

THERAPY EXPERTS, <i>Petitioner</i>	§	BEFORE THE STATE OFFICE
	§	
	§	
VS.	§	OF
	§	
TRANSCONTINENTAL INSURANCE COMPANY, <i>Respondent</i>	§	ADMINISTRATIVE HEARINGS

### DECISION AND ORDER

Therapy Experts is appealing the decision of the Texas Workers' Compensation Commission's (Commission's) designee, an independent review organization (IRO), which upheld Transcontinental Insurance Company's (Transcontinental's) denial of a claim for reimbursement for work hardening provided to Claimant based on lack of medical necessity. This decision concludes that Therapy Experts is not entitled to reimbursement because it failed to establish that the work hardening program was medically necessary.

#### **I. Procedural History**

A hearing convened in this case on July 1, 2003, before the undersigned Administrative Law Judge (ALJ) at the State Office of Administrative Hearings, 300 West 15<sup>th</sup> Street, Austin, Texas. Therapy Experts appeared and was represented by Attorney Martin R.G. Marasigan. Transcontinental appeared and was represented by Attorney David Swanson. The record closed on July 1, 2003. The parties did not contest notice or jurisdiction.

#### **II. Background**

Claimant suffered a compensable injury on \_\_\_\_\_, while working as a food preparer at \_\_\_\_\_. She fell backwards while reaching for an object on a shelf and hit her lower back. She was diagnosed with lumbar strain/sprain. At issue are work hardening sessions provided to Claimant from February 5, 2001, through February 22, 2001.

#### **III. Analysis**

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 and intended to address the functional, physical, behavioral, and vocational needs of the injured worker.<sup>1</sup> The Commission has adopted rules governing work hardening programs. The rules, found in the Spine Treatment Guideline (STG)<sup>2</sup> and MFG, relate to, among other things, when work hardening is appropriate and what documentation is required of work hardening providers.

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<sup>1</sup> Medical Fee Guideline (MFG) Medicine Ground Rule II.E. at 28 TEX. ADMIN. CODE § 134.201.

<sup>2</sup> 28 TEX. ADMIN. CODE § 134.1001. Although the Spine Treatment Guideline was repealed, effective January 1, 2002, it was in effect at the time of the injury and treatment in question.

Therapy Experts contends that the work hardening was medically necessary based primarily on the recommendation of Claimant's treating doctor, James Compian, D.C., and the functional capacity evaluation (FCE), which showed that Claimant was at a sedentary physical demand level, which was below the medium level required by the duties of her job. Therapy Experts also points to the recommendation of Dr. Plummer, a designated doctor who believed that Claimant would benefit from work hardening, as well as chronic pain management.

Despite the recommendation of Claimant's treating doctor, the ALJ agrees with Transcontinental that Claimant did not meet the entrance requirements for work hardening as set out in the MFG and was not an appropriate candidate for the program. Although Claimant is entitled to "all health care reasonably required by the nature of the injury as and when needed . . . that cures or relieves the effects naturally resulting from the compensable injury,"<sup>3</sup> that does not mean that the Claimant is entitled to every treatment available.

As Transcontinental's expert witness, Michael Bhatt, D.C., noted, the purpose of work hardening is to transition between management of the initial injury and return to work.<sup>4</sup> In this case, Claimant had actually returned to work in August 2000. (Ex. 3 at 100, 113). Although there may have been a reason for taking her off work for further treatment, her treating doctor did not provide an explanation for the change in status. Dr. Bhatt testified that once an injured worker returns to work, the preferable treatment is to arrange for further conditioning in the work setting itself.

Dr. Bhatt also noted that although the initial FCE was performed on September 11, 2000, it provided little value. (Ex. 1 at 1-6). An FCE done five months prior to the program would not be an accurate indicator of Claimant's functional ability.

Dr. Bhatt also criticized the FCE because it was incomplete. No physical examination or range of motion testing was performed. It also lacked postural references, neurologic testing, the testing of reflexes, strength and endurance testing, isometric and kinetic testing, cardiovascular testing, and a psychological evaluation. Although Therapy Experts performed an evaluation at the start of the program, it also was insufficient because it contained only range of motion testing. (Ex. 1 at 7).

Dr. Bhatt also stated that the FCE did not adequately test whether Claimant was giving 100% effort during the FCE. For example, a subsequent FCE dated March 27, 2001, which included tests for heart rate and grip strength, showed submaximal effort on her part. (Ex. 3 at 269, 272). Other evidence of her unwillingness to put forth effort was exhibited during an examination by Day Lee Snell, D.C., on April 12, 2000, in which she refused to participate in range of motion and flexion testing, even though she was able to bend over to pick up her purse and rise from a chair without apparent pain. (Ex. 3 at 72, 75). The report also showed only 9-10% leg raises, which is indicative of someone who shuffles when they walk, which was not the case. What little the September 2000 FCE did show indicated limited effort on her part. For example, she could lift no more than eight pounds, which is the weight of a gallon of milk, and she could push no more than ten pounds, which

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<sup>3</sup> TEX. LAB. CODE ANN. § 408.021.

<sup>4</sup> Medicine Ground Rule II.E.

is the weight of an average door. (Ex. 1 at 4). Lack of effort on her part would make her a poor candidate because work hardening requires that the injured worker be goal-oriented.

Dr. Bhatt also noted that in October and November 2000, Claimant received seven sessions of chronic pain management, including physical therapy. If she had given full effort then, her functional ability should have improved. Yet the records show that her pain and depression levels were still at a nine on a scale of zero to ten at the end of the program, the same as when she entered. (Ex. 3 at 115-17). Dr. Bhatt testified that if an injured worker is suffering from pain and depression at a level of nine out of ten, the worker has significant psychological needs that must be addressed because psychological problems can limit the participant's ability to perform well in a program that requires substantial initiative. The FCE should have included a psychological evaluation to determine whether Claimant had psychological issues that prohibited participation in the program.<sup>5</sup> As noted, there was none. Therapy Experts did not conduct a psychological evaluation until February 28, 2000, at which time the decision was made to discontinue Claimant from the program. (Ex. 1 at 8-11).

Dr. Bhatt's final criticism, which is apparent in the record, is that the program was generic and did not meet the STG and MFG, which require that the program be tailored to meet the physical demands of Claimant's specific job and provide real or simulated work activities of her work environment.<sup>6</sup>

In conclusion, Therapy Experts failed to show that Claimant met the entrance requirements for work hardening as required by the MFG.<sup>7</sup> Therefore, Therapy Experts is not entitled to reimbursement.

#### **IV. Findings of Fact**

1. Claimant suffered a compensable injury on \_\_\_\_\_, while working as a food preparer at \_\_\_\_\_. She fell backwards while reaching for an object on a shelf and hit her lower back. She was diagnosed with lumbar strain/sprain.
2. Therapy Experts provided Claimant with work hardening sessions from February 5, 2001, through February 22, 2001.
3. Transcontinental Insurance Company (Transcontinental) denied reimbursement on the basis that the work hardening program was medically unnecessary.
4. Therapy Experts appealed the denial to the Texas Worker's Compensation Commission (Commission).
5. The Commission's designee, an independent review organization, issued a decision on

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<sup>5</sup> Medicine Ground Rule II.E.2.a.

<sup>6</sup> Medicine Ground Rule II.E; STG Ground Rule (e)(2)(L).

<sup>7</sup> Medicine Ground Rule II.E.

- January 9, 2003, denying the appeal because the work hardening was not medically necessary.
6. Therapy Experts filed a request for a hearing on January 21, 2003.
  7. The Commission sent notice of the hearing to the parties on March 7, 2003. 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.
  8. Claimant's treating doctor did not provide justification for why Claimant was removed from work for further treatment after returning to work in August 2000.
  9. A functional capacity evaluation (FCE) performed five months prior to the beginning of a work hardening program would not provide an accurate indicator of Claimant's functional ability at the time of the work hardening program.
  10. The FCE did not include a physical examination that included range of motion testing, postural references, neurological testing, strength and endurance testing, testing of reflexes, isometric and kinetic testing, and cardiovascular testing.
  11. The FCE did not adequately test whether Claimant was giving 100% effort during the FCE.
  12. Lack of effort on the part of the Claimant made her a poor candidate for a work hardening program because the program requires that the injured worker be goal-oriented.
  13. The FCE did not include a psychological evaluation to determine whether Claimant had psychological problems that would interfere with her ability to participate in the work hardening program.
  14. After participating in a chronic pain management program in October and November 2000, Claimant was still experiencing pain and depression at a level of nine on a scale of zero to ten.
  15. The work hardening program provided generic work activities that did not mimic the physical demands of her specific job and that did not provide real or simulated activities of her work environment.
  16. Claimant did not meet the entrance requirements for a work hardening program and was not an appropriate candidate for the program.

## **V. Conclusions of Law**

1. The Commission has jurisdiction over this matter 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. TEX. LAB. CODE ANN. §§ 402.073 and 413.031(k) and TEX. GOV'T CODE ANN. ch. 2003.
3. Therapy Experts filed a timely notice of appeal as specified in 28 TEX. ADMIN. CODE (TAC) § 148.3.
4. Adequate and timely notice of the hearing was provided. TEX. GOV'T CODE ANN. §§ 2001.051 and 2001.052.
5. Therapy Experts had the burden of proof in the case. 28 TAC §148.21(h).
6. Therapy Experts failed to show that the admission criteria of a work hardening program were met according to Medical Fee Guideline (MFG) Medicine Ground Rule II.E.1. and 2. at 28 TAC § 134.201.
7. Therapy Experts failed to show that the work hardening program was designed to meet the physical demands of Claimant's job as required by MFG Medicine Ground Rule II.E.1 and the Spine Treatment Guideline Ground Rules at 28 TAC § 134.1001(e)(2)(L).
8. Enrollment in a work hardening program was not reasonably required health care under TEX. LAB. CODE ANN. § 408.021.
9. Based on the foregoing findings of fact and conclusions of law, Therapy Experts is not entitled to reimbursement for the work hardening program.

**ORDER**

**IT IS, THEREFORE, ORDERED** that the claim of Therapy Experts against Transcontinental Insurance Company for work hardening provided to the Claimant from February 5, 2001, until February 22, 2001, is denied.

**Signed September 15, 2003.**

**STATE OFFICE OF ADMINISTRATIVE HEARINGS**

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**KATHERINE L. SMITH**  
**ADMINISTRATIVE LAW JUDGE**