

**DOCKET NO. 453-03-2810.M5  
MDR Tracking No. M5-03-0800-01**

**GREGORY DAVIDOVICH, D.C.,  
Petitioner**

VS.

**INSURANCE COMPANY OF THE WEST,  
Respondent**

## **BEFORE THE STATE OFFICE**

OF

## **ADMINISTRATIVE HEARINGS**

## **DECISION AND ORDER**

The issue is whether the Insurance (Carrier) should reimburse Gregory Davidovich, D.C. for work hardening sessions provided to Claimant \_\_\_\_\_. The Administrative Law Judge concludes that Dr. Davidovich is entitled to reimbursement for work hardening sessions provided to Claimant on December 4, 5, 6, 7, and 17, 2001.

## I. Background

The Claimant sustained a compensable injury on \_\_\_\_\_. Claimant was cutting a piece of metal when a sliver of the metal lodged in his left leg. The dispute initially involved work hardening sessions provided to Claimant from November 19, 2001, to December 18, 2001. The Carrier denied reimbursement claiming lack of medical necessity based on two peer reviews and determined that the amount of payment should be reduced because Dr. Davidovich's program is not CARF accredited. The Texas Workers' Compensation Commission's designee, an independent review organization (IRO), found that the work hardening sessions provided from November 19, 2001, through December 3, 2001, were medically necessary, but that the sessions provided from December 4, 2001, through December 18, 2001, were not. Dr. Davidovich appealed the portion of the decision that denied reimbursement for the work hardening provided from November 4, 2001, through December 18, 2001. The Carrier did not appeal the decision.

## II. Analysis

Dr. Davidovich is entitled to reimbursement for the work hardening sessions provided on December 4, 5, 6, 7, and 17, because the carrier pre-authorized 10 additional work hardening sessions to begin on November 27, 2001. Ex. 1 at 48. When the treating doctor has received pre-authorization from the carrier, the carrier is liable for reasonable and necessary medical costs relating to the health care treatments provided. 28 TEX. ADMIN. CODE (TAC) § 134.600. The carrier may not retrospectively review the medical necessity of care when the provider obtained pre-authorization. 28 TAC § 133.301(a). Dr. Davidovich concedes, however, that he is not entitled to reimbursement for the work hardening provided on December 18, 2003, because the treatment was beyond the number of sessions pre-authorized. Dr. Davidovich also concedes that he is not entitled to the full amount billed because he is not CARF accredited, which requires a 20% reduction in the amount billed.<sup>1</sup>

<sup>1</sup> Exhibit 1 at 15-16 shows that Dr. Davidovich billed \$384 a day for the treatments provided on December 4, 6, 7, and 17 and \$350 for the treatment of December 5, which totals \$1886. A 20% reduction produces a final total of \$1508.80.

The Carrier argues that the IRO improperly found that the work hardening sessions provided from November 19, 2001, through December 3, 2001, were medically necessary. An appeal from the IRO's findings and the request for an administrative hearing must be made in writing and must be received by the Commission within 20 days of the date the decision is received. 28 TAC §§133.308(t) and 148.3. Because Carrier failed to file a timely appeal it is precluded from litigating that portion of the decision in this proceeding.

The Carrier also argues that Dr. Davidovich's request for reimbursement for the services provided is barred because he failed to file the request for medical dispute resolution within one year of the dates of service. According to 28 TAC §133.308(e)(1), a request for retrospective necessity dispute resolution is considered timely if it is filed with the carrier and the Commission no later than one year after the dates of service. The Carrier provided evidence that it received the request for dispute resolution on November 21, 2002. Ex. 2 at 2. The only dates of service that might be affected by this issue are November 19 and 20, 2001, which are included in those dates of service that the IRO determined were medically necessary. Because the Carrier did not file an appeal contesting the IRO's decision, that issue is not before this proceeding. The issue has been waived, much like the failure to assert the affirmative defense of a statute of limitations may be waived.

### **III. Findings of Fact**

1. Claimant sustained a compensable injury to his left leg on \_\_\_\_.
2. Claimant's treating physician, Gregory Davidovich, D.C., requested pre-authorization to provide two additional weeks of work hardening beyond the work hardening already provided.
3. Insurance Company of the West (Carrier) pre-authorized 10 additional sessions of work hardening to begin on November 27, 2001.
4. Dr. Davidovich provided Claimant with work hardening treatment on November 27, 28, 29, 30, December 3, 4, 5, 6, 7, 17, and 18, 2001.
5. The Carrier denied reimbursement claiming lack of medical necessity based on two peer reviews and determined that the payment should be reduced by 20% because Dr. Davidovich's program is non-accredited.
6. Dr. Davidovich's program is not CARF accredited.
7. The Texas Workers' Compensation Commission's (Commission's) designee, an independent review organization (IRO), found that the work hardening sessions provided from November 19, 2001, through December 3, 2001, were medically necessary, but that the six sessions provided from December 4, 2001, through December 18, 2001, were not medically necessary.
8. Dr. Davidovich filed a timely appeal of the portion of the decision that was adverse to him.
9. The Carrier did not file an appeal.

10. Notice of the hearing was sent May 13, 2003.
11. 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.
12. The hearing was held June 4, 2003, with Administrative Law Judge Katherine L. Smith presiding. Doug Pruett, an attorney, represented Dr. Davidovich. Peter Macaulay, an attorney, represented the Carrier. The hearing adjourned the same day.

#### **IV. Conclusions of Law**

1. The Commission has jurisdiction over this matter pursuant to Section 413.031 of the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. ch. 401 *et seq.*
2. The State Office of Administrative Hearings 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.
3. Adequate and timely notice of the hearing was provided in accordance with TEX. GOV'T CODE ANN. §2001.052.
4. Dr. Davidovich is entitled to reimbursement for the work hardening sessions provided on December 4, 5, 6, 7, and 17, because the carrier pre-authorized 10 additional work hardening sessions to begin on November 27, 2001. 28 TEX. ADMIN. CODE (TAC) §§ 133.301(a) and 134.600.
5. Dr. Davidovich is not entitled to reimbursement for the work hardening provided on December 18, 2003, because that treatment was beyond the number of sessions pre-authorized.
6. Dr. Davidovich is not entitled to the full amount billed because his program is not CARF accredited, which requires a 20% reduction in the amount billed.
7. Carrier is precluded from litigating that portion of the IRO's decision that was adverse to it because it did not file a timely appeal of the decision. 28 TAC §§ 133.308(t) and 148.3.
8. Carrier waived the claim that Dr. Davidovich did not timely file his request for medical dispute resolution when it did not appeal the IRO's decision that the treatments provided from November 19, 2001, through December 3, 2001, were medically necessary.
9. Based on the foregoing Findings of Fact and Conclusions of Law, Dr. Davidovich is entitled to reimbursement in the amount of \$1508.80 for the work hardening provided to Claimant on December 4, 5, 6, 7, and 17, 2001.

**ORDER**

**IT IS, THEREFORE, ORDERED** that Dr. Davidovich's request for additional reimbursement is granted and the Insurance Company of the West shall reimburse Dr. Gregory Davidovich \$1508.80 for the work hardening provided to Claimant on December 4, 5, 6, 7, and 17, 2001.

**Signed June 20, 2003.**

**STATE OFFICE OF ADMINISTRATIVE HEARINGS**

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**KATHERINE L. SMITH**  
**Administrative Law Judge**