

**DOCKET NO. 453-03-2991.M5**  
**MDR Tracking No. M5-03-1036-01**

<b>JOHN P. HODGES, Jr., D.C.,</b>	§	<b>BEFORE THE STATE OFFICE</b>
<b>PETITIONER</b>	§	
	§	
<b>V.</b>	§	<b>OF</b>
	§	
<b>TWIN CITY FIRE INSURANCE</b>	§	
<b>COMPANY,</b>	§	
<b>RESPONDENT</b>	§	<b>ADMINISTRATIVE HEARINGS</b>

**DECISION AND ORDER**

**I. SUMMARY**

John P. Hodges, D.C. (Provider), sought review of a decision by the Medical Review Division (MRD) of the Texas Workers' Compensation Commission (Commission) denying reimbursement for a work hardening program provided by the Provider on behalf of (Claimant) between December 17, 2001, and February 1, 2002. The substantive review of Petitioner's claim was conducted by an Independent Review Organization (IRO). Carrier had denied payment as not medically necessary. In a decision issued on March 28, 2003, the MRD concluded there no medical need for work hardening. The Provider argued there was a medical need for all services provided.

Based on the evidence, the Administrative Law Judge (ALJ) concluded that Provider failed to meet its burden of proof to show that work hardening was medically necessary to treat Claimant's injury.

**II. DISCUSSION**

Claimant in this case suffered a back injury in \_\_\_\_\_. Notwithstanding a two-year course of treatment which included conservative care, two courses of epidural injections, and a surgery with instrumentation, Claimant failed to demonstrate substantial improvement. By November 2002, Claimant was diagnosed as having radiculopathy in his right leg and a "failed back," as well as depression. The depression arose in large part due to being off work for a protracted period of time, with the consequent financial strain. Although Claimant tried to return to his previous employment as automobile mechanic, it was clear at least by the end of 2002-if not earlier-that his physical

condition would not permit that. Before he entered the work hardening program at issue he had already secured the promise of employment in an automotive training school, so he had himself adjusted his vocational direction from a heavy demand job to a job with a lower physical demand level. Claimant clearly was strongly motivated to return to work and demonstrated willingness to give full effort in any therapy program.

Per the 1996 *Medical Fee Guideline*, the multi-disciplinary work hardening program is designed to address the needs of injured workers who need *simultaneous* help in a number of areas: functional, physical, behavioral, and vocational. The goal is to enable to worker to move from the stage of injury management to becoming employable again. MFG at P. 39. While Claimant did have some functional deficits, primarily in his lifting capacity, the evidence did not demonstrate that Claimant had behavioral or vocational rehabilitation needs. As to the physical component, in mid-December 2002, Claimant exhibited deconditioning due to his protracted rehabilitation period. However, Claimant was moving into a position with moderate physical demands. Although it was clear that the demonstration and hands-on portions of teaching automotive repair made it a more demanding job than just sitting at a desk, Provider failed to make the case that an intensive six-week program was medically necessary to ready Claimant for that position. Given the diagnosis of “failed back” made in November 2002, it was also unclear that any rehabilitation program in 2003 could have *substantially* increased Claimant’s lifting capacity or flexibility, or even what a reasonable expectation for improvement would have been during the treatment period.<sup>1</sup> As noted, Claimant himself had located new employment, so he did not need vocational redirection. In regard to the behavioral or mental health component of the work hardening program, Provider failed to demonstrate how group therapy targeting stress reduction would treat Claimant’s depression. Indeed, at the end of the work hardening program, Provider recommended that Claimant undergo additional one-on-one psychological counseling for continuing treatment of the depression, indicating Claimant’s mental illness was of a more serious, long-term nature. Taking the evidence as a whole,

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<sup>1</sup> There is no assertion that the services were not provided as billed, or that Claimant did not fully participate to the best of his ability. It appeared that Claimant did receive some benefit in conditioning and improvement of his lifting capacity. However, the ALJ was unable to discern a rational basis to segregate service segments which did address those conditioning deficits Claimant’s treating doctors wanted addressed, so finally concluded the integrated work hardening program must be addressed an a whole, as billed.

Provider failed to demonstrate with specificity that the Claimant medical needs in December 2001 would warrant a course of work hardening. The request for reimbursement is denied.

### **III. FINDINGS OF FACT**

1. On \_\_, \_\_ (Claimant) suffered a compensable injury to his lower back while lifting a 75-pound transmission. He was an automobile mechanic which is a heavy physical demand level job.
2. Twin City Fire Insurance Company (Carrier) was the responsible workers' compensation insurance carrier for Claimant's employer on the date of injury.
3. In October 2000, Claimant was diagnosed as having a disk protrusions at the L4-L5 and L5-S1 spine levels.
4. Claimant initially receive conservative care, including epidural spinal injections in November 2000 at the L5-S1 spine level.
5. On March 25, 2001, after conservative care proved unsuccessful, Claimant underwent spinal surgery, including a L5-S1 fusion, and a L4 decompressive laminectomy with insertion of pedicel screws.
6. John P. Hodges, Jr., D.C. (Provider), began treating Claimant in June 2001.
7. Following the surgery, Provider administered physical therapy to Claimant from July 18, 2003 to August 9, 2001, and also administered 12 additional sessions of physical therapy in October and November 2001.
8. In August 2001 Claimant had attempted to return to work as an automobile mechanic but was unable to remain on the job due to continuing lower back pain. He had been off work for approximately a year by the end of 2001.
9. Notwithstanding the surgery and post-surgery therapy, Claimant continued to experience low back pain, and underwent a second series of epidural steroid injections in December 2001. The injections reduced his back pain by nearly half.
10. In November 2002, Moshe Allon, M.D., diagnosed Claimant as having failed back syndrome, right S1 radiculopathy, and depression.
11. On December 13, 2001, a functional capacity evaluation (FCE) demonstrated that Claimant was functioning at a light physical demand level. Due to his lower spine condition, Claimant was at risk for exacerbation of his injury by lifting at even a light physical demand level.

12. On February 4, 2002, a functional capacity evaluation (FCE) demonstrated that Claimant was still functioning at a light physical demand level but that he had reduced his chance of being injured by lifting from an "extremely high" to a "high" risk. Claimant's sitting and standing tolerances were substantially the same before and after the work hardening program.
13. On December 5, 2001, Barry Boone, M.D., referred Claimant to Provider for a six-week course of work hardening. Richard Westmark, M.D., Claimant's surgeon, also recommended work hardening.
14. Neither Dr. Boone nor Dr. Westmark issued specific protocols or instructions to Provider for tailoring the work hardening program to Claimant's specific needs or identified specific goals for Claimant.
15. Prior to entering the work hardening program, Claimant had been offered a teaching position at an automotive school upon his release to return to work, so he did not need vocational redirection or retraining in December 2001.
16. Claimant did not present any behavioral or attitudinal deficits at the commencement of the work hardening program in December 2001.
17. On February 13, 2002, Provider released Claimant to work with a 50-pound lifting restriction.
18. The teaching position at the automotive school required some lifting in order to demonstrate repair techniques, and required the instructor to stand approximately 80 per cent of the workday. Instructors were also required to help move assembled transmissions by pushing or pulling and to help students assemble and disassemble transmission components weighing 10-25 pounds.
19. Provider administered a course of work hardening to Claimant on dates between December 17, 2001, and February 1, 2002.
20. Group therapy during the work hardening program involved general stress-reduction skills. It was not focused on treatment of depression.
21. At the end of the work hardening program, Provider recommended that Claimant be offered one-on-one counseling or therapy for treatment of his depression.
22. The Carrier denied payment for all sessions of work hardening between December 17, 2001, and February 1, 2002, on the grounds this therapy was not medically necessary.
23. Provider appealed the Carrier's denial of benefits to the Medical Review Division (MRD) of the Texas Workers Compensation Commission (Commission), which referred the dispute to an Independent Review Organization (IRO).

24. On March 28, 2003, based on the recommendation of the IRO, the MRD determined that the physical therapy administered to Claimant was not medically necessary.
25. On April 8, 2003, Carrier filed a timely request for a hearing at the State Office of Administrative Hearings (SOAH) on the MRD decision.
26. On May 2, 2003, the Commission issued a notice of hearing which included the date, time, and location of the hearing, the applicable statutes under which the hearing would be conducted, and a short, plain statement on the nature of the matters asserted.
27. SOAH Administrative Law Judge (ALJ) Cassandra Church convened a hearing on these issues on August 12, 2003. The record closed that day.

#### **IV. CONCLUSIONS OF LAW**

1. The Texas Workers' Compensation Commission (Commission) has jurisdiction to decide the issues presented pursuant to TEX. LABOR CODE ANN § 413.031.
2. The State Office of Administrative Hearings (SOAH) has jurisdiction over matters related to the hearing in this proceeding, including the authority to issue a Decision and Order, pursuant to TEX. LABOR CODE ANN § 413.031 and TEX. GOV'T CODE ch. 2003.
3. The notice of hearing issued by the Commission was sufficient under the terms of TEX. GOV'T CODE §§ 2001.051 and 2001.052.
4. Provider, the petitioner, has the burden of proving by a preponderance of the evidence that it should prevail in this matter, pursuant to TEX. LABOR CODE ANN § 413.031.
5. Petitioner failed to prove by a preponderance of the evidence that Claimant was a person likely to benefit in December of 2001 and January of 2002 from a program of work hardening, or that Claimant was in need of interdisciplinary services to effect a transition between management of his physical injury and return to work, within the meaning of 28 TEX. ADMIN. CODE § 134.201, *Medical Fee Guideline*, Medicine Ground Rules, Section II.
6. Petitioner failed to prove by a preponderance of the evidence that sessions of work hardening between December 17, 2001, and February 1, 2002, were medically necessary to treat Claimant's compensable injury, within the meaning of TEX. LABOR CODE ANN. §§ 408.021 and 401.011 (9).

**ORDER**

IT IS HEREBY ORDERED that the request for reimbursement by John P. Hodges, Jr., D. C., for work hardening services performed on behalf of Claimant \_\_\_\_ between December 17, 2001, and February 1, 2002, is denied.

**ISSUED October 10, 2003.**

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**CASSANDRA J. CHURCH  
ADMINISTRATIVE LAW JUDGE  
STATE OFFICE OF ADMINISTRATIVE HEARINGS**