

STATE OFFICE OF ADMINISTRATIVE HEARINGS
300 West 15th Street, Suite 502
Austin, Texas 78701

DOCKET NO. 453-02-2978.M5
[TWCC Docket No. M5-02-2012-01]

MARCOS RODRIGUEZ, D.C.,
Petitioner

V.

TEXAS WORKERS' COMPENSATION
COMMISSION and UTICA MUTUAL
INSURANCE COMPANY,
Respondents

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BEFORE THE STATE OFFICE

OF

ADMINISTRATIVE HEARINGS

DECISION AND ORDER

Marcos Rodriguez, D.C. (the Petitioner) seeks reimbursement from Utica Mutual Insurance Company (the Carrier) for \$11,056.60 in medical services associated with a work hardening program provided to workers' compensation Claimant __ between February 7, 2001, and April 11, 2001. The Carrier denied payment on the basis that the services provided were not medically necessary. The Carrier's action was reviewed by an Independent Review Organization, which denied reimbursement for the same reason. The Petitioner challenges that denial. This decision finds that reimbursement should be denied except for the last two weeks, which the Carrier preauthorized.

I. JURISDICTION, NOTICE, AND PROCEDURAL HISTORY

There were no contested issues regarding notice of the hearing. Therefore, those matters are addressed in the Findings of Fact and Conclusions of Law without further discussion here.

The hearing convened July 10, 2002, at the Hearings Facility of the State Office of Administrative Hearings (SOAH) before SOAH Administrative Law Judge (ALJ) Kerry D. Sullivan. The Petitioner was represented by Douglas Pruett; the Carrier was represented by Dean G. Pappas; and the Commission was represented by Yvonne Williams. After receipt of evidence, the record was closed the same day.

II. EVIDENCE AND BASIS FOR DECISION

The documentary record in this case consists of records of the evaluations and progress notes provided by the Petitioner as well as a peer review and other documentation provided by the Carrier in support of its position. Additionally, Spencer Sloan, D.C., an administrator with the Petitioner, testified for the Petitioner, and Roger Canard, D.C. testified on behalf of the Carrier.

A. The Evidence

The Claimant is a 22-year old woman who sustained a compensable injury on _____, when she slipped and fell on a wet floor. The Claimant initially sought treatment at Alta Health Care Clinic, where she was apparently diagnosed with contusions to both knees. An MRI was performed and was normal, indicating no internal derangement of the knees. Shortly thereafter, the Claimant sought treatment from the Petitioner, who provided physical therapy and then the work hardening program in dispute in this proceeding.

Dr. Sloan testified that the Claimant responded well to the physical therapy provided by the Petitioner. Dr. Sloan is an administrator with the Petitioner and did not provide or supervise the Claimant's treatment. At the conclusion of Physical Therapy, however, the Claimant was given a Functional Capacity Examination (FCE) that indicated she was not yet able to perform the medium level physical demand requirements of her employment. The Petitioner then proceeded to provide the eight-week work hardening program at issue in this proceeding. At the conclusion of this program, a follow-up functional capacity evaluation showed marked improvement in the Claimant's performance, although the Claimant still could not fully satisfy the demands of a medium level job.

Dr. Sloan testified that the work hardening program was medically necessary. He relied heavily on the deficits in the Claimant's physical abilities indicated in the initial FCE and on the improvements reflected in the follow up FCE. He also observed that the services were provided within the time frames prescribed by the Commission's upper and lower extremities guidelines. Dr. Sloan also observed that the Carrier actually preauthorized the last two weeks of the program.

Dr. Sloan described the elements of the work hardening program and indicated how they apply to the Claimant's ability to work. Additionally, he did not believe that a home exercise regime would have been an acceptable alternative to work hardening because of the expensive equipment involved in the program and the need for clinical supervision and evaluation of the Claimant's performance.

Dr. Canard disputed Dr. Sloan's assessment. Dr. Canard conducted a document review but did not examine the Claimant. He testified that an MRI is the most accurate way to document soft tissue injuries. Dr. Canard also observed that the injury to the Claimant's wrist was not detected by the Claimant's first treating doctor. Based on the absence of any pathology in the knee capsule, Dr. Canard believed nothing beyond passive chiropractic treatment and a home exercise program was warranted for the Claimant.

B. Applicable Law

Pursuant to the Act, an employee who has sustained 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. LAB. CODE ANN. § 408.021(a).

Work hardening is an individualized, highly structured, goal-oriented treatment program designed to maximize the ability of the person receiving the treatment to return to work. Work

hardening programs are interdisciplinary, intended to address the functional, physical, behavioral, and vocational needs of the Claimant. The Commission has adopted rules governing work hardening programs. The rules, found in the Medical Fee Guideline (MFG) Medicine Ground Rules relate to, among other things, when work hardening is appropriate, how such programs are to be administered and billed, and what documentation is required of work hardening providers. MFG Medicine Ground Rule II. E.(1) provides that work hardening would be suitable if:

1. person was likely to benefit from the program;
2. person whose current levels of functioning due to illness or injury interferes with the person's ability to carry out specific tasks required in the workplace;
3. person whose medical, psychological, or other conditions do not prohibit participation in the program; and
2. person is capable of attaining specific employment upon completion of the program.

Section (e)(2)(A) of the Lower Extremities Ground Rule provides that treatment must be provided in the least intensive setting and must be cost effective.

The Petitioner bears the burden of proof in this proceeding pursuant to 28 TEX. ADMIN. CODE §§ 148.21(h) and (i).

C. Analysis

The ALJ concludes that the Petitioner failed in its burden of proving that the work hardening program was medically necessary. The MRI indicated no pathology, and the record presents no clear indication of the seriousness of the Claimant's injury. Her first treating doctor apparently diagnosed only contusions to the knees. There is also no clear evidence connecting the Claimant's poor performance on the initial FCE to her injury. To the contrary, some of the therapy provided during the work hardening program was to treat and relieve pain in the Claimant's spine, and there is no indication in the record that the Claimant suffered spinal pain in relation to her compensable injury. Based on these circumstances, the ALJ concurs with Dr. Canard that some more efficient and less intensive program appears to have been in order for this Claimant.

Nevertheless, because the Carrier preauthorized the last two weeks of the work hardening program, the parties agree that those two weeks must be reimbursed.¹ Based on the summaries contained in the record, the amount due for the last two weeks of work hardening is \$2,144.00.

III. FINDINGS OF FACT

1. On_____. (the Claimant) suffered an injury compensable under the Texas Workers' Compensation Act (Act). She slipped and fell on a wet floor.

¹ The Petitioner argues that the Carrier's preauthorization of the last two weeks indicates the Carrier must have believed the first six weeks were necessary. The Carrier argues, however, that it approved this preauthorization by mistake. There is no indication that the Carrier conducted an actual medical review prior to granting preauthorization. Additionally, there is no concern that the Petitioner relied on the Carrier's grant of preauthorization in providing the first six weeks of service, since those services were provided prior to the preauthorization approval. Under these circumstances, the ALJ does not attach much significance to the Carrier's preauthorization of the last two weeks in terms of the medical necessity of the first six weeks of service.

2. At the time of the Claimant's compensable injury, Utica Mutual Insurance Company (the Carrier) was the workers' compensation insurer for Claimant's employer.
3. Petitioner Marcos Rodriguez, D.C., seeks reimbursement from the Carrier for \$11,056.60 in medical services associated with a work hardening program provided to the Claimant between February 7, 2001, and April 11, 2001.
4. The Carrier denied reimbursement of the expenses identified in Finding of Fact No. 3.
5. The Petitioner timely requested dispute resolution by the Texas Workers' Compensation Commission Medical Review Division, which referred the matter to an Independent Review Organization (IRO).
6. The IRO issued its decision on April 2, 2002, concluding that the disputed expenses should be denied. On April 9, 2002, the Medical Review Division issued a decision acknowledging the IRO's decision. The Petitioner has appealed the IRO's decision.
7. The Claimant's first treating doctor diagnosed contusions to the Claimant's knees. The Petitioner has also diagnosed a sprained wrist.
8. Following the injury, an MRI was performed on the Claimant's knees. The results were negative, indicating no internal derangement of the knees.
9. There is no clear evidence connecting the Claimant's poor performance on her initial functional capacity evaluation to her injury.
10. Some of the therapy provided during the work hardening program was to treat and relieve pain in the Claimant's spine, and there is no indication that the Claimant suffered spinal pain in relation to her compensable injury.
11. The work hardening program was not shown to be efficient or to be provided in the least intensive setting required to adequately treat the Claimant's injuries.
12. Because the Carrier preauthorized the last two weeks of the work hardening program, those two weeks must be reimbursed. Based on the summaries contained in the record, the amount due for the last two weeks of work hardening is \$2,144.00.

IV. CONCLUSIONS OF LAW

1. The Texas Workers' Compensation Commission (Commission) has jurisdiction related to this matter pursuant to the Texas Workers' Compensation Act (the 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 § 413.031(d) of the Act and TEX. GOV'T CODE ANN. ch. 2003.

3. The hearing was conducted pursuant to the Administrative Procedure Act, TEX. GOV'T CODE ANN. ch. 2001.
4. Adequate and timely notice of the hearing was provided in accordance with TEX. GOV'T CODE ANN. §§ 2001.051 and 2001.052.
5. The Petitioner has the burden of proof in this proceeding. 28 TAC §§ 148.21(h) and (i).
6. Section (e)(2)(A) of the Lower Extremities Ground Rule provides that treatment must be provided in the least intensive setting and must be cost effective.
7. The disputed services were not shown to be medically necessary health care for Claimant.
8. Based on the foregoing, the Petitioner's claim for reimbursement from the Carrier for the disputed expenses described in Finding of Fact No. 3 should be denied except for the last two weeks, which were preauthorized.

ORDER

IT IS ORDERED that the Petitioner, Marcos Rodriguez, D.C., be reimbursed by Utica Mutual Insurance Company \$2,144.00 for work hardening expenses provided from March 28, 2001, through April 11, 2001.

SIGNED this 3rd day of September, 2002.

KERRY D. SULLIVAN
Administrative Law Judge
State Office of Administrative Hearings