

**DOCKET NO. 453-02-3638.M5**  
**[TWCC Docket No. M5-02-2162-01]**

<b>HARTFORD UNDERWRITERS</b>	<b>§</b>	<b>BEFORE THE STATE OFFICE</b>
<b>INSURANCE COMPANY</b>	<b>§</b>	
	<b>§</b>	
<b>V.</b>	<b>§</b>	<b>OF</b>
	<b>§</b>	
<b>TEXAS WORKERS' COMPENSATION</b>	<b>§</b>	
<b>COMMISSION AND SOUTHWEST</b>	<b>§</b>	
<b>WORK REHAB</b>	<b>§</b>	<b>ADMINISTRATIVE HEARINGS</b>

**DECISION AND ORDER**

Southwest Work Rehab (the Provider) sought reimbursement for work hardening services it had provided an injured worker (the Claimant), but Hartford Underwriters Insurance Company (the Carrier) denied payment based on a lack of medical necessity. Subsequently, an Independent Review Organization (IRO) found that the Provider's records substantiated medical necessity. Based on the IRO finding, the Medical Review Division of the Texas Workers' Compensation Commission (the Commission) ordered the Carrier to reimburse the Provider for the services. The Carrier challenged the IRO finding and MRD order in a hearing. The Administrative Law Judge (ALJ) finds that the services were not medically necessary and that the Carrier does not have to reimburse the Provider.

On March 4, 2003, ALJ Georgie B. Cunningham convened the hearing at the William P. Clements Building, 300 West 15<sup>th</sup> Street, Austin, Texas. Attorney James M. Loughlin represented the Carrier, and Attorney Michael L. Sprain represented the Provider.<sup>1</sup> Neither the Provider nor the Carrier contested notice or jurisdiction. After evidence was presented, the ALJ closed the hearing on March 4, 2003.

**I. DISCUSSION**

The issue to be determined is whether the Carrier should reimburse the Provider for the work hardening services provided the Claimant between April 9 and May 18, 2001.<sup>2</sup> Work hardening is a highly structured, goal-oriented, individualized treatment program designed to maximize the ability of the person served to return to work. Work hardening programs are interdisciplinary with a capability of addressing the functional, physical, behavioral, and vocational needs of the injured worker.<sup>3</sup> The Carrier denied reimbursement based on its finding that the services were not medically necessary. Michael A. Bhatt, D.C. testified as an expert witness for the Carrier, and James Andrew Compian, D.C. testified as the treating doctor. The parties presented extensive documentary evidence.

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<sup>1</sup> The Commission did not participate in the hearing.

<sup>2</sup> The parties did not agree about the amount at issue, but neither provided evidence on the subject. The Provider asserted the amount was \$12,288, but the Carrier contended it was \$11,684.

<sup>3</sup> When this matter arose, the Commission's rule governing work hardening was found at 28 TEX. ADMIN. CODE § 134.201 *Medical Fee Guideline Medicine Ground Rules*.

Dr. Bhatt testified about the criteria for establishing the medical necessity of a work hardening program and the failure of the Provider to meet the criteria in this case. To establish need, for example, one could compare an injured worker's performance in a Functional Capacity Evaluation (FCE) with the worker's job requirements to determine medical necessity of the program. On January 18, 2001, the Claimant had an FCE to ascertain her functional capacity, her ability to meet minimum job criteria, and her need for rehabilitation. The FCE showed that the Claimant had a moderate functional deficit and was unable to return to work as a housekeeper.

During the three months between the FCE and the work hardening program, the Claimant continued to receive physical therapy, manipulations, injections, and prescription medication. According to Dr. Bhatt, the January 18 FCE did not provide a base-line establishing need for the work hardening program because her condition could have changed significantly in response to the care received. Moreover, Guy L. Clifton, M.D. recommended on April 4, 2001, that the Claimant merely continue manual therapy and exercise.<sup>4</sup>

Dr. Bhatt reiterated that a work hardening program is a multi-disciplinary program with a psychological component. He pointed out that the Claimant did not have psychological tests prior to the referral to support the need for her participation in a multi-disciplinary work hardening program or to establish that she had no impediments to participation in the program. He therefore concluded that the Claimant could have been treated in a less intensive program, such as work conditioning. Moreover, the work hardening program in which the Claimant participated was not based on an individualized plan of treatment and did not include real or simulated work activities. He noted, for example, that she was not taught the proper methods to use in lifting in spite of her having injured her back while lifting.

Dr. Compian testified that the Claimant, employed as a hotel housekeeper, incurred a lumbar sprain and strain while lifting a bed. He treated the Claimant with electrical stimulation, massage, heat packs, ultrasound, traction, and joint mobilization to reduce her pain and inflammation after he became her treating doctor on September 25, 2000. The Claimant also had x-rays, an MRI, a series of lumbar epidural steroid injections, and various motor and sensory tests administered by numerous other doctors. Dr. Compian explained that he did not order another FCE immediately prior to his work hardening referral because FCEs have to be preauthorized. Although he did not get a discharge summary, Dr. Compian testified that he received weekly reports about the Claimant's participation.

In their closing arguments, the Carrier reiterated the points enumerated by Dr. Bhatt demonstrating a lack of medical necessity. Additionally, the Carrier pointed out that work hardening is nearly twice as expensive as work conditioning, but asserted no showing was made here that the more expensive program was actually needed.

In contrast, the Provider contended that the program was successful based on the Claimant's return to work. The coping skills the Claimant needed could be documented by the observations of

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<sup>4</sup> Dr. Clifton was one of many doctors who examined and treated the Claimant.

the health care providers in frequent contact with her. Moreover, the IRO decision found the program was medically necessary.

The ALJ finds the Carrier's evidence and argument are more convincing. The Commission's rules specify some objective standards for participation in a work hardening program. A timely-administered FCE is an excellent way to establish necessity and show improvement. The Provider did not adequately explain why the referral was made three months after the FCE or why another FCE was not requested considering a medical doctor's conclusion that the Claimant just needed physical therapy and exercise.

Moreover, the Provider did not establish that it had an individualized treatment plan for the Claimant or that it used real or simulated work activities to prepare her to return to work. The Claimant's specific job tasks were simply not identified, and she did not receive instruction in lifting to avoid future injuries. Although the Provider's records show the Claimant attended some group counseling, its documentation does not establish the Claimant had behavioral problems or that the services provided met such problems in spite of Dr. Zvi Kalisky's finding during a required medical examination that she demonstrated a tendency of developing chronic pain syndrome and a non-productive lifestyle. Furthermore, details about the Claimants return to work were not clearly established.

The ALJ finds that the Carrier showed by a preponderance of the evidence that the work hardening program was not medically necessary and that it should not have to reimburse the Provider. Additional facts in support of this decision are set forth in the findings of fact, and the legal conclusions derived from those facts appear in the conclusions of law.

## II. FINDINGS OF FACT

1. On \_\_\_\_\_, \_\_\_\_ (the Claimant) sustained a lumbar sprain and strain while employed as a hotel housekeeper.
2. At the time of the injury, the Claimant's employer had its workers' compensation insurance through Hartford Underwriters Insurance Company (the Carrier).
3. On September 25, 2000, James A. Compian, D.C. became the Claimant's treating doctor.
4. Southwest Work Rehab (the Provider) furnished work hardening services to the Claimant between April 9, 2001, and May 18, 2001.
5. The Provider submitted unspecified claims to the Carrier for the Claimant's work hardening services.
6. The Carrier determined the work hardening services were not medically necessary and denied reimbursement.
7. Subsequently, the Provider requested dispute resolution services through the Texas Workers' Compensation Commission (the Commission).
8. Based on a decision by an Independent Review Organization (IRO) that the work hardening program was medically necessary, the Commission's Medical Review Division (MRD)

issued a decision on June 7, 2002, ordering the Carrier to reimburse the Provider for the unpaid medical fees, interest, and the IRO fee.

9. On June 20, 2002, the Carrier filed a request for a hearing regarding the disputed reimbursement.
10. The Commission sent notice of the hearing to the parties on July 22, 2002. The hearing notice informed the parties of the matter to be determined, the right to appear and be represented by counsel, the time and place of the hearing, and the statutes and rules involved.
11. On October 10, 2000, Dr. Compian determined that the Claimant's medical condition was such that she should not work at all .
12. Between September 27, 2000, and January 17, 2001, Dr. Compian provided the Claimant 37 treatments of electrical stimulation, massage, heat packs, ultrasound, traction, and joint mobilization to reduce pain and inflammation.
13. On January 18, 2001, the Claimant had a Functional Capacity Evaluation (FCE) to ascertain her functional capacity, her ability to meet minimum job criteria, and her need for rehabilitation .
14. The FCE showed that the Claimant had a moderate functional deficit and was unable to return to work as a housekeeper.
15. Nearly three months elapsed between the Claimant's FCE and her starting the work hardening program.
16. During the three months between the FCE and the work hardening program, the Claimant continued to receive physical therapy, manipulations, injections, and other medical treatment.
17. On January 30 and February 6, 2001, the Claimant received lumbar facet injections.
18. The January 18 FCE did not provide a base-line establishing need for the work hardening program.
19. A work hardening program is a multi-disciplinary program with a psychological component.
20. The Claimant did not have psychological tests prior to the referral to support the need for her participation in a multi-disciplinary work hardening program or to establish that she had no impediments to participation in the program .
21. The work hardening program in which the Claimant participated was not based on an individualized plan of treatment and did not include real or simulated work activities.
22. The Provider did not furnish a discharge summary for the Claimant at the end of her participation in the work hardening program.
23. The Claimant could have been treated in a less intensive program.

### III. CONCLUSIONS OF LAW

1. The Texas Workers' Compensation Commission (the 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. The Carrier timely filed its request for a hearing, as specified in 28 TEX. ADMIN. CODE (TAC) § 148.3.
4. The Commission provided the parties proper and timely notice of the hearing according to TEX. GOV'T CODE ANN. ch. 2001 and 28 TAC § 148.4(b).
5. The Carrier had the burden of proving the case by a preponderance of the evidence, pursuant to 28 TAC § 148.21(h) and (i).
6. As specified in 28 TAC § 134.201 Medicine GR II.E.1., work hardening programs should admit persons: (a) who are likely to benefit from the program; (b) whose current levels of functioning due to injury interfere with their ability to carry out specific tasks required in the workplace; (c) whose medical, psychological, or other conditions do not prohibit participation in the program; and (d) who are capable of attaining specific employment upon completion of the program.
7. Based on the findings of fact, the Claimant did not meet the admission requirements to participate in a work hardening program pursuant to 28 TAC § 134.201 Medicine GR II.E.1.
8. Based on the foregoing findings of fact and conclusions of law, the Carrier established that the work hardening program provided the Claimant was not medically necessary, as specified in TEX. LAB. CODE ANN. § 408.021.

### **ORDER**

It is ordered that Southwest Work Rehab is not entitled to reimbursement for its work hardening services provided to an injured worker between April 9, 2001, and May 18, 2001, from Hartford Underwriters Insurance Company.

**SIGNED this 2<sup>nd</sup> day of May, 2003.**

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