

STATE OFFICE OF ADMINISTRATIVE HEARINGS
300 West Fifteenth Street, Suite 502
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[MDR TRACKING NO. M5-02-1912-01]

THERAPY EXPERTS, INC. d/b/a	§	BEFORE THE STATE OFFICE
HARRISBURG REHABILITATION	§	
CENTER, Petitioner	§	
	§	
V.	§	OF
	§	
TEXAS WORKERS' COMPENSATION	§	
COMMISSION and AMERICAN	§	
CASUALTY COMPANY OF	§	
READING, PA., Respondents	§	ADMINISTRATIVE HEARINGS

DECISION AND ORDER

Therapy Experts, Inc. d/b/a Harrisburg Rehabilitation Center (Petitioner) appealed a decision of the Texas Workers' Compensation Commission's Independent Review Organization (IRO) denying reimbursement for work hardening services. The IRO decision agreed with the American Casualty Company of Reading, Pa. (the Carrier) that Petitioner's reimbursement request failed to demonstrate that the treatments provided an injured worker (the Claimant) were medically necessary. The Administrative Law Judge (ALJ) concludes that Petitioner failed to prove that the services were medically necessary.

On November 19, 2002, ALJ Georgie B. Cunningham convened the hearing at the William P. Clements Building, 300 West 15th Street, Austin, Texas. Attorney David L. Swanson represented the Carrier, and Attorney Martin R. G. Marasigan represented Petitioner. The Commission did not participate in the hearing. Neither Petitioner nor the Carrier contested notice or jurisdiction. After evidence was presented, the hearing was closed on November 19, 2002.

I. DISCUSSION

On ___, the Claimant tripped on a carpet and fell while working as a dishwasher and server assistant ___. She hurt her upper back and right leg, hip, and ankle. On April 3, 2001, John Dang, M.D. diagnosed her problem as a contusion of the right hip and leg, sprain of the thoracic area, and right ankle sprain. On April 10, 2001, the Claimant began treatments with a chiropractor, Dr. Barbara Nedry. Dr. Nedry provided the Claimant 65 physical therapy treatments in approximately 16 weeks and had her participate in 4 additional weeks of work conditioning. At issue here is the denial of the reimbursement for the subsequent work hardening services Petitioner provided the Claimant between August 24 and October 5, 2001.

Petitioner relied on the documentary evidence it had provided the IRO previously. The Carrier presented documentary evidence also submitted previously to the IRO along with the Claimant's job function evaluation and an excerpt from the *Dictionary of Occupational Titles*, U. S.

Department of Labor, 1991. Additionally, the Carrier presented the testimony of its case manager Peggy Vega Huson, R.N. and an expert witness, Michael Bhatt, D.C.

Based on the documentary evidence, Petitioner contended the need for the work hardening was established by records including a functional capacity evaluation (FCE) and other medical assessments showing the Claimant had poor body mechanics, situational depression, lack of strength, and deconditioning. Through its witnesses, the Carrier pointed out that Petitioner administered the FCE before providing her work conditioning. Thus, Dr. Bhatt testified and the Carrier argued in closing that the FCE did not serve as an accurate assessment of the Claimant's functional capacity prior to her participation in the work hardening program. According to Dr. Bhatt, the physical therapy and work conditioning program should have addressed the Claimant's poor body mechanics, lack of strength, and deconditioning. The ALJ agrees with the Carrier that after 4 weeks participation in a work conditioning program, the Claimant presumably had an improved functional capacity and the FCE was a flawed measure of need.

Furthermore, the Carrier presented evidence showing that Petitioner did not correctly assess the Claimant's job as light to medium nor did it identify specific job tasks she had to perform. Moreover, Petitioner did not take into consideration that the Claimant's employer had light duty available for the Claimant, and the Claimant could have returned to work. According to Dr. Bhatt, the Claimant's situational depression could have been treated by other means than participation in a work hardening program. Although a behavioral problem should not be so severe as to exclude an injured worker from participation in a work hardening program, the ALJ concludes the Claimant's situational depression does not establish the necessity of the program. With the exception of group counseling, the Carrier contended the Claimant's work hardening program largely duplicated her work conditioning. Again, the ALJ agrees because the Claimant had a job to which she could return and had light duty available immediately, as established by Ms. Huson's testimony.

In the ALJ's opinion, Petitioner failed to establish that the work hardening program met the Labor Code requirements of curing or relieving the effects naturally resulting from the compensable injury, promoting the Claimant's recovery, or enhancing her ability to return to or retain employment. Therefore, the ALJ agrees with the IRO decision and the Carrier that reimbursement should be denied. Additional facts in support of the ALJ's conclusion are contained in the findings of fact.

II. FINDINGS OF FACT

1. On ___, the Claimant tripped and fell while working as a dishwasher and server assistant at a ___.
2. Between August 24, 2001, and October 5, 2001, Therapy Experts, Inc. d/b/a Harrisburg Rehabilitation Center (Petitioner) provided work hardening services to the Claimant.
3. The American Casualty Company of Reading, Pa. (the Carrier) determined the services were not medically necessary and denied reimbursement.
4. The Texas Workers' Compensation Commission's Independent Review Organization (IRO) issued a decision on February 26, 2002, agreeing with the Carrier's determination that the

work hardening program between August 27, 2001, and October 5, 2001, was not medically necessary.

5. Petitioner appealed the IRO determination on March 22, 2001.
6. On April 30, 2002, the Commission served a hearing notice on the parties. The notice included a statement of the time, place, and nature of the hearing; 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.
7. On April 3, 2001, John Dang, M.D. diagnosed the Claimant's injury as a contusion of the right hip and leg, sprain of the thoracic area, and right ankle sprain.
8. On April 10, 2001, the Claimant began treatments with a chiropractor, Dr. Barbara Nedry.
9. Dr. Nedry provided the Claimant 65 physical therapy treatments in 16 weeks.
10. Dr. Nedry had the Claimant participate in 4 weeks of work conditioning following the 16 weeks of physical therapy.
11. The Claimant's soft tissue injury should have been resolved within 8 to 12 weeks following her fall.
12. On April 11, 2001, the Claimant reported having a pain level of 8 on a possible scale of 10.
13. By June 2001, the Claimant's reported pain level had decreased to no more than a 1 or 2 on a possible scale of 10.
14. As shown by an independent medical examination on July 25, 2001, the Claimant had no evidence of radiculopathy or atrophy, no neurological or orthopaedic findings that would prevent her from returning to work unrestricted, moderate obesity and deconditioning, voluntarily limitation of motion in the lower back, and no need for further treatment other than the use of moist heat and non-prescription medication.
15. An injured worker's treating doctor should document the need for a work hardening program.
16. On July 30, 2001, the Claimant had a functional capacity evaluation (FCE).
17. The FCE did not have indicators to document validity.
18. The Claimant participated in the four-week work conditioning program after she had the FCE.
19. On October 22, 2001, the Claimant had a discharge FCE comparing her functional capacity prior to her participation in the work conditioning program with her functional capacity at the conclusion of the work hardening program.

20. An FCE administered prior to the Claimant's participation in the work conditioning program would not provide an accurate determination of her functional capacity at the conclusion of the work conditioning program or establish her need to participate in a work hardening program.
21. The functional and physical activities of a work hardening program are similar to those of a work conditioning program.
22. The intensive, multi-disciplinary regimen of work hardening is appropriate only where a claimant has behavioral and attitudinal needs that will not be addressed in the single disciplinary approach of work conditioning.
23. The Claimant's physical therapy and work conditioning program should have addressed her poor body mechanics, lack of strength, and deconditioning.
24. The Claimant's situational depression could have been treated by a means other than a work hardening program.
25. The Claimant's work was classified as a light to medium demand level that did not involve the very heavy physical demands indicated by her treating doctor.
26. Denny's Restaurant had light duty work with reduced hours available for the Claimant.
27. Petitioner did not show that the Claimant was unable to perform the light duty work Denny's Restaurant had available.
28. The Claimant did not have a significant loss of range of motion and could lift up to 35 pounds weight.
29. The treating doctor did not document the need for vocational counseling, which a work hardening program can address.

III. CONCLUSIONS OF LAW

1. The Texas Workers' Compensation Commission has jurisdiction over this matter pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 413.031.
2. 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. LAB. CODE ANN. § 413.031(d) and TEX. GOV'T CODE ANN. Ch. 2003.
3. Adequate and timely notice of the hearing was provided in accordance with TEX. GOV'T CODE ANN. §§ 2001.051 and 2001.052.

4. Petitioner bore the burden of proof in this proceeding, as specified in 28 TEX. ADMIN. CODE § 148.21(h).
5. An employee who sustains a compensable injury is 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, according to TEX. LAB. CODE ANN. § 408.021.
6. Based on the findings of fact, Petitioner failed to show the work hardening program would cure or relieve the effects naturally resulting from the compensable injury, promote recovery, enhance the ability of the Claimant to return to or retain employment as required by TEX. LAB. CODE ANN. § 408.021.
7. The reimbursement request should be denied based on a lack of medical necessity.

ORDER

The reimbursement request of Therapy Experts, Inc. d/b/a Harrisburg Rehabilitation Center is denied.

SIGNED this 15th day of January, 2003.

**GEORGIE B. CUNNINGHAM
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS**