

**SOAH DOCKET NO. 453-03-3304.M5
MDR TRACKING NO. M5-02-3098-01**

**MOCKINGBIRD WORKSKILLS,
PETITIONER**

VS.

**AMERICAN CASUALTY, INC.,
RESPONDENT**

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BEFORE THE STATE OFFICE

OF

ADMINISTRATIVE HEARINGS

DECISION AND ORDER

I. INTRODUCTION

Mockingbird Workskills (Petitioner or Provider) seeks reimbursement from American Casualty Company of Reading, PA (Carrier) for \$9,792.00 in disputed medical services associated with 22 dates of service for a work hardening program provided to workers' compensation claimant ____ (Claimant), between January 2, 2002, and January 31, 2002. Carrier denied payment on the bases that Provider failed to obtain preauthorization for the treatment and the services were not medically necessary. Carrier's action was reviewed by an Independent Review Organization (IRO), which determined that the services were not medically necessary and reimbursement should be denied. The Medical Review Division (MRD) of the Texas Workers' Compensation Commission (Commission) reviewed the IRO decision and determined reimbursement should be denied for Provider's failure to obtain preauthorization and because the services were not medically necessary. Petitioner challenges that denial. This decision finds that reimbursement should be denied.

The hearing convened October 20, 2003, at the hearings facility of the State Office of Administrative Hearings (SOAH) before SOAH Administrative Law Judge (Judge) Carol Wood. Kevin W. Stouwie, attorney, represented Petitioner, and Carrier was represented by David L. Swanson, attorney. After receipt of evidence, the record closed that same day.

II. DISCUSSION

A. Applicable Law

Pursuant to the Texas Workers' Compensation Act, an employee who has sustained a compensable injury is entitled to all health care reasonably required by the nature of the injury as and when needed. The employee is specifically entitled to health care that cures or relieves the effects naturally resulting from the compensable injury, promotes recovery, or enhances the ability of the employee to return to or retain employment. TEX. LAB. CODE § 408.021(a).

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, intended to address the functional, physical, behavioral, and vocational needs of an injured worker. The Commission has adopted rules governing work hardening programs. Those rules, in effect when the disputed services were provided and found in the Medical Fee Guideline (MFG) Medicine Ground Rules, concern such matters as when work hardening is appropriate, how such programs are to be administered and billed, and what documentation is required of work hardening providers. MFG Medicine Ground Rule II. E.(1) provides that work hardening admission criteria are to enable the program to admit persons:

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

Pursuant to Commission Rule 134.600(h)(9), effective January 1, 2002, non-emergency health care requiring preauthorization includes:

work hardening and work conditioning services provided in a facility that has not been approved for exemption by the commission. For approval, facilities must submit documentation of current accreditation by the Commission on Accreditation or Rehabilitation Facilities (CARF) to the commission. . . All work hardening or work conditioning programs, regardless of accreditation, will be subject to preauthorization and concurrent review on or after one year from the effective date of this section. Commission exempted facilities are subject to commission verification and audit, and the commission will provide a list of the facilities approved for exemption on the TWCC website. . . .

Petitioner bears the burden of proof in this proceeding pursuant to 28 TEX. ADMIN. CODE § 148.21(h).

B. The Evidence

Claimant is a ____-year old male who sustained a compensable injury to his right wrist on ____, while stepping up on a valve to perform a lock out. He slipped and fell backwards, fracturing his wrist while attempting to brace himself with his right hand. Claimant's wrist was surgically repaired with bone grafting and a stabilization plate. He also received work conditioning and 16 weeks of physical therapy before undergoing the work hardening treatment program in question. Michael Smith, D.C., testified on behalf of Provider. He stated that Provider has been accredited by CARF since 1999 to deliver work hardening services. He testified that Claimant met the

requirements for admission to work hardening set forth in MFG Medicine Ground Rule II.E.(I).

Dr. Smith further stated Claimant was a suitable candidate for work hardening because of his “psychological problems.”

Samuel Bierner, M.D., testified on behalf of Carrier. In his view, the work hardening program was not medically necessary. Dr. Bierner stated that, for Claimant’s type of injury, work hardening after work conditioning is unusual and medically unnecessary.

C. Judge’s Analysis

Commission Rule 134.600(h)(9), effective January 1, 2002, clearly indicates that a facility that has not been approved for exemption by the Commission must acquire preauthorization to provide work hardening services. Although Provider argues that it in “good faith” believed it had no need to acquire preauthorization, the Commission rule is unambiguous: only facilities approved for exemption by the Commission do not have to acquire preauthorization. The record shows that Provider was not exempted until June 12, 2002. Because Provider was not an exempt facility at the time it provided work hardening services to Claimant, that is, between January 2, 2002, and January 31, 2002, Provider was required to obtain preauthorization. The record shows Provider did not acquire preauthorization. Accordingly, Petitioner’s request for reimbursement is denied.

III. FINDINGS OF FACT

1. On ___, Claimant suffered an injury compensable under the Texas Workers’ Compensation Act (Act) while stepping up on a valve to perform a lock out.
2. At the time of Claimant’s compensable injury, American Casualty Company of Reading, PA (Carrier) was the workers’ compensation insurer for Claimant’s employer.
3. Petitioner Mockingbird Workskills seeks reimbursement from Carrier for \$9,792.00 in medical services associated with a work hardening program provided to Claimant between January 2, 2002, and January 31, 2002.
4. Carrier denied reimbursement of the expenses identified in Finding of Fact No. 3.
5. Petitioner timely requested dispute resolution by the Texas Workers’ Compensation Commission Medical Review Division (MRD), which referred the matter to an Independent Review Organization (IRO).
6. The IRO issued its decision on February 14, 2003, concluding that the disputed expenses were not medically necessary and should be denied. On April 15, 2003, the MRD issued a decision not only acknowledging the IRO’s decision but determining that preauthorization had not been obtained. Petitioner appealed the decision.
7. Provider was not an exempt facility approved by the Commission until June 12, 2002.

8. Provider was not an exempt facility at the time it provided work hardening services for Claimant, that is, between January 2, 2002, and January 31, 2002.
9. Provider did not acquire preauthorization to provide work hardening services to Claimant.

IV. CONCLUSIONS OF LAW

1. The Texas Workers' Compensation Commission (Commission) has jurisdiction related to this matter pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE (Labor 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 § 413.031(d) of the Labor Code and TEX. GOV'T CODE (Gov't Code) ch. 2003.
3. The hearing was conducted pursuant to the Administrative Procedure Act, Gov't Code ch. 2001.
4. Adequate and timely notice of the hearing was provided in accordance with Gov't Code §§ 2001.051 and 2001.052.
5. Petitioner has the burden of proof in this proceeding. 28 TEX. ADMIN. CODE § 148.21(h).
6. Commission Rule 134.600(h)(9), effective January 1, 2002, provides that a facility that has not been approved for exemption by the Commission must acquire preauthorization to provide work hardening services.
7. Petitioner's claim for reimbursement from Carrier for the disputed expenses described in Finding of Fact No. 3 should be denied.

ORDER

IT IS ORDERED that Petitioner Mockingbird Workskills' request for reimbursement of \$9,792.00 for disputed work hardening services provided between January 2, 2002, and January 31, 2002, is denied.

SIGNED July 2, 2004.

CAROL WOOD
ADMINISTRATIVE LAW JUDGE
STATEOFFICEOFADMINISTRATIVEHEARINGS