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| TOTAL REHABILITATION SERVICES, INC., <i>Petitioner</i> | § | BEFORE THE STATE OFFICE |
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| VS. | § | OF |
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| LIBERTY MUTUAL FIRE INSURANCE COMPANY, Respondent | § | ADMINISTRATIVE HEARINGS |
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DECISION AND ORDER

The issue in this case is whether Total Rehabilitation Services, Inc. (Provider) should be reimbursed for work-hardening services rendered to the Claimant from September 24, 2001 to October 19, 2001. The Administrative Law Judge (ALJ) finds that Liberty Mutual Fire Insurance Company (Carrier) is not required to reimburse the Provider for these services.

1. Factual Background

The Claimant sustained an on-the-job injury on ___ when he injured his knee and lower back. In the course of his work as a data-collector, he slipped in mountainous terrain and fell ten to fifteen feet on his right side and back. The Claimant was reassigned to "light-duty" work with the same employer and continued to work light-duty until May 16, 2001. Carrier Ex. 20.

An MRI performed on May 2, 2001 revealed a disc bulge at the L2-L3 level of the spine. The results of his knee MRI were normal. Beginning in June of 2001, the Claimant began a physical therapy program with the Provider, which included passive and active modalities.

The results of the July 17, 2001 functional capacity evaluation (FCE) administered by the Provider demonstrated that the Claimant could perform "medium-duty" work. The Provider determined that the Claimant was a good candidate for an eight-week work-hardening program based upon the results of the FCE and the assumption that he would return to his former job as a data-collector, which the Provider found to be "heavy-duty" employment. Provider Ex. 1 at 31. The Claimant was also examined by Rick Moses, Ph.D., a Qualified Mental Health Provider, who found that the Claimant "appears to be a good candidate for a Work Hardening Program," and that he was "willing and able to participate in and benefit from the program." The results of the diagnostic review also found the Claimant to suffer from Chronic Pain Syndrome. Provider Ex. 1 at 36.

On July 18, 2001, the Claimant began an eight-week work-hardening program. During the course of the program, the Claimant re-injured himself and began experiencing more pain. On August 16, 2001, John Wells, M.D., a pain management specialist and the Claimant's treating doctor, suspended work-hardening until September 13, 2001. Provider Ex. 1 at 58-9. During the break in the work-hardening program, Dr. Wells recommended that the Claimant receive epidural steroid injections (ESIs), which were administered on August 29, 2001. Carrier Ex. 1 at 26.

The Claimant completed work-hardening on October 19, 2001. The services at issue were rendered after the Claimant resumed the work-hardening program from September 24, 2001 through October 19, 2001.

2. Discussion

The Provider argues that the work-hardening program was medically necessary and supported by the results of the FCE and the findings of Dr. Moses. The Provider also argues that the Carrier's preauthorization of additional work-hardening in 2002 is an admission that work-hardening was appropriate in September and October of 2001. Andrew Reed, a physical therapist with the Provider, testified that the Claimant was a good candidate for work-hardening despite his consistent reports of pain and that the Claimant progressed well through the program. He also provided extensive testimony relating to the validity of the FCE testing.

The Carrier argues that the services were not medically necessary and relies upon a peer review performed by Dr. James Hood, who believed that the results of the FCE were invalid. The Carrier also argues that work-hardening should have ceased when the Claimant re-injured his back. The Carrier points to the administration of the ESIs to support its position that the Claimant's treatment was ongoing, and therefore, he was no longer a good candidate for work-hardening, even if he was at the beginning of the program.

The parties concentrated primarily on the validity of the FCE and whether the work-hardening program should have resumed after the Claimant's four-week break and treatment with ESIs. The record demonstrates that the FCE furnished to the Carrier contains errors. The FCE contained within the Provider's records, however, does not contain the errors identified by the Carrier and is also signed by Mr. Reed, the physical therapist. While the FCE offered by the Provider appears to be valid, it does not, in and of itself, meet the criteria set forth in the MFG. The ALJ finds instead that the Provider failed to demonstrate that the Claimant's level of functioning interfered with his ability to carry out specific tasks in the workplace, because the Provider failed to establish that it was necessary to prepare the Claimant for heavy-duty employment. Further, the record fails to demonstrate that the Claimant intended to return to his previous job as a data-collector.

The MFG¹ defines work-hardening as a "highly structured, goal-oriented, individualized treatment program designed to maximize the ability of the persons served to return to work" The MFG further states that "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." The MFG identifies the following criteria for admission into a work-hardening program:

1. persons who are likely to benefit from the program;
2. persons whose current levels of functioning due to illness or injury interfere with their ability to carry out specific tasks required in the workplace;
3. persons whose medical, psychological, or other conditions do not prohibit participation in the program;
4. persons who are capable of attaining specific employment upon completion of the program.

¹ 1996 Medical Fee Guideline, *Medicine Ground Rules*, II. E. at 37.

The Claimant performed light-duty work after his accident from November 2000, until May 2001. The FCE showed the Claimant to be capable of performing medium-duty work, which the FCE defines as primarily the ability to carry up to fifty pounds of weight frequently and ten to twenty pounds constantly. The record is void of any explanation of why it was necessary to intensively prepare the Claimant for heavy-duty employment in light of his six months of light-duty work after his accident. Therefore, the Provider failed to demonstrate that the Claimant's level of functioning, in the medium-duty range, interfered with his ability to return to work.

Further, the record is not at all clear that the Claimant intended to return to work as a data-collector. In the preliminary evaluations and in the first half of the work-hardening program, the Claimant consistently expressed disappointment that his pain persisted, but there is no documented desire to return to work as a data-collector. Therefore, the record fails to establish that he would benefit from the continuation of the program or that he was capable of attaining specific employment upon completion of the program.

III. Findings of Fact

1. The Claimant sustained an on-the-job injury on ____, when he fell and injured his knee and lower back.
2. Liberty Mutual Insurance Company (Carrier) denied payment for treatment rendered from September 24, 2001 to October 19, 2001. The denial codes were primarily "V"(not medically necessary with peer review), "U" (not medically necessary), and "F" (related to fee guidelines).
3. The Provider requested medical dispute resolution from the Medical Review Division of the Texas Workers' Compensation Commission. An Independent Review Organization (IRO) decision found that the Provider was not entitled to reimbursement for its claim.
4. The Provider appealed the decision issued by the IRO.
5. Notice of the hearing was sent March 5, 2003. 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.
6. The hearing was convened on April 15, 2003 with Administrative Law Judge (ALJ) Shannon Kilgore presiding and representatives for the Carrier and Provider participating. The record closed April 30, 2003, after the parties had an opportunity to file written briefing. After the record closed, the matter was reassigned to ALJ Janet Dewey, who reviewed the entire record.
7. At the time of his injury, the Claimant was performing "heavy-duty" work as a data-collector in the mountains in New Mexico. After his injury, the Claimant was reassigned to "light-duty" work with the same employer and continued to work light-duty until May 16, 2001.
8. The results of the July 17, 2001 functional capacity evaluation (FCE) demonstrated that the Claimant could only perform "medium-duty" work. In determining that the Claimant was a

good candidate for an eight-week work-hardening program, the Provider relied upon the results of the FCE, and a psychological evaluation.

9. On July 18, 2001, the Claimant began the eight-week work-hardening program. During the course of the program, the Claimant re-injured himself and began experiencing more pain.
10. On August 16, 2001, John Wells, M.D., a pain management specialist and the Claimant's treating doctor, suspended the program until September 13, 2001 when the Claimant was released back to the program.
11. On August 29, 2001, the Claimant received epidural steroid injections to alleviate the pain in his lower back.
12. The Provider failed establish why it was necessary to prepare the Claimant for heavy-duty employment, when the record shows that the Claimant was employed in a light-duty capacity for six-months after his injury.
13. The record fails to establish that the Claimant intended to return to his previous job as a data-collector.
14. The record fails to establish that the Claimant would benefit from the program or that he was capable of attaining work as a data-collector upon completion of the program, or that the Claimant's level of functioning, in the medium-duty range, interfered with his ability to return work.

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(k) and TEX. GOV'T CODE ANN. Ch. 2003 (Vernon 2000).
2. The Provider timely filed its request for a hearing as specified in 28 TEX. ADMIN. CODE (TAC) § 148.3.
3. Adequate and timely notice of the hearing was provided in accordance with TEX. GOV'T CODE ANN. § 2001.052.
4. The Provider has the burden of proof in this matter. 28 TAC §148.21(h).
5. The Provider did not meet its burden of proving that the work-hardening program the Claimant attended from September 24, 2001 to October 19, 2001 met the criteria established in the 1996 Medical Fee Guideline, *Medicine Ground Rules* (MFG), II. E. at 37 adopted pursuant to 28 TAC §134.201.

6. The Provider did not meet its burden of proving that the work-hardening program the Claimant attended from September 24, 2001 to October 19, 2001 was medically necessary or reasonably required health care under TEX. LAB. CODE ANN. § 408.021.

ORDER

IT IS, THEREFORE, ORDERED that Total Rehabilitation Services, Inc.'s request for reimbursement for work-hardening services rendered to the Claimant from September 24, 2001 to October 19, 2001 is denied.

Signed June 23, 2003

STATE OFFICE OF ADMINISTRATIVE HEARINGS

JANET R. DEWEY
ADMINISTRATIVE LAW JUDGE