

STATE OFFICE OF ADMINISTRATIVE HEARINGS
300 West 15th Street, Suite 502
Austin, Texas 78701
DOCKET NO. 453-03-2267.M5
MDR Tracking No. M5-03-0394-01

TWIN CITY FIRE INSURANCE	§	BEFORE THE STATE OFFICE
COMPANY	§	
PETITIONER	§	
	§	
V.	§	OF
	§	
INDUSTRIAL MEDICAL ASSOCIATES	§	
RESPONDENT		ADMINISTRATIVE HEARINGS

DECISION AND ORDER

I. SUMMARY

Industrial Medical Associates (Provider), the provider of services in this case, seeks reimbursement for work hardening services provided an injured worker, _____. (Claimant). Twin City Fire Insurance Company (Carrier) denied payment indicating the services were not medically necessary. Subsequently, the Independent Review Organization (IRO) considered Provider's claim for reimbursement and recommended reimbursement. Carrier appealed the IRO's decision.

The Administrative Law Judge (ALJ) finds the work hardening program was not medically necessary; therefore, Provider is not entitled to reimbursement.

II. JURISDICTION, NOTICE, AND PROCEDURAL HISTORY

On June 2, 2003, ALJ Michael J. O'Malley convened the hearing on the merits at the William P. Clements Building, 300 West 15th Street, Austin, Texas. Carrier appeared through its attorney, Jane Lipscomb Stone. Provider appeared *pro se*, through Provider's owner A. J. Morris, M.D. After the evidence was presented, the record of the hearing closed on June 11, 2003, the last day to file legal argument.

III. BACKGROUND, EVIDENCE, AND DISCUSSION

1. Background

Claimant suffered from right wrist and elbow pain in _____. She began seeing A. J. Morris, M.D. at that time. Claimant initially participated in physical therapy through June 2001. On August 6, 2001, Claimant had an EMG/NCS performed, which showed cubital tunnel syndrome. On August 21, 2001, Claimant had surgery (right cubital neurolysis) to correct the right cubital tunnel syndrome. Linden Dillin, M.D. performed the surgery. Claimant began the work hardening program on October 24, 2001, and continued until November 9, 2001.

2. Parties' Positions and Evidence

1. **Carrier's Position and Evidence**

Carrier relies on certain medical documents and the testimony of Samuel M. Bierner, M.D. to support its position that the work hardening program was not medically necessary. Carrier asserts that Claimant's condition did not warrant the multi-disciplinary work hardening program. First, Carrier claims and Dr. Bierner testified that Provider began the work hardening program too soon after surgery. According to the medical records and as noted by Dr. Bierner, on October 12, 2001, Dr. Dillin (the surgeon) treated Claimant. Dr. Dillin noted that Claimant's pain was down since the surgery, but she still had a lot of hypersensitivity around the medical incision. At that time, Dr. Dillin recommended deep friction massage, ultrasound, and microelectrical stimulation. He stated that he would see her in four weeks to check on her progress. Provider began the work hardening program on October 24, 2001. Dr. Bierner testified that Provider began the work hardening program without a recommendation from Dr. Dillin. Because Provider began the work hardening program too soon after surgery and without a recommendation from Dr. Dillin, Dr. Bierner concluded that the program had to be stopped because it caused Claimant too much pain.

Second, Carrier argued that there were no psycho-social problems noted prior to beginning the work hardening program. Because the work hardening is a multi-disciplinary program, Dr. Bierner testified that there should have been a psychological evaluation done before beginning the program.

Finally, Carrier argues that no functional capacity evaluation (FCE) was performed before beginning the work hardening program. Dr. Bierner testified that an FCE is required prior to beginning work hardening because it is essential to determine what a claimant must achieve to return to work. According to Dr. Bierner, in this case, the FCE would have determined the skills that Claimant needed to return to work. Because an FCE was not performed, Dr. Bierner testified that Provider could not have concluded that a work hardening program was medically necessary for this Claimant.

2. **Provider's Position and Evidence**

Provider contends that Claimant met the established criteria for work hardening. Dr. Morris, the owner of the clinic, testified on behalf of Provider as did Richard McQuire, LPT, the therapist who treated Claimant. Dr. Morris testified that he determined Claimant was a good candidate for work hardening because she needed to be reconditioned to return to work. He stated that Claimant was pain free when she began the work hardening program. However, because Claimant was not achieving her goals and experienced increased pain with the work hardening program, Provider decided to terminate the work hardening program on November 9, 2001.

Mr. McQuire testified that because Claimant had been off work for an extended period of time, she needed a work hardening program to integrate her back into the work force. He indicated that he did not perform an FCE because Claimant performed secretarial-type duties and the FCE was not designed to test these skills.

3. ALJ's Analysis

The issue in this case is whether the work hardening program was medically necessary for Claimant. The ALJ finds the work hardening was not medically necessary; therefore, Provider should not be reimbursed by Carrier.

Work hardening is 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 Claimant. The Texas Workers' Compensation Commission has adopted rules governing work hardening programs. These rules are found in the Medical Fee Guideline and relate to, 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 programs.¹ In this case, Provider has not shown the medical necessity of the work hardening program.

Provider failed to show that Claimant was an appropriate candidate for a work hardening program because it did not perform an FCE before admitting her into the program. Dr. Bierner testified that an FCE could be modified to test for secretarial/data entry skills. Without an FCE, it would have been difficult to establish goals for Claimant or develop work simulation activities.

Further, Provider recommended the work hardening program without a psychological evaluation. According to Medicine Ground Rule II. E. 2., an initial mental evaluation may be performed prior to entrance into the work hardening program. In this case, there is no indication that Claimant had psychological issues that warranted a work hardening program. Because a work hardening program involves physical as well as psychological components, it is more expensive. To justify the expense of a work hardening program, it is typical to assess any psychological problems before beginning the program.

The most troubling aspect of this work hardening program is the timing of the program. At the time the program began on October 24, 2001, there was no indication that the program was needed, especially given Claimant's recent surgery. On October 12, 2001, Dr. Dillin, Claimant's surgeon, recommended deep friction massage, ultrasound, and microelectrical stimulation to treat Claimant post surgery. He noted that he would see Claimant back in four weeks to check her progress. Carrier Ex. 1 at 44. Dr. Dillin never recommended a work hardening program. Within two weeks after Dr. Dillin's recommendations, Provider initiated a work hardening program. There is nothing in the medical records indicating why Provider initiated the work hardening program when it did. Two weeks after beginning the program, Provider terminated the work hardening program because Claimant's condition worsened. On November 13, 2001, Dr. Dillin noted that Claimant had been getting better until she participated in the work hardening program. *Id.* at 67.

In summary, the record shows that: (1) Provider began the work hardening program before Claimant had fully recovered from her surgery; (2) there was no indication that a work hardening program was necessary for Claimant at that time; (3) no FCE was performed; (4) no psychological evaluation was given; and (5) Claimant's surgeon had recommended a different type of post-surgery

¹ See Medical Fee Guideline Medicine Ground Rule II. E. and 28 TEX. ADMIN. CODE § 134.201.

treatment for Claimant. For these reasons, Carrier has shown that the work hardening program for Claimant was not medically necessary. Accordingly, reimbursement for this program is denied.

IV. FINDINGS OF FACT

1. Claimant ____ (Claimant), performed computer and data entry for _____. She suffered from right wrist and elbow pain in _____.
2. At the time of pain, Claimant's employer had workers' compensation insurance through Twin City Fire Insurance Company (Carrier).
3. A. J. Morris, M.D., a doctor with Industrial Medical Associates (Provider), began treating Claimant in April 2001.
4. Claimant initially participated in physical therapy through June 2001.
5. On August 21, 2001, Claimant had surgery (right cubital neurolysis) to correct her right cubital tunnel syndrome.
6. Claimant began the work hardening program on October 24, 2001, and continued until November 9, 2001.
7. Before beginning the work hardening program, Provider did not perform a Functional Capacity Evaluation.
8. Provider did not perform a psychological evaluation before beginning the work hardening program.
9. Provider did not document Claimant's psychological problems before the work hardening program.
10. Provider began the work hardening program two months after Claimant's surgery.
11. Because Claimant's condition deteriorated as a result of the work hardening program, Provider ended the program on November 9, 2001.
12. Claimant did not return to work after completion of the work hardening program.
13. Provider seeks reimbursement for Claimant's work hardening.
14. Carrier denied reimbursement for the work hardening program because it was not medically necessary.
15. On December 26, 2002, an Independent Review Organization (IRO) granted Provider reimbursement for the work hardening program.

16. On January 30, 2003, Carrier appealed the IRO's decision.
17. The Texas Workers' Compensation Commission (Commission) sent notice of the hearing to the parties on March 4, 2003. The hearing notice informed the parties of the matter to be determined, the right to appear and be represented, the time and place of the hearing, and the statutes and rules involved.
18. The hearing was held on June 2, 2003. Carrier appeared through its attorney, Jane Lipscomb Stone. Provider appeared *pro se*, through Dr. Morris. The record of the hearing closed on June 11, 2003, the last day to file legal argument.

V. CONCLUSIONS OF LAW

1. The Commission has jurisdiction to decide the issue presented, 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. §§ 402.073 and 413.031(d) and TEX. GOV'T CODE ANN. ch. 2003.
3. Proper and timely notice of the hearing was provided to the parties in accordance with TEX. GOV'T CODE ANN. ch. 2001 and 28 TEX. ADMIN. CODE § 148.4(b).
4. Pursuant to 28 TEX. ADMIN. CODE § 148.21(h) and (i), Carrier had the burden of proving by a preponderance of the evidence that the work hardening program was not medically necessary.
5. Provider's work hardening program did not enhance the ability of Claimant to return to work as required under TEX. LAB. CODE ANN. § 408.021(a).
6. Based on the Findings of Fact and Conclusions of Law, Provider's work hardening program was not medically necessary.
7. Based on the Findings of Fact and Conclusions of Law, Provider should not be reimbursed for the work hardening program.

ORDER

IT IS HEREBY ORDERED that the request for reimbursement of Industrial Medical Associates for the work hardening program for Claimant _____ is denied as it was not medically necessary.

SIGNED this 12th day of June 2003.

MICHAEL J. O'MALLEY
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARING