 which allows for medical dispute resolution by an IRO.

\_\_\_ has performed an independent review of the proposed care to determine if the adverse determination was appropriate. In performing this review, relevant medical records, any documents utilized by the parties referenced above in making the adverse determination and any documentation and written information submitted in support of the appeal was reviewed.

The independent review was performed by a Chiropractic reviewer who has an ADL certification. The reviewer has signed a certification statement stating that no known conflicts of interest exist between him or her and any of the treating physicians or providers or any of the physicians or providers who reviewed the case for a determination prior to the referral to for independent review. In addition, the reviewer has certified that the review was performed without bias for or against any party to this case.

**Submitted by Requester:**

- The usual notice of IRO assignment and IRO documentation including a list of treating physicians and reviewing physicians and a list of disputed dates of service.
- A 5/13/04 letter from \_\_\_\_, the treating chiropractor, which provides rationale for the work hardening program that has been disputed.
- \_\_\_\_ provided some copies of the more current worker's compensation fee guidelines.
- A TWCC Advisory 98-03 (which is documentation in a medical bill review note) was provided.
- A Medical Dispute Resolution Request response
- The 4/26/04 chiropractic peer review (which was previously mentioned as provided by the carrier and was also provided for review by the provider).
- The orthopedic peer review of 7/18/03 was also provided in this set of documentation.
- As was provided with the documentation submitted by the carrier, voluminous amounts of work hardening notations were provided for review, much the same as were provided by the carrier.
- A copy of the APPA Guidelines, specific guidelines for programs for injured worker's, was provided for review,
- A functional capacity evaluation (FCE) report of 7/10/03
- A mental health assessment prior to entrance into the work hardening program was reviewed. The date of the evaluation was 5/6/03 and was performed by a \_\_\_\_
- The evaluation was written on company letterhead from \_\_\_\_ office.
- An initial FCE report of 5/6/03 was reviewed, revealing the claimant to be at the sedentary to light duty level. He was required to function at the heavy duty level.
- Multiple weekly work hardening reports were reviewed.
- Several work hardening group therapy notes were also reviewed.

**Submitted by Respondent:**

- IRO assignment and Medical Dispute Resolution Request documentation
- A list of disputed services and dates of service
- A peer review report of 4/22/04 from \_\_\_\_.
- An orthopedic peer review from \_\_\_\_ dated 7/18/03
- Multiple work hardening progress notes and documentation from 6/3/03 through approximately 7/9/03. These notes included behavioral and psychological notations as well as what type of exercises and activities were performed during the course of work hardening.
- Several weekly work hardening reports were reviewed.
- An FCE report of 7/10/03
- Several work hardening group therapy notes were reviewed during the course of the program.

- Several weekly summarizations as it pertained to the work hardening program were reviewed.
- A pre-authorization request for two more weeks of work hardening (for a total of 8 weeks) was reviewed.
- Multiple billing forms (specifically HICFA forms) dated 5/28/03 through 7/9/03 were reviewed.
- A notice of medical payment dispute
- Several explanations of benefit pages pertaining to the disputed dates of service
- A prescription for durable medical equipment dated 5/27/03 to include an intensive back therapy kit, cervical pillow, shoe orthotics, therapeutic hand held massage-deep penetrating, and therapeutic mattress overlay.
- Letter of medical necessity for the durable medical equipment from \_\_\_ dated 5/27/03

### **Clinical History**

According to the documentation submitted for review, \_\_\_ was removing a large screen TV from a customer's home with the help of a co-worker and as he stepped down he felt a pull in his low back. The claimant did report the injury and went to ER. The peer review information from \_\_\_ revealed that the claimant has also seen a \_\_\_, orthopedist, who felt the claimant was at maximum medical improvement on 7/16/03 after the disputed dates of service. The claimant also saw \_\_\_ for designated doctor purposes on 12/5/03 and was felt to be at maximum medical improvement with 5% whole body impairment rating. \_\_\_ saw the claimant on 8/7/03 and felt the claimant was also at maximum medical improvement with 5% whole body impairment rating. The claimant has also seen \_\_\_ who diagnosed lumbosacral sprain.

The claimant underwent MRI evaluation on 11/1/02 and this report revealed disc desiccation at L4-L5 with a 3-mm. central disc herniation and some spinal stenosis at L4-L5. It appears that the claimant has undergone epidural steroid injections with questionable benefit.

Some of the documentation revealed that he benefited and other forms of documentation revealed that he did not experience any long term benefits. A \_\_\_ diagnosed lumbosacral strain and he felt the claimant could have been on over the counter medications within four weeks of the injury and muscle relaxants should have been discontinued. The claimant has undergone a work hardening program from approximately 5/12/03-7/9/03. Review of this documentation revealed that the claimant was progressed through the work hardening program from the sedentary-light position to the medium-heavy duty capability. The claimant was reportedly required to function at the heavy duty level.

### **Requested Service(s)**

Please review and address the medical necessity of outpatient services including work hardening program from 5/28/03-7/9/03 for the above-mentioned claimant.

### **Decision**

I agree with the carrier and find that the specific services including work hardening were not medically necessary.

### **Rationale/Basis for Decision**

It should be noted that during the peer review process between \_\_\_ and \_\_\_ it was mentioned that \_\_\_ did indeed speak with \_\_\_ about this case. It should also be noted that \_\_\_, in fact, wrote a prescription for work hardening. However, when \_\_\_ spoke with \_\_\_, the claimant was reportedly much better as of 7/16/03 and this of course was after the work hardening program. \_\_\_ further felt that the claimant was at maximum medical improvement. \_\_\_ specifically stated that he did not think psychiatric or psychological problems were a portion of his medical picture, either now or before, and saw no need for a work hardening program and thought that a work conditioning program would have been all that was needed. Although \_\_\_ did write a prescription for work hardening, he probably meant to prescribe work conditioning. Sometimes work hardening is lumped into a general category of programs that encompasses work hardening and work conditioning and physicians need to state specifically which program is appropriate. In addition, the only rationale that has really been provided for the program appears to come from a mental health assessment that was written on letterhead from the treating chiropractor's office, who in this case is \_\_\_. I find it irregular that a psychological counselor who works in \_\_\_ office and writes a report on \_\_\_ letterhead has prescribed work hardening. It should also be noted that upon review of the mental health assessment report of 5/6/03, just prior to work hardening, the entire work hardening program seemed to be based on only two tests to include the Beck Depression Inventory as well as the Spielberger State-Trait Anxiety Inventory. This would not be sufficient testing to automatically place the claimant into a much more invasive, intensive and non cost effective work hardening program versus a regular work conditioning program. The results of the Beck Depression Inventory were within the normal range, as a matter of fact. The Spielberger State-Trait Anxiety Inventory placed him in the moderate anxiety category.

It was further stated that the claimant was in the 62<sup>nd</sup> percentile for state anxiety, meaning that this particular portion of the anxiety was from the injury and he was in the 57<sup>th</sup> percentile for trait anxiety, meaning that he had some level of anxiety to begin with. The claimant had the normal concerns about his financial situation and inability to work and did not like to be supported by others. I would consider this to be a normal feeling. The claimant also presented as being very proactive and willing to participate in the healing process.

He was reportedly anxious, which in this context really meant eager to return to work. He was also considering being retrained depending on his outcome. The claimant was reportedly complaining of severe low back pain, however, the documentation around this time revealed that his pain was actually at a 4-6/10 pain level. The bottom line is that this mental health assessment did not provide sufficient enough psychological issues that needed to be dealt with a thorough multi-disciplinary highly intensive program. Such expressions and statements as "he is somewhat anxious" and "he is feeling a little depressed" and statements such as that do not justify a non cost effective multi-disciplinary approach. The claimant, in my opinion, was demonstrating the normal psychological state for his pain and injury, which could have been progressed through a regular work conditioning program. The work hardening notes continue to state that the claimant is experiencing a "depressed feeling throughout the week" throughout the work hardening program. This is really insufficient to justify the multi-disciplinary approach. I will certainly not argue that the program was somewhat effective in moving him from the sedentary-light position to the medium-heavy position within eight weeks. However, the program was overkill given the claimant's psychological state and condition at the time.

The claimant, in my opinion, did not seem pain focused because his pain levels ranged from a 4-5/10 throughout the work hardening notations. The claimant was documented to be positive and receptive and fully participatory. The work hardening notes continue to state that there was “a psychophysical limitation continuing”, however, this is very non-specific and I saw no evidence of a psychophysical limitation beyond the normal amount of limitation due to pain. The claimant again did not seem to be pain focused. His anxiety about returning to work and his fear of injury would be considered normal at this stage of the injury and would not have required an intensive work hardening program. There was also no documentation of any type of psychological depression, anxiety or coping mechanism problems in the documentation prior to entrance in the work hardening program. This was not a reoccurring theme throughout the documentation and only became apparent at the time of the pre-work hardening mental health assessment report. The claimant was felt to be self limited due to pain and this is also normal and does not require psychological or group counseling. A little bit of anxiety about a new program such as work hardening would be expected, but there would be no need for psychological counseling for this. The claimant was reportedly and repeatedly optimistic. The claimant was noted to be quiet, but cooperative. If the claimant was quiet, then this was not a sufficient reason for work hardening. The claimant had some anxiety about some job interviews in July 2003 and this would be considered somewhat normal and would not require an intensive multi-disciplinary approach.

In accordance with Commission Rule 102.4 (h), I hereby verify that a copy of this Independent Review Organization (IRO) Decision was sent to TWCC via facsimile or U.S. Postal Service form the office of the IRO on this 4<sup>th</sup> day of August 2004.