

DOCKET NO. 453-03-0095.M5
MDR TRACKING NUMBER: M5-02-2143-01

THERAPY EXPERTS, INC.,	§	BEFORE THE STATE OFFICE
<i>Petitioner</i>	§	
	§	
VS.	§	
	§	OF
INSURANCE COMPANY OF THE	§	
STATE OF PENNSYLVANIA,	§	
<i>Respondent</i>	§	ADMINISTRATIVE HEARINGS

DECISION AND ORDER

This is a dispute over reimbursement for work hardening services. The amount in controversy is \$13,440.00. The Administrative Law Judge (ALJ) concludes the work hardening program was not medically necessary for the Claimant and therefore denies reimbursement.

I. Discussion

The Claimant was a machine operator at the ___ when, on ___ she sustained a compensable injury to her right wrist, elbow, and shoulder. After approximately a year and a half of treatment, she underwent evaluation for admission into a CARF¹-accredited work hardening program run by the Petitioner, Therapy Experts, Inc. (TEI). The evaluation, which included psychological screening, found the Claimant to be a candidate for work hardening.

The Claimant underwent work hardening from TEI from April 16, 2001, through May 25, 2001. The Carrier, Insurance Company of the State of Pennsylvania, denied TEI's request for reimbursement for the work hardening program. TEI then filed a request for medical dispute resolution. The Independent Review Organization (IRO) ruled against TEI, and the Medical Review Division (MRD) of the Texas Workers' Compensation Commission (TWCC) therefore denied reimbursement on July 11, 2002. TEI then filed a request for hearing before the State Office of Administrative Hearings (SOAH).

The SOAH hearing was held January 29, 2003, with ALJ Henry D. Card presiding. Representatives of both TEI and the Carrier participated in the hearing, which was adjourned the same day.

TWCC's Medicine Ground Rules set out the purposes of and criteria for work hardening:

“Work hardening” is

a highly structured, goal-oriented, individualized treatment program designed to maximize the ability of the persons served to return to work. Work Hardening programs are interdisciplinary in nature with a capability of addressing the functional,

¹Commission on Accreditation of Rehabilitation Facilities.

physical, behavioral, and vocational needs of the injured worker. Work Hardening provides a transition between management of the initial injury and return to work while addressing the issues of productivity, safety, physical tolerances, and work behaviors. Work Hardening programs use real or simulated work activities in a relevant work environment in conjunction with physical conditioning tasks. These activities are used to progressively improve the biomechanical, neuromuscular, cardiovascular/metabolic, behavioral, attitudinal and vocational functioning of the persons served.

1. Entrance/admission criteria shall enable the program to admit:
 - a. persons who are likely to benefit from the program;
 - b. persons whose current levels of functioning due to illness or injury interfere with their ability to carry out specific tasks required in the workplace;
 - c. persons whose medical, psychological, or other conditions do not prohibit participation in the program; and
 - d. persons who are capable of attaining specific employment upon completion of the program.

TWCC 1996 Medical Fee Guideline, pp. 37-38.

The Claimant underwent a Functional Capacity Evaluation (FCE) and psychological screening, both of which indicated she was a candidate for work hardening. The Carrier nevertheless cited several reasons why she was not an appropriate candidate. The Carrier pointed out that the Claimant was extremely deconditioned, to the point of being morbidly obese, a condition which was not the result of her compensable injury. She had undergone a year and a half of mostly unsuccessful treatment, which argued against the effectiveness of work hardening. Moreover, according to the Carrier's interpretation, the clinical findings showed no objective pathology to support her complaints of continuing pain. The Carrier further argued that the work hardening program itself was not interdisciplinary, although it included documented group psychological counseling sessions in addition to therapeutic physical activities.

The ALJ agrees with TEI that the FCE and the psychological assessment supported the decision to place the Claimant in a work hardening program. However, the evidence did not show that the Claimant met the vocational component for admission to such a program. In her vocational assessment, conducted April 25, 2001, the Claimant stated she definitely did not want to return to work at ___ or elsewhere as a machine operator. Instead she wanted to be a housekeeper. Ex. 1 at 31-32.²

The record did not show that the Claimant's specific vocational goals were considered in the decision to begin the program or in the design of the program. The Claimant did complete a job

²The vocational assessment report stated the Claimant would be provided with job search assistance at the appropriate time.

profile, on December 5, 2000, and that job profile recognized that she did not want to return to the same type of employment. The profile concentrated on her job as a machine operator, however. Ex. 1 at 34-36. The work hardening program itself focused on the job skills associated with that type of employment. Ex. 1 at 13-30.

Work hardening is meant to address, among other things, a claimant's vocational needs. Programs use "real or simulated work activities in a relevant work environment" to improve the claimant's vocational functioning. Candidates for admission must be unable to carry out specific tasks required in the workplace.

The evidence did not show the Claimant met the vocational criteria for admission into the work hardening program. Therefore, TEI did not prove the program was medically necessary for the Claimant. The ALJ denies reimbursement for the work hardening services at issue.

II. Findings of Fact

1. The Claimant was a machine operator at the ___ when, on ___, she sustained a compensable injury to her right wrist, elbow, and shoulder.
2. After approximately a year and a half of treatment, the Claimant underwent evaluation for admission into a CARF-accredited work hardening program run by TEI.
3. The evaluation, which included psychological screening, found the Claimant to be a candidate for work hardening.
4. The Claimant underwent work hardening from TEI from April 16, 2001, through May 25, 2001.
5. The Carrier denied TEI's request for reimbursement for the work hardening program.
6. TEI filed a request for medical dispute resolution.
7. The IRO ruled against TEI, and the MRD therefore denied reimbursement on July 11, 2002.
8. TEI filed a request for hearing before the State Office of Administrative Hearings (SOAH).
9. Notice of the hearing was sent to the parties September 16, 2002.
10. 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.
11. The SOAH hearing was held January 29, 2003, with ALJ Henry D. Card presiding. Representatives of both TEI and the Carrier participated in the hearing, which was adjourned the same day.

12. In her vocational assessment, conducted April 25, 2001, the Claimant stated she definitely did not want to return to work at ___ or elsewhere as a machine operator. Instead she wanted to be a housekeeper.
13. The Claimant's December 5, 2000, job profile recognized that the Claimant did not want to return to the same type of employment, but nevertheless concentrated on her job as a machine operator.
14. The work hardening program itself focused on the job skills associated with the Claimant's employment as a machine operator.
15. The Claimant's specific vocational goals were not considered in the decision to begin the work hardening program or in the design of the program.
16. The Claimant did not meet the vocational criteria for admission into the work hardening program.

III. Conclusions of Law

1. SOAH has jurisdiction over 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.
2. Adequate and timely notice of the hearing was provided in accordance with TEX. GOV'T CODE ANN. §2001.052.
3. TEI has the burden of proof in this matter. 28 TEX. ADMIN. CODE §148.21(h).
4. TEI did not prove the work hardening program was medically necessary for the Claimant.
5. The Carrier should not be required to reimburse TEI for the work hardening program.

ORDER

IT IS, THEREFORE, ORDERED that Therapy Experts, Inc.'s request for reimbursement for work hardening services provided the Claimant from April 16, 2001, through May 25, 2001, is **DENIED**.

Signed this 4th day of March, 2003.

STATE OFFICE OF ADMINISTRATIVE HEARINGS

Henry D. Card
Administrative Law Judge