

DOCKET NO. 453-02-3318.M2
[MDR TRACKING NO. M2-02-0543-01]

GABRIEL GUTIERREZ, D.C.,

Petitioner

V.

**AMERICAN CASUALTY
INSURANCE COMPANY
OF READING, PENNSYLVANIA**

Respondent

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BEFORE THE STATE OFFICE

OF

ADMINISTRATIVE HEARINGS

DECISION AND ORDER

Gabriel Gutierrez, D.C., appealed the Independent Review Organization's ("IRO's") denial of a preauthorization request for work hardening for an injured worker's compensation claimant ("Claimant"). American Casualty Insurance Company of Reading, Pennsylvania ("the Carrier") preauthorized work *conditioning* services but argued against the mental health and vocational counseling components of work *hardening*. This decision agrees with the Carrier, finding that Dr. Gutierrez did not sustain his burden of proof.

I. Notice, Jurisdiction, and Procedural History

Notice and jurisdiction were not disputed and are discussed only in the findings of fact and conclusions of law. The hearing was convened on July 15, 2002, at State Office of Administrative Hearings facilities, 300 West Fifteenth Street, Austin, Texas, by Administrative Law Judge ("ALJ") Sarah G. Ramos. The Commission's staff did not participate in the proceedings. Attorney Jane Lipscomb Stone represented the Carrier, and attorney Philip Orth represented Dr. Gutierrez. The hearing continued for additional proceedings on July 19, 2002, before concluding on that day. The record also closed on July 19, 2002.

II. Discussion

The Claimant was injured on _____, and diagnosed with lumbar sprain and lumbago. As a _____ for a _____, the Claimant has light physical job demands.

In the Claimant's December 2001 functional capacity evaluation ("FCE"), Dr. Gutierrez found several physical functional deficits. He also noted the reasons that he thought work hardening was appropriate for the Claimant. He wanted her to have vocational guidance and to explore job

alternatives, and he thought mental health counseling would help her to overcome maladaptive pain behaviors and to develop pain-coping strategies.¹

After the Carrier denied preauthorization, Dr. Gutierrez sought IRO review. The reviewer determined that the Claimant's records did not include appropriate psychosocial data to support a work hardening program. However, noting that the Claimant had made little or no progress through home rehabilitation, the reviewer recommended the type of rehabilitation program utilized in work conditioning. Additional therapeutic applications would, in the reviewer's opinion, require further functional testing. In response to the IRO decision, the Carrier preauthorized a work conditioning program, which the Claimant recently completed at Dr. Gutierrez's clinic. Her program was for eight hours per day, five days a week, for four weeks.

At the hearing, Dr. Gutierrez's re-urged his opinion that the Claimant needed the mental health counseling and vocational training available in a work hardening program. While she has made physical progress, she has developed poor responses to pain, he testified. The Claimant avoids pushing beyond her pain to complete tasks, and she fears reinjury.

For the Carrier, Michael Bhatt, D.C., testified that the mental health assessments in the Claimant's file do not indicate mental health problems. On the Beck Depression Inventory, the Claimant's score showed she had some "ups and downs" but was within the normal range. The highest score, forty, indicates severe depression, but the Claimant scored a very low score, only two points out of forty. On the Pain and Impairment Relationship Scale, which indicates a person's perception of her pain, a score of zero to sixty-five is considered low. The Claimant scored sixty. Finally, the total on the Dallas pain questionnaire indicated that medical treatment was sufficient for her; *i.e.*, she does not need behavior treatment.

Dr. Bhatt agreed that the FCE showed some submaximal effort, but he said the effort level could have been related to pain or physical limitation rather than mental health components. Also, the Claimant has cerebral palsy that is not related to her injury, and that illness may have limited her ability to perform.

III. Analysis

In an appeal from an IRO prospective necessity review, the IRO decision has presumptive weight. TEXAS ADMIN. CODE TAC §133.308(v). The Carrier has a defense if it timely complies with the IRO decision with respect to the medical necessity or appropriateness of health care. 28 TAC §133.308(r).

Dr. Gutierrez has worked closely with the Claimant, and the ALJ respects his opinion. Nevertheless, he failed to carry his burden of proof in this case. There was no objective evidence of a mental health deficit, and the mental health assessments showed that the Claimant's pain impressions and depression were within normal ranges.

The final assessment of the Claimant's health after work conditioning had not been

¹Carrier's Ex. 7.

completed by the hearing date, but Dr. Gutierrez testified that she did successfully finish the program. The lack of objective evidence of mental health symptoms, the Carrier's approval of work conditioning, and the Claimant's ability to complete work conditioning all weigh against the preauthorization request. Thus, the ALJ denies the work hardening request.

IV. Findings Of Fact

1. A worker ("Claimant") sustained a work-related injury on _____, and was diagnosed with lumbar pain and lumbago.
2. On that date, the Claimant's employer had workers' compensation coverage through American Casualty Insurance Company of Reading, Pennsylvania ("Carrier").
3. As a _____ for a _____, the Claimant has light physical job demands.
4. The Claimant was referred to Gabriel Gutierrez, D.C., for treatment, and based on results obtained in a December 2001, functional capacity evaluation ("FCE"), he recommended a work hardening program.
5. After the Carrier denied preauthorization for the work hardening program, Dr. Gutierrez appealed to the Independent Review Organization ("IRO") selected by the Texas Workers' Compensation Commission.
6. In a decision dated May 15, 2002, the IRO reviewer denied the preauthorization request.
7. The IRO reviewer determined that the Claimant's records did not include appropriate psychosocial data to support a work hardening program, but the reviewer recommended a work conditioning program.
8. On May 17, 2002, Dr. Gutierrez appealed the IRO decision.
9. Notice of hearing on the appeal was issued June 13, 2002. Both Dr. Gutierrez and the Carrier participated in the hearing.
10. The December 2001, FCE showed some submaximal effort, but the effort level could have been related to pain or physical limitation rather than mental health components.

11. On the Beck Depression Inventory, the Claimant's score showed she had some "ups and downs" but was within the normal range. The highest score, forty, indicates severe depression, but the Claimant scored only two out of forty, which is a very low (or favorable) score.
12. On the Pain and Impairment Relationship Scale, which indicates a person's perception of her pain, a score of zero to sixty-five is considered low, and the Claimant scored sixty.
13. The Claimant's final total on the Dallas pain questionnaire indicated that medical treatment was sufficient for her; *i.e.*, she did not need behavior treatment.
14. In response to the IRO decision, the Carrier preauthorized work conditioning, which the Claimant recently completed at Dr. Gutierrez's clinic.
15. The Claimant's work conditioning program was for eight hours per day, five days a week, for four weeks.

V. Conclusions Of Law

1. The Texas Workers' Compensation Commission has jurisdiction to decide the issue presented pursuant to the Texas Workers' Compensation Act, TEX. LABOR 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. Section 413.031(d) of the Act 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. The hearing was conducted pursuant to the Administrative Procedure Act, TEX. GOV'T CODE ANN. ch. 2001.
5. In appeals from IRO prospective necessity reviews, the IRO decision has presumptive weight. TEXAS ADMIN. CODE TAC §133.308 (v).
6. The Carrier has a defense if it timely complies with the IRO decision with respect to the medical necessity or appropriateness of health care. 28 TAC §133.308(r).

7. Based on the Findings of Fact and Conclusions of Law, the preauthorization request should be denied.

ORDER

IT IS THEREFORE, ORDERED that the preauthorization request for work hardening filed by Gabriel Gutierrez, D.C., is denied.

SIGNED this 25th day of July 2002.

SARAH G. RAMOS
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS