

DOCKET NO. 453-03-0105.M5
[MDR TRACKING NO. M5-02-2324-01]

MOCKINGBIRD WORKSKILLS,
Petitioner

v.

CONNECTICUT INDEMNITY
COMPANY,
Respondent

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BEFORE THE STATE OFFICE

OF

ADMINISTRATIVE HEARINGS

DECISION AND ORDER

I. PROCEDURAL HISTORY

Mockingbird Workskills (Petitioner) appealed the decision of Texas Medical Foundation an independent review organization (IRO) certified by the Texas Department of Insurance, in Texas Worker's Compensation Commission (TWCC) Medical Review Division tracking number M5-02-2324-01 denying reimbursement for a work hardening program and functional capacity evaluation in the amount of \$9,096.

The Administrative Law Judge convened a hearing on January 7, 2003. Petitioner was represented by Kevin W. Stouwie, attorney. Connecticut Indemnity Company (Carrier) was represented by Tom Lueders, attorney. Following the presentation of evidence, the hearing was closed on the same day.

II. EVIDENCE AND BASIS FOR DECISION

The issue presented in this proceeding is whether the Carrier should reimburse the Petitioner \$9,096 plus interest for a work hardening program which began on March 19, 2001, and concluded on April 20, 2001, and a functional capacity evaluation on April 24, 2001.

The documentary record in this case consisted of 107 pages of medical records which had been presented to the IRO by Petitioner. No oral testimony was presented.¹

¹ Respondent offered several pages of documentation. However, the documents were not presented with an affidavit of the custodian of records. Additionally, Respondent did not know if the documentation had been submitted to the IRO. Petitioner's objection was sustained.

Based on the evidence, the ALJ concludes that the Petitioner's appeal should be granted. The particular facts, reasoning, and legal analysis in support of this decision are set forth below in the Findings of Fact and Conclusions of Law.

III. FINDINGS OF FACT

1. On _____, _____. (Claimant) suffered a compensable injury with a diagnosis of cervical radiculitis and myalgia.
2. Claimant's injury is covered by worker's compensation insurance written for Claimant's employer by Connecticut Indemnity Company (Carrier).
3. Mockingbird Workskills (Petitioner) treated the Claimant's injury with a work hardening program from March 19, 2001, to April 20, 2001, and a functional capacity evaluation on April 24, 2001.
4. Petitioner requested payment of \$9,096 for the treatment referred to in Finding of Fact No. 3.
5. Carrier denied payment for treatment referred to in Finding of Fact No. 3 on the basis that it was not medically necessary.
6. On March 7 2001, Claimant had an initial functional capacity evaluation.
 1. Claimant was unable to return to work due to limited lifting capacity.
 2. Claimant's work required medium heavy lifting capacity.
 3. Claimant could only work at the sedentary physical demand level for activity above the waist.
 4. Claimant could only work at the sedentary light physical demand level for activity below the waist.
 5. Claimant's potential for rehabilitation was good.

6. Claimant was recommended for a work hardening program.
7. On April 11, 2001, Claimant had a second functional capacity evaluation.
 1. Claimant was unable to return to work due to limited lifting capacity.
 2. Claimant was able to work at the light physical demand level for activity above the waist.
 3. Claimant was able to work at the sedentary light physical demand level for activity below the waist.
 4. Claimant's lifting capacity had increased.
 5. Claimant had completed four weeks of work hardening.
 6. Two additional weeks of work hardening were recommended to maximize Claimant's return to work potential.
8. On April 24, 2001, Claimant had a final functional capacity evaluation.
 1. Claimant was able to work at the light physical demand level for activity above the waist.
 2. Claimant was able to work at the light physical demand level for activities below the waist.
 3. Claimant made fair progress with increased lifting capacity and increased tolerance to critical functional demands.
 4. Claimant was recommended for a chronic pain management program.
9. Petitioner timely requested dispute resolution by the Medical Review Division of the Texas Workers' Compensation Commission (Commission).

10. On June 27, 2002, Texas Medical Foundation, an independent review organization certified by the Texas Department of Insurance, issued its decision agreeing with the Carrier, and Petitioner timely appealed.
11. The Commission sent notice of the hearing to the parties on September 16, 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.
12. The hearing was held on January 7, 2003, and all parties appeared and participated.

IV. CONCLUSIONS OF LAW

13. The Texas Workers' Compensation Commission (TWCC) has jurisdiction to decide the issues presented pursuant to TEX. LAB. CODE ANN. § 413.031.
14. 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 and TEX. GOV'T CODE ch. 2003.
15. The Notice of Hearing issued by TWCC conformed to the requirements of TEX. GOV'T CODE §2001.052 in that it 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 section of the statutes and rules involved; and a short plain statement of the matters asserted.
16. Petitioner has the burden of proving by a preponderance of the evidence that it should prevail in this matter. TEX. LAB. CODE ANN. § 413.031.
17. Based on the Findings of Fact Nos. 6 - 8, Claimant was likely to benefit from a work hardening program.
18. Based on the Findings of Fact Nos. 6 - 8, Claimant's injury interfered with her ability to carry out specific tasks required at the workplace.

19. Based on Findings of Fact Nos. 6 - 8 and Conclusions of Law Nos. 5 and 6, Claimant was entitled to participate in a work hardening program.
20. The Carrier should reimburse Petitioner for providing treatment in the amount of \$9,096.

ORDER

IT IS, THEREFORE, ORDERED that Connecticut Indemnity Company reimburse Mockingbird Workskills for fees incurred in treating the Claimant in the amount of \$9,096.

ISSUED this 6th day of March, 2003.

**MICHAEL J. BORKLAND
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS**