

DOCKET NO. 453-03-1563.M5
TWCC NO. M5-02-2693-01

MOCKINGBIRD WORKSKILLS,
Petitioner

v.

LIBERTY MUTUAL FIRE
INSURANCE COMPANY,
Respondent

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BEFORE THE STATE OFFICE

OF

ADMINISTRATIVE HEARINGS

DECISION AND ORDER

Mockingbird Workskills (Petitioner) appealed the decision of the Texas Workers' Compensation Commission's Medical Review Division (MRD) denying payment for work hardening treatments provided to Claimant from June 27, 2001 through August 13, 2001, in the amount of \$7,406.00. Liberty Mutual Fire Insurance Company (Carrier) denied Petitioner's claim, asserting that the work hardening was not medically necessary. Based on the evidence presented, the Administrative Law Judge (ALJ) finds that Petitioner failed to establish the medical necessity of the work hardening program and is not entitled to reimbursement.

I. NOTICE, JURISDICTION, AND PROCEDURAL HISTORY

ALJ Suzanne Formby Marshall convened a hearing on March 19, 2003. Petitioner was represented by Kevin W. Stouwie, attorney. Liberty Mutual Fire Insurance Company (Carrier) was represented by Charlotte Salter, attorney. Following the presentation of evidence, the hearing was closed on the same day. There were no contested issues of jurisdiction or notice. Those issues are set out in the Findings of Fact and Conclusions of Law below.

II. EVIDENCE AND BASIS FOR DECISION

The issue presented in this proceeding is whether the Carrier should reimburse the Petitioner \$7,406.00 for a work hardening program which began on June 27, 2001, and concluded on August 13, 2001.

The documentary record in this case consisted of 176 pages of medical records which had been presented to the independent review organization (IRO) by Petitioner. Respondent introduced one exhibit containing 7 pages of records relating to the Carrier's evaluation of the Petitioner's claim.¹ No oral testimony was presented.

¹ These pages were presented without an affidavit of the custodian of records. Further, Respondent did not represent that the documentation had been submitted to the IRO. However, since Petitioner did not object to these exhibits, they were admitted into evidence.

Based on the evidence, the ALJ concludes that the Petitioner's appeal should not 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 to her right hand and shoulder.
2. Claimant's injury is covered by worker's compensation insurance written for Claimant's employer by Liberty Mutual Fire Insurance Company (Carrier).
3. Claimant's treating physician is Dr. Curtis Adams, D.C. Claimant was treated by Dr. Adams on approximately 196 occasions from September 21, 2000, to November 10, 2001.
4. Dr. Adams provided work conditioning therapy to Claimant from May 29, 2001, through June 14, 2001.
5. When the work conditioning was unsuccessful, Dr. Adams referred Claimant to Mockingbird Workskills (Petitioner) for work hardening.
6. On June 26, 2001, Claimant had an initial functional capacity evaluation (FCE) provided by Petitioner. The evaluation noted that:
 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 less than a sedentary light physical demand level for activity below the waist.
 5. Claimant's potential for rehabilitation was good.
 6. Claimant was recommended to continue with current therapy with possible integration into a work hardening program.
 7. Petitioner treated the Claimant's injury with a work hardening program from June 27, 2001, the day after the initial FCE was performed, through August 13, 2001.

8. On July 2, 2001, a psychological evaluation was performed by Dr. Jonnalee Barta, a psychologist at Behavioral Healthcare Associates, to determine Claimant's psychosocial readiness for a work hardening program.
9. The psychological evaluation described in Finding of Fact No. 8 noted that Claimant was experiencing symptoms of heightened depression and panic that might impede her performance in a rehabilitation program.
10. During the work hardening program, Petitioner noted that Claimant continued to have significant psychological distress and depression.
11. On August 14, 2001, Claimant had a final functional capacity evaluation performed by Petitioner.
12. Claimant was able to work at the light physical demand level for activity above the waist.
13. Claimant was able to work at the sedentary physical demand level for activities below the waist
14. Claimant made slight progress with increased lifting capacity and increased tolerance to critical functional demands.
 - a. Claimant was recommended for a chronic pain management program.
15. Petitioner requested payment of \$7,406.00 for the treatment referred to in Finding of Fact No. 7.
16. Carrier denied payment for treatment referred to in Finding of Fact No. 7 on the basis that it was not medically necessary.
17. Claimant was not able to perform at the physical demand level required for her job as a mail sorter with the United Parcel Service after completing the work hardening program.
18. Petitioner timely requested dispute resolution by the Medical Review Division of the Texas Workers' Compensation Commission (Commission).

19. On August 30, 2002, Envoy Medical Systems, LLC, an independent review organization (IRO) certified by the Texas Department of Insurance, issued its decision finding that the medical records submitted for review did not demonstrate the medical necessity for a work hardening program.
20. The Commission's Medical Review Division issued its Findings and Decision on September 24, 2002, concurring in the findings of the IRO, and Petitioner timely appealed.
21. The Commission sent notice of the hearing to the parties on January 8, 2003. 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.
22. The hearing was held on March 19, 2003, and all parties appeared and participated.
23. The purpose of a work hardening program is to serve as a transition between management of the compensable injury and a return to work.
24. Claimant was not ready to make the transition to a return to work due to her psychological condition on June 27, 2001, nor at any time throughout the work hardening program.
25. The referral to the work hardening program, after Claimant had unsuccessfully completed a work conditioning program and continued to experience significant psychosocial distress, constituted an over-utilization of services.

IV. CONCLUSIONS OF LAW

1. The Texas Workers' Compensation Commission (Commission) has jurisdiction to decide the issues presented pursuant to 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 and TEX. GOV'T CODE ch. 2003.

3. The Notice of Hearing issued by the Commission 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.
4. Petitioner has the burden of proving by a preponderance of the evidence that it should prevail in this matter. 28 Tex. Admin. Code § 148.21(h) and (i)
5. Based on Findings of Fact Nos. 5, 6, 8-11, and 21, Claimant was not likely to benefit from a work hardening program.
6. Based on Findings of Fact No. 14, Claimant was not capable of attaining specific employment upon completion of the program.
7. Based on Findings of Fact Nos. 5-6, 8-9, and 22 and Conclusions of Law Nos. 5-6, Claimant was not entitled to participate in a work hardening program.
8. Based on the above Findings of Fact and Conclusions of law, the work hardening program from June 27, 2001, through August 13, 2001, was not medically reasonable or necessary to treat Claimant's medical condition.
9. The Carrier should not reimburse Petitioner for providing work hardening treatment to Claimant from June 27, 2001, through August 13, 2001.

ORDER

IT IS, THEREFORE, ORDERED that Mockingbird Workskills is not entitled to reimbursement by Liberty Mutual Fire Insurance Company for the work hardening program administered to Claimant from June 27, 2001, through August 13, 2001.

ISSUED this 8th day of May 2003.

SUZANNE FORMBY MARSHALL
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS