

DOCKET NO. 453-02-3603.M5
[MDR TRACKING NO: M5-02-2090-01]

THERAPY EXPERTS,
Petitioner

v.

**HARTFORD INSURANCE COMPANY OF
THE MIDWEST,**
Respondent

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BEFORE THE STATE OFFICE

OF

ADMINISTRATIVE HEARINGS

DECISION AND ORDER

Therapy Experts (Provider) appealed the decision of the Texas Workers' Compensation Commission's Medical Review Division (MRD), which found that Hartford Insurance Company of the Midwest (Carrier) was not required to reimburse the Provider for a six week work hardening program. The Administrative Law Judge agrees with the MRD and finds that the Provider is not entitled to reimbursement for the work hardening program.

The hearing convened before Janet R. Dewey, Administrative Law Judge (ALJ) at the State Office of Administrative Hearings (SOAH), on November 18, 2002, 300 West 15th Street, Fourth Floor, Austin, Texas. James Loughlin appeared on behalf of the Carrier. The Provider appeared and was represented by Martin G. Marasigan. The hearing concluded on November 18, 2002 and the record closed the same day. Based upon the evidence presented, the ALJ finds that the Carrier is not required to reimburse the Provider for the work hardening program. The ALJ's reasoning is detailed below.

I. FINDINGS OF FACT

1. The injured worker suffered a compensable injury on_____. Following the incident, the injured worker complained of pain to her head, neck and back.
2. The Hartford Insurance Company of the Midwest (Carrier) provided workers' compensation insurance coverage to the injured worker's employer on the date of the injury.
3. The injured worker underwent a six week, eight hour a day work hardening program from April 17, 2001 to May 25, 2001.
4. The Carrier denied reimbursement for the work hardening program based upon medical necessity.

5. The Independent Review Organization found that the work hardening program was not medically necessary based upon a review of the medical documentation and the 1996 Medical Fee Guideline, *Medicine Ground Rules*, II. E. at 37, adopted pursuant to 28 TEX. ADMIN. CODE (TAC) § 134.201(MFG).
6. The Provider filed a timely request for a hearing before the State Office of Administrative Hearings (SOAH).
7. The original notice of hearing was sent July 16, 2002. The notice contained a statement of the time, place, and nature of the hearing; a statement of 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.
8. Nine months after the date of injury, the injured worker first saw James Compian, D.C., who diagnosed her as having lumbar and cervical strain/sprain. At that time the injured worker selected Dr. Compian as her treating doctor.
9. Under Dr Compian's care, the injured worker received cervical and lumbar MRIs, which did not reveal any structural abnormalities in her lumber or cervical spine.
10. The average healing time for a lumbar or cervical strain or sprain is roughly three months.
11. On January 12, 2001, Marcus Hayes, D.C. performed a functional capacity evaluation and recommended that the injured worker be taken off work so that she could receive services to increase her functional ability.
12. Prior to attending the work hardening program at issue, the injured worker received a variety of services from Dr. Compian and the Provider, including electrical stimulation, ultrasound, joint mobilizations, massage, neuromuscular education, and chiropractic adjustments. She also attended a four week work conditioning program from March 12, 2001 to April 6, 2001 before undergoing the six week work hardening program.
13. Prior to her enrollment in the work hardening program, the injured worker had minimal improvement in her subjective complaints or her functional capacity after attending the four week work conditioning program.
14. The continuation of the injured workers' subjective complaints long after the typical healing time for a back strain or sprain without any objective findings of unresolved problems in her back demonstrate chronic pain behavior.
15. Pain-focused individuals typically do not perform well in work hardening programs.

16. Because the injured worker was pain-focused and did not have plans to attain specific employment upon completion of the program, she was not likely to benefit from a work hardening program.
17. The record lacked any documentation providing a rational for the injured worker's enrollment in a work hardening program that would have justified a deviation from the MFG's criteria for enrollment in work hardening programs.
18. A work hardening program was not medically necessary health care for the injured worker.

II. CONCLUSIONS OF LAW

1. The Commission has jurisdiction over this matter pursuant to TEX. LAB. CODE ANN. § 413.031 (Vernon 1996 and Supp. 2002).
2. SOAH has jurisdiction over this proceeding, including the authority to issue a decision and order, pursuant to TEX. LAB. CODE ANN. § 413.031(k) and TEX. GOV'T CODE ANN. ch. 2003 (Vernon 2000).
3. Enrollment in a work hardening program was not reasonably required health care under TEX. LAB. CODE ANN. § 408.021.
4. Adequate and timely notice of the hearing was provided in accordance with TEX. GOV'T CODE ANN. §§ 2001.051 and 2001.052 (Vernon 2000).
5. The injured worker did not meet the criteria for admission into a work hardening program as is set forth in the MFG because she was not likely to benefit from the program, and she did not have specific employment available upon completion of the program.
6. The Provider has the burden of proof in this matter. 28 TAC § 148.21(h).
7. The Provider is not entitled to reimbursement for the work hardening program.

Order

IT IS, THEREFORE, ORDERED that Hartford Insurance Company of the Midwest is not

required to reimburse the Therapy Experts any amounts billed for the work hardening program.

SIGNED this 14th day of January, 2003.

STATE OFFICE OF ADMINISTRATIVE HEARINGS

JANET R. DEWEY
ADMINISTRATIVE LAW JUDGE