

KEVIN R. WHITE, D.C., PETITIONER	§ § § § § § §	BEFORE THE STATE OFFICE OF ADMINISTRATIVE HEARINGS
V.		
TASB RISK MANAGEMENT FUND, RESPONDENT		

DECISION AND ORDER

Kevin R. White, D.C. (Petitioner), appeals from a decision by the Independent Review Organization that denied him reimbursement for work-hardening services provided to Claimant ____ TASB Risk Management Fund (Carrier) contends that the IRO decision should be upheld because the services were not medically reasonable or necessary. The dates of service are July 23, 2001, through August 15, 2001, and the amount in dispute is \$3,652.00. This Decision and Order denies Dr. White’s appeal because he failed to prove that work-hardening services were medically reasonable and necessary for ____.

I. JURISDICTION, NOTICE, AND VENUE

There were no contested issues of jurisdiction, notice, or venue. Therefore, those issues are addressed in the Findings of Fact and Conclusions of Law without further discussion here.

II. STATEMENT OF THE CASE

Administrative Law Judge (ALJ) Thomas H. Walston convened a hearing in this case on June 15, 2003, at the State Office of Administrative Hearings, William Clements State Office Building, 300 W. 15th, Austin, Texas. Dr. White appeared by telephone and attorney Jane Lipscomb Stone appeared in person on behalf of the Carrier. After the presentation of evidence, the record closed the same day.

III. APPLICABLE LEGAL STANDARDS

The Labor Code requires the Texas Workers’ Compensation Commission to establish medical policies and guidelines relating to fees charged or paid for medical services, including guidelines for specific services. TEX. LAB. CODE §413.011(a)(1). The rules applicable in this case include the Commission’s the *Medicine Ground Rules* contained in the Commission’s *Medical Fee Guideline*, found at 28 TEX. ADMIN. CODE §134.201.

The *Medicine Ground Rules* describe “work hardening” at Section II.E as follows:
Work Hardening: A highly structured, goal-oriented, individualized program designed to maximize the ability of the persons served to return to work. Work hardening programs are interdisciplinary in nature with a capability of addressing the functional, physical, behavioral, and vocational needs of the injured worker. 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. Work hardening programs use real or simulated work activities in a relevant work environment in conjunction with physical conditioning tasks. These activities are used to progressively improve the biomechanical, neuromuscular, cardiovascular/metabolic, behavioral, attitudinal, and vocational functioning of the persons served.

Persons eligible for work hardening are

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

(Medicine Ground Rules, Section II.E.1.)

IV. Discussion

Introduction

_____ suffered a compensable injury on _____, when the school bus she was driving for _____ was hit on the right side by a car. The school bus was stopped and waiting to make a turn when the car hit it. Three days later _____ began chiropractic care with Dr. Mary Wilkinson, who is the treating doctor in this case. _____ initial complaints were headaches and pain in the low back, shoulder, neck, and mid-back, with numbness in the legs and foot, and cramping in the calf and toes. Over the course of her treatment, _____ received more than 50 chiropractic treatments from Dr. Wilkinson.

On March 8, 2001, _____ also saw a neurologist, Dr. Pedro Nosnick, for an exam and neurodiagnostics. At that time she made complaints of pain in both legs and knees, as well as swelling in her legs, but she made no complaints of back or neck pain. An EMG of the legs was normal, and there was no evidence of radiculopathy or nerve root entrapment.

An initial functional capacity evaluation (FCE) was performed on _____ on May 7, 2001, at Town East Rehabilitation (where Petitioner Dr. White works). This FCE concluded that _____ could only do sedentary light work and that she could not return to her job at that time. Thereafter, _____ underwent a rehabilitation program at Town East of therapeutic exercise for four weeks and work conditioning for about six weeks, ending in mid-July.

A subsequent FCE was performed by Town East on ____ on July 12, 2001. It showed that ____ could perform light work with maximum lifting of 25 pounds. On July 13, 2001, Dr. Wilkinson reported that ____ was on total disability and she recommended a work hardening program for ____ to begin July 23, 2001. However, she gave no explanation of the clinical rationale for the referral.

In the meantime, however, on July 18, 2001, Dr. Michael D. Ciepiela, M.D., conducted an Independent Medical Exam on ____ on behalf of the Carrier, and he had another FCE performed. Based on this FCE and exam, Dr. Ciepiela concluded that ____ had suffered cervical and lumbar sprains, her problems had resolved, she had 0% impairment, and she reached Maximum Medical Improvement (MMI) on July 18, 2001.

As noted previously, ____ underwent work hardening between July 23 -August 15, 2001. These are the services at issue in this case. After the work hardening, ____ was released to return to work effective August 15, 2003. But it is not clear from the evidence whether ____ actually returned to work at that time.

Based on Dr. Ciepiela's report that ____ reached MMI on July 18, 2001, Carrier denied reimbursement to Petitioner for the work hardening services provided between July 23 -August 15, 2001, as not being medically reasonable or necessary.

On October 16, 2001, Dr. David S. Olson, D.C., performed a designated doctor exam on _____. He examined _____ and reviewed the history of the injury and treatment described above. At the time, _____ continued to complain of low back pain, occasional neck pain, numbness in her arms and hands at night, cramps in her leg and calf about once per week, and numbness in her toes about one or two times per week.

On exam, Dr. Olson noted that ____ was quite obese, being 5'3" tall and weighing 289 pounds. Orthopedic tests were generally normal, with some lumbar pain on the straight-leg raising test. Dr. Olson diagnosed ____ with initial cervical and lumbar strains and pain, as well as "myalgic pain complicated by somatic dysfunction." Dr. Olson assessed 8% impairment rating and, consistent with Dr. Ciepiela, found that ____ had reached MMI on July 18, 2001.

Dr. White appealed Carrier's denial of payment for work hardening services, but on February 4, 2003, the Independent Review Organization denied the appeal, finding that the services were not medically necessary. This appeal followed.

Parties' Evidence and Arguments

Dr. White testified briefly. In essence, he stated that ____ was referred to Town East Rehabilitation by Dr. Wilkinson and that he relied on Dr. Wilkinson's judgment that work hardening was necessary. Dr. White believes that Town East should be reimbursed for the work hardening because Dr. Wilkinson was the treating doctor and Town East provided the services in good faith reliance on her referral. He also believes the follow-up FCE performed on ____ on July 12, 2001, supported work hardening.

Initially, Carrier notes that Town East is a CARF facility; therefore, it was not required to obtain preauthorization for work hardening services. However, without preauthorization, the services are subject to retrospective review for medical necessity. Carrier called Brian M. Glenn, D.C., as an expert witness. Dr. Glenn has practiced chiropractic for 11 years. He primarily sees patients in private practice, but a small percentage of his work is peer review. Dr. Glenn reviewed all of the available records in this case and concluded that ____ was provided excessive treatment and care, and that the work hardening services at issue were not medically reasonable or necessary. In particular, Dr. Glenn testified that ____ sprain injury did require some trial period of chiropractic care, but here ____ had 59 chiropractic visits (not counting the work hardening), excessive x-rays, and therapy for activities of daily living that were not needed. He testified that in a typical sprain case of this type, the patient will receive six to eight weeks of chiropractic care and will return to work within 35 days.

Dr. Glenn also criticized the two FCE's performed by Town East. He stated that these were not comprehensive or thorough. He agreed that they supported the work conditioning given to ____ but stated that they did not support work hardening. He also cited the additional FCE performed in connection with Dr. Ciepiela's examination of ____ in July 2001. In Dr. Glenn's view, that FCE was more comprehensive and it showed that ____ was capable of performing the medium duty tasks required for her job. He also noted that both Dr. Ciepiela and the designated doctor (Dr. Olson) concluded that ____ reached MMI on July 18, 2001, which was prior to the work hardening services.

On cross examination, Dr. Glenn conceded that it is common to accept referrals from other doctors and to rely on the referring doctor's conclusion that the treatment is necessary.

Carrier also referred to various medical records introduced into evidence. The March 8, 2001, report from Dr. Nosnik states that ____ complained of knee and leg pain but she had no headaches and no pain in her back, neck, or chest. Also, all of the objective tests of ____ legs and knees were normal. In addition, Dr. Ciepiela's report dated July 20, 2001, found no objective evidence of injury and specifically noted that ____ had normal range of motion in her neck and back. That report concluded that ____ reached MMI on July 18, 2001, and that no further medical treatment was reasonable or necessary. Finally, Carrier stresses that Dr. Olson (the designated doctor) also found that ____ reached MMI on July 18 and that the IRO denied Dr. White's appeal.

V. ALJ'S ANALYSIS AND DECISION

The ALJ finds that Dr. White has not established that work hardening was a medically reasonable and necessary treatment program for _____. Therefore, the ALJ denies Petitioner's request for reimbursement. In particular, the ALJ was not persuaded that ____ needed a multi-disciplinary work hardening program. At best, the FCEs showed that ____ had difficulty meeting the physical requirements of her bus-driving job. The purposes of a less intensive work conditioning program is to assist "persons whose current level of functioning due to illness or injury interferes with their ability to carry out specific identifiable tasks required of the work place." *Medical Fee Guideline, Medicine*, Sec. II.D. But ____ had already undergone work conditioning with little improvement, and there was no evidence to suggest that additional work hardening therapy would enable her to

return to work. Also there is no evidence of a psychological component to ____ problems that required a multi-disciplinary approach such as work therapy. Apparently, ____ did go to some general group educational therapy sessions during work hardening, but there is no evidence in the record of any psychological evaluation of ____ to establish that she needed such therapy or, if she did, that the therapy provided was appropriate for her needs.

Finally, the report from Dr. Ciepiela states that ____ had no impairment and had reached MMI on July 18, 2001, some five days before the work hardening began. Likewise, Dr. Olson, the designated doctor, confirmed that ____ reached MMI on July 18, 2001, and that no further treatment was needed to enable her to return to work.

Dr. White did not dispute any of this evidence. Instead, he simply argued that he relied on the referring doctor, that he performed the services, and that he should be paid. While doctors receiving patients referred to them by other doctors may face a dilemma on whether to provide treatment, the law is clear that all providers must establish that services provided by them were medically reasonable and necessary in order to obtain payment under the workers' compensation system. In this case, Dr. White failed to show by a preponderance of the evidence that the work hardening services he provided to ____ were medically reasonable and necessary. Therefore, he is not entitled to reimbursement for these services and the appeal is denied.

VI. FINDINGS OF FACT

1. On ____, ____, the Claimant, sustained a compensable injury during the course and scope of her employment with Dallas County Schools.
2. At the time ____ sustained the compensable injury, the TASB Risk Management Fund (the Carrier) was the workers' compensation insurance carrier for ____'s employer.
3. ____ treating physician for her compensable injury was Mary Wilkinson, D.C. In July 2001, Dr. Wilkinson referred ____ to Town East Rehabilitation for working hardening services.
4. Between July 23, 2001, and August 15, 2001, Town East Rehabilitation provided work hardening services to ____.
5. The Carrier refused to pay for the services described in Finding of Fact No. 4.
6. The amount in dispute is \$3,652.00.
7. Petitioner appealed the Carrier's denial of payment to the Independent Review Organization (IRO) established by the Texas Workers' Compensation Commission.
8. On February 4, 2003, the IRO denied Petitioner's appeal and declined to order Carrier to pay the disputed services.

9. Petitioner filed a timely request for to appeal the decision of the IRO.
10. ____ was not in need of a multi-disciplinary treatment program such as work hardening at the time of her referral to Petitioner.
11. The evidence did not establish that work hardening was medically reasonable and necessary for ____ at the time of her referral to Petitioner, or at the time the services were provided.

VII. CONCLUSIONS OF LAW

1. The Texas Workers' Compensation Commission has jurisdiction to decide the issue presented pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE §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 §§402.073(b) and 413.031(d) and TEX. GOV'T CODE, Ch. 2003.
3. Petitioner timely requested a hearing pursuant to 28 TEX. ADMIN. CODE §§102.3, 102.5(h), 102.7 and 148.3.
4. The parties received adequate and timely notice of the hearing pursuant to TEX. GOV'T CODE §2001.051.
5. Venue was established pursuant to 28 TEX. ADMIN. CODE §148.6.
6. Petitioner had the burden of proof in this matter to establish his claim by a preponderance of the evidence. 28 TEX. ADMIN. CODE §148.21(h) and (i).
7. Based on Findings of Fact Nos. 10B11, Petitioner failed to establish by a preponderance of the evidence that a work-hardening program was medically reasonable and necessary for ____
8. Based on Conclusion of Law No. 7, Petitioner's claim is denied.

ORDER

IT IS, THEREFORE, ORDERED that Petitioner's appeal of the IRO decision in Medical Dispute Resolution Docket No. M5-02-2644-01 is Denied, and that Petitioner Kevin R. White, D.C., shall have and recover nothing in this case from Respondent TASB Risk Management Fund for the claims made the subject of this proceeding.

SIGNED July 9, 2003.

THOMAS H. WALSTON
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS