

DOCKET NO. 453-03-0188.M5
[MDR TRACKING NO. M5-02-2157-01]

CENTRAL DALLAS REHAB,
Petitioner

vs.

TEXAS WORKERS' COMPENSATION
COMMISSION and LIBERTY MUTUAL
INSURANCE COMPANY,
Respondents

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BEFORE THE STATE OFFICE

OF

ADMINISTRATIVE HEARINGS

DECISION AND ORDER

I. SUMMARY

Central Dallas Rehab (Petitioner) sought reimbursement for work hardening services and associated functional capacity evaluations (FCE) and office visits provided to Claimant____. Liberty Mutual Insurance Company (Carrier) denied payment for the treatments as medically unnecessary. The Texas Medical Foundation, an Independent Review Organization (IRO), reviewed the claim, agreed with the Carrier and denied reimbursement. Petitioner appealed the IRO's decision.

After reviewing the evidence and arguments, the Administrative Law Judge (ALJ) concludes the work hardening program and associated services were not medically necessary. Therefore, Petitioner is not entitled to reimbursement in the amount of \$10,204.80.¹

II. PROCEDURAL HISTORY

On February 19, 2003, ALJ Ruth Casarez convened the hearing at the William P. Clements Building, 300 West 15th Street, Austin, Texas. Petitioner was represented by Amber Morgan, attorney. Carrier was represented by Charlotte Salter, attorney. The Texas Workers' Compensation Commission (Commission) did not participate in the hearing. The parties did not contest notice or jurisdiction, and those matters are discussed in the findings and conclusions without further discussion here. At the conclusion of the evidence, the parties were allowed to submit written closing arguments. The record of the hearing closed on March 5, 2003, with submission of closing arguments from both parties.

III. APPLICABLE LAW, EVIDENCE, AND ARGUMENTS

1. Background

On_____, Claimant, an employee of_____, felt faint, and as she tried to sit in her chair, she fell onto the cement floor, striking her head, neck and the right side of her body. After being examined she was diagnosed with the following compensable injuries: cervical intervertebral disc syndrome, lumbar intervertebral disc syndrome, injury to knee, impingement syndrome of the shoulder, cervical sprain/strain, and meniscal tear of the right knee.

¹ Petitioner is seeking reimbursement for the work hardening program and associated office visits and FCEs from July 25, 2001, through November 23, 2001. Petitioner's Ex. 1, pp.17-22.

On April 27, 2001, Dean L. Allen, D.C., began treating Claimant at Petitioner's facility. He treated her with physical therapy and active rehabilitation. As of July 16, 2001, he had administered 36 sessions of intense physical therapy to Claimant. While noting progress in some of the injured areas, Dr. Allen also noted that Claimant continued to complain of intense pain in her right hip and knee. Additionally, he noted the range of motion (ROM) in her knee was only 59% of the normal ROM. Despite the noted deficits, Dr. Allen referred Claimant to Dr. Haycock, another doctor with Petitioner, for a FCE to determine if she might be a good candidate for work hardening to prepare her to return to work. Dr. Allen believed Claimant might benefit from the program because she had shown some improvement during physical therapy and had been very compliant.

When Dr. Haycock conducted the initial FCE on August 13, 2001, his findings mirrored those of Dr. Allen's. Dr. Haycock noted the physical demand level (PDL) required for Claimant's job as a data entry operator was sedentary. Claimant could function at the sedentary level for two of the required eight hours. Despite Claimant's reporting intense pain in the right hip and knee, Dr. Haycock recommended participation in the work hardening program so that she might improve further and be able to work the full eight hours required by her job. She began the program on August 14, 2001. When Dr. Haycock performed an interim FCE on September 6, 2001, he noted little, if any, change in her condition. Significantly, he noted her report of pain in her right hip and knee continued to be intense (8 on a 10-point scale), just as she had reported to Dr. Allen and to him during the initial FCE. In addition, Claimant could still only function for two hours at the sedentary level. Nonetheless, Dr. Haycock recommended she continue with work hardening. She completed the program on September 27, 2001. Dr. Haycock reported Claimant's progress in the final FCE. His findings were very similar to those in the initial FCE: Claimant continued to have intense pain remained in her right knee. Dr. Haycock indicated no significant progress in the final FCE, or that Claimant could to return to work.

2. Applicable Law

Sections 408.021 and 408.025(c) of the TEX. LAB. CODE ANN. (Code) respectively provide that (1) an injured worker with a compensable injury is entitled to health care that cures or relieves the effects naturally resulting from the injury, promotes recovery, or enhances the ability of the employee to return to work, and (2) a treating doctor is responsible for maintaining efficient utilization of the worker's health care. The Code also authorizes the Commission to adopt rules and policies that explain how, when, and under what circumstances certain health care may be provided to an injured worker.

The Commission adopted rules, found in the Medical Fee Guideline (MFG), relating to work hardening programs. According to the Medicine Ground Rules, included in the MFG, work hardening is described as an individualized, highly structured, goal-oriented treatment program designed to maximize the ability of the person receiving the treatment to return to work. Work hardening programs are interdisciplinary, intended to address the functional, physical, behavioral, and vocational needs of the person. The Medicine Ground Rules also indicate, among other things, when work hardening is appropriate, how such programs are to be administered and billed, and what documentation is required of work hardening providers.² Relating to participation in a work hardening program, Medicine Ground Rule II. E.(1) provides that admission would be suitable if:

² See 1996 Medical Fee Guideline Medicine Ground Rule II. E., pp. 37-38, and 28 TEX. ADMIN. CODE § 134.201.

1. person was likely to benefit from the program;
2. person whose current levels of functioning due to illness or injury interferes with the person's ability to carry out specific tasks required in the workplace;
3. person whose medical, psychological, or other conditions do not prohibit participation in the program; and
4. person is capable of attaining specific employment upon completion of the program.

The MFG also allows a maximum of three functional capacity evaluations (FCE) for an injured worker. Reimbursement is at \$100 per hour for a maximum of five hours for the initial FCE and a maximum of two hours for an interim or discharge FCE. A summary report of the evaluator's findings is required for each FCE conducted, with no additional charge allowed for the reports.³

3. Petitioner's Evidence and Arguments

Petitioner introduced Ex.1 (297 pages),⁴ which contained its medical records relating to Claimant's treatment and submission of its claim to the Carrier and to the Commission when it sought medical dispute resolution. In addition, Laurent Pelletier, D.C., testified on behalf of Petitioner. Dr. Pelletier testified that although he saw Claimant on several occasions, he was not her treating doctor, and he did not know all the details of her treatment or condition. He did not have a copy of Claimant's job description; did not know what her actual job duties were, and did not know if she had been able to return to work after completing work hardening. He also testified that both Dr. Allen and Dr. Haycock, who were much more familiar with Claimant's treatment, had left Petitioner's employ.

Dr. Pelletier testified that Claimant had numerous office visits between July 25, 2001, and November 23, 2001, and those visits were justified and medically necessary because Dr. Allen, her treating doctor, needed to check her progress. According to Dr. Pelletier, the FCEs, performed by Dr. Haycock on September 6, and September 27, 2001, should be paid because they are permitted and required by Commission's rules to check a claimant's progress during work hardening.

³ See 1996 Medical Fee Guideline Medicine Ground Rule I. E.(2), p. 35.

⁴ For some unknown reason, Pet. Ex. 1 did not include a copy of the initial FCE report by Dr. Haycock. To complete the record, Carrier introduced a copy of that report, Respondent's Ex. A; it was admitted at the hearing.

Petitioner argued that all treatment provided to Claimant was medically necessary to treat her compensable injuries. Petitioner asserted that Gordon Strom, M.D., who signed the IRO decision, was not a matched peer who could review Claimant's treatment. Further, Petitioner argued the IRO denied the claim based upon *only* one of the Claimant's five injuries--the cervical sprain/strain. Petitioner further asserted that Carrier cannot dispute the compensability of Claimant's injuries in this forum as Claimant's diagnoses had already been confirmed and accepted by Carrier's peer review. The IRO doctor ignored Claimant's injury of a meniscal tear and termed it a "sprain/strain which should have been completely resolved within 6-8 weeks." Petitioner asserted such characterization of Claimant's injuries was not appropriate. Setting aside the compensability issue, Petitioner argued that Claimant's sprain/strain was not the basis for referring Claimant to a work hardening program; Dr. Allen agreed with the IRO doctor that Claimant's [cervical]sprain/strain was resolved and "had improved in cervical strength to normal in all areas." Claimant was referred to work hardening because of weakness in shoulder and knee, decreased range of motion in shoulder and knee, and difficulty in managing pain, especially in her shoulder and knee. (*See* Pet. Ex. 1, pp. 100-101).

Petitioner also argued that Claimant met the criteria for a work hardening program. First, she was likely to benefit from the program because she had continually improved and was wholly compliant during the earlier physical therapy, Second, Dr. Allen believed Claimant's current level of functioning due to illness or injury interfered with her ability to carry out specific tasks in the workplace, *i.e.*, she was only able to meet the minimum requirements of her job for two hours out of an eight-hour day. Third, Dr. Allen believed that Claimant's medical, psychological, or other conditions did not prohibit her participation in the program. Fourth, Dr. Allen believed Claimant would be capable of attaining specific employment upon completion of the program, if she continued to show the determination and progress she had shown during physical therapy.

Petitioner argued the FCEs performed on September 6, and September 27, 2001, were medically reasonable and necessary to determine her progress in the program, and that the office visits (July 25, 2001, September 25, 2001, October 9, 2001, October 19, 2001, October 23, 2001, November 6, 2001, and November 23, 2001) were medically necessary to assist Claimant's treating doctor to track her progress and provide needed treatment for her injuries.

3. Carrier's Argument

Carrier disputed the medical necessity of the work hardening program. Carrier argued the IRO's decision stated that a doctor of chiropractic had reviewed this case, and thus the decision was based on a matched peer review. Furthermore, at Carrier's request, Thomas B. Sato, D.C. had reviewed Claimant's file on November 11, 2001, and found that while a minimal amount of chiropractic care would have been appropriate for Claimant, he concluded the treatment by Dr. Allen had become "excessive and protracted, and essentially, the excess care is unsupported." Dr. Sato had also concluded that work hardening was not appropriate, as the FCEs showed no functional deficits⁵ nor did they show that Claimant was making any progress. (Pet. Ex. 1, p. 96).

⁵ Dr. Sato also questioned the validity of Petitioner's FCEs, presumably because they failed to test for functions that were related to Claimant's job duties. *See* Pet. Ex. 1, pp. 95-98.

In addition, Carrier argued that, despite the improvements (gained strength in cervical and low back areas and improved range of motion in shoulder and neck) noted by Dr. Allen at the conclusion of intensive physical therapy, Claimant continued to report pain in her head and neck, intense, sharp, and constant pain in her right shoulder, intense constant pain in her right hip, and intense sharp pain in the right knee. (Pet. Ex. 1, p. 100). Claimant's continued reports of constant and intense pain, even after intensive physical therapy, should have alerted Dr. Allen and Dr. Haycock that Claimant was not ready to begin transitioning back to work. Clearly, the physical condition of her right shoulder, hip and knee, which caused her intense pain, should have alerted her treating doctors that other interventions were required to address those conditions. The MFG Medical Ground Rules state that one criterion for admission to a work hardening program is that there be no medical, psychological, or other conditions that prohibit participation in the program. In this case, the medical condition that caused Claimant such great pain certainly should have prohibited participation in Petitioner's work hardening program. Finally, Carrier argued that it should have been obvious to Dr. Haycock very soon after enrollment in the program that Claimant was not progressing, and he should have discharged her as soon as he noted the lack of progress. All of the FCE reports clearly showed Claimant made little or no physical improvement during the six weeks of work hardening. She was just as unprepared to return to work at the conclusion of the program as she was at the outset. For all of the above reasons, Carrier argued that work hardening was not medically necessary or reasonable.

Carrier also argued that office visits on July 25, 2001, September 25, 2001, October 9, 2001, October 23, 2001, November 6, 2001, and November 23, 2001 were not medically necessary, per peer review, and should not be paid. The FCEs should not be paid because they were performed pursuant to the work hardening program, which was not medically necessary.

IV. ANALYSIS

The main issue in this case is whether work hardening was medically reasonable and necessary for Claimant. The ALJ finds that given Claimant's physical condition, work hardening was not medically necessary or appropriate.

One of the primary objectives of a work hardening program is to prepare the injured worker to return to work. In this case, however, Claimant's physical condition was not such that would have reasonably allowed her to begin a transition to work. While she had made some improvements after intensive physical therapy, she continually reported severe pain, particularly in her right shoulder, hip, and knee. Drs. Allen and Haycock, who evaluated and treated Claimant, knew about the pain, yet they chose to ignore that the pain would undoubtedly interfere with her participation in the work hardening program. Instead of addressing the pain through other interventions, *e.g.*, orthopedic tests, that might have uncovered the source of the pain, they chose to enroll her in a work hardening program, which incorporated elements of physical therapy, counseling, and job simulation exercises.⁶ The program included some treatments that she had previously received and that had been relatively ineffective. Physical therapy had already failed to resolve Claimant's pain, and both doctors knew that. Thus, it was not surprising that Claimant's medical condition did not significantly improve after the six-week work hardening program-the intense pain Claimant had repeatedly reported continued.

⁶ Petitioner offered no evidence, other than one or two references to "keyboarding," that it provided job simulation activities for Claimant to perform during the program. Claimant's job description was not introduced into evidence.

In addition, Claimant's physical condition remained essentially unchanged after the work hardening program: she was able to perform the minimum requirements of her job for only two hours of an eight-hour day, as she had been able to do prior to the program.⁷ The ALJ agrees with Carrier that both of Petitioner's doctors who evaluated Claimant should have recognized before sending her to work hardening that she had a medical condition that prohibited her from benefitting from such program. The ALJ cannot ignore that condition and finds that work hardening was inappropriate and unnecessary. Similarly, the physical therapy that Dr. Allen continued to render during office visits on and after July 25, 2001, was excessive and medically unnecessary because that type of treatment had already proved to be ineffective for Claimant's pain.

V. FINDINGS OF FACT

1. Claimant, an employee of _____, sustained the following compensable injuries after she fell while at a work on _____: cervical intervertebral disc syndrome, lumbar intervertebral disc syndrome, injury to knee, impingement syndrome of the shoulder, cervical sprain/strain, and meniscal tear of the right knee.
2. At the time of her injury, Claimant's employer had workers' compensation insurance through Liberty Mutual Insurance Company (Carrier).
3. Dean L. Allen, D.C., a doctor with Central Dallas Rehab (Petitioner), began treating Claimant for her injuries on April 27, 2001. He treated her with intense physical therapy modalities and active rehabilitation three times per week through July 16, 2001. He also examined and treated Claimant during office visits from July 25, 2001, through November 23, 2001.
4. After having provided intensive physical therapy to Claimant, Dr. Allen noted that although she had made some improvement in cervical and low back strength and in her shoulder, her right knee remained extremely painful. The knee could withstand very little exertion and had very limited range of motion. Claimant rated the pain in her knee as 8 on a 10-point scale, with 10 being severe or extreme pain.
5. On or about August 13, 2001, Dr. Allen referred Claimant to Petitioner's Dr. Haycock for a functional capacity evaluation (FCE) to determine Claimant's ability to return to work.
6. The initial FCE showed that Claimant had made some improvement related to her cervical and low back injury, but also that she had intense pain in her right hip and knee. She also reported some pain in her head, neck and shoulder.

⁷ Petitioner presented no evidence showing that Claimant's capacity to function had significantly improved after work hardening, that she was prepared to return to work, or that she had been trained for some other type of work that she could perform after the work hardening program.

7. The physical demand level required of Claimant's job as data entry operator was sedentary. Claimant could function at the sedentary level during the initial FCE, but only for two hours and not eight as was required by her job.
8. Based on the initial FCE, Dr. Allen and Dr. Haycock recommended Claimant enroll in Petitioner's work hardening program, because they believed she would benefit from the program and be able to return to her normal job duties at the conclusion of the program.
9. Claimant participated in work hardening from August 14, 2001, through September 28, 2001.
10. Dr. Allen evaluated Claimant during office visits on July 25, 2001, September 25, 2001, October 9, 2001, October 19, 2001, October 23, 2001, November 6, 2001, and November 23, 2001. He also provided physical therapy to her during some of those visits.
11. On September 6, 2001, Dr. Haycock conducted an interim FCE to record Claimant's progress. This FCE showed little progress: Claimant still reported intense pain in her right hip and knee, and she could not perform more than two hours of work at the sedentary level.
12. In spite of Claimant's limited progress during the first three weeks of work hardening, Dr. Haycock recommended Claimant continue in work hardening.
13. On September 27, 2001, Dr. Haycock conducted a final FCE toward the completion of the work hardening program. The final FCE showed little, if any, progress in Claimant's condition. She was still only able to perform the minimum requirements of her job for two hours of an eight-hour work day, and she continued to report intense pain in her right hip and knee. Dr. Haycock did not indicate that Claimant could return to work.
14. Petitioner submitted a claim for payment of \$10,204.80 for the treatments provided Claimant by its doctors (work hardening program and office visits, from July 25, 2001, through November 23, 2001).
15. Carrier denied payment for the services on the basis that they were not medically necessary.
16. Petitioner timely requested medical dispute resolution by the Medical Review Division of the Texas Workers' Compensation Commission (Commission).
17. On July 5, 2002, after reviewing Petitioner's claim, the Texas Medical Foundation (TMF), an Independent Review Organization (IRO) denied reimbursement for the work hardening program and associated FCEs and office visits. The Commission adopted the IRO's decision, and on August 6, 2002, notified Petitioner of the decision.
18. Petitioner timely appealed the IRO decision on August 16, 2002.
19. The Commission sent notice of the hearing to the parties on September 18, 2002. The hearing notice informed the parties of the time, place, and nature of the hearing; the legal authority and jurisdiction under which the hearing was to be held; the statutes and rules involved; and the matters asserted.
20. The hearing was held on February 19, 2003 with ALJ Ruth Casarez presiding. Carrier appeared through its attorney, Charlotte Salter. Petitioner appeared through its attorney,

Amber Morgan. After the evidence was received, the record remained open for receipt of closing arguments. The hearing record closed on March 5, 2003.

VI. CONCLUSIONS OF LAW

- 1 The Texas Workers' Compensation Commission has jurisdiction to decide the issue presented, pursuant to the Texas Workers' Compensation Act (the 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. §§ 402.073 and 413.031(d) and TEX. GOV'T CODE ANN. ch. 2003.
- 3 Petitioner timely filed notice of appeal of the IRO decision, as specified in 28 TEX. ADMIN. CODE (TAC) § 148.3.
- 4 Proper and timely notice of the hearing was effected upon the parties according to TEX. GOV'T CODE ANN. ch. 2001 and 28 TAC § 148.4(b).
- 5 Petitioner had the burden of proving that the work hardening program and associated functional capacity evaluations (FCE) and office visits were medically necessary for Claimant by a preponderance of the evidence, pursuant to 28 TAC § 148.21(h) and (i) and 1 TAC §155.41.
6. Pursuant to § 408.21 of the Act, an injured worker is entitled to treatment that will cure, relieve, promote recovery or enhance the injured worker's ability to return to work. Pursuant to § 408.025, the treating doctor is responsible for ensuring the worker's efficient utilization of health care.
7. The Commission adopted rules relating to work hardening programs. Medicine Ground Rule II.E.(1) in the Commission's Medical Fee Guideline set out criteria that apply to persons who may participate in a work hardening program. Among the criteria are that (a) person is likely to benefit from the program, (b) person has no medical, psychological or other condition that prohibit participation in the program, and (c) person is capable of attaining specific employment after completing the program.
8. Based on Findings of Fact Nos. 4 and 6 - 13, Petitioner did not prove by a preponderance of the evidence that Claimant met the entrance criteria for Petitioner's work hardening program.
9. Petitioner did not prove by a preponderance of the evidence that the functional capacity evaluations associated with work hardening, or that office visits from July 25, 2001, through November 23, 2001, were medical treatment necessary to efficiently treat Claimant's injury.
10. Based on the foregoing Findings of Fact and Conclusions of Law, Petitioner should not be reimbursed in the amount of \$10,204.80.

ORDER

IT IS HEREBY ORDERED that Central Dallas Rehab's request for reimbursement for specified office visits through November 23, 2001, and for work hardening services and associated functional capacity evaluations provided to Claimant is denied.

SIGNED this 7th day of May 2003.

RUTH CASAREZ
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARING