

DOCKET NO. 453-03-3323.M4
MDR TRACKING NO. M4-03-1911-01

FINAL STAGE,
Petitioner

v.

CONNECTICUT INDEMNITY CO.,
Respondent

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BEFORE THE STATE OFFICE

OF

ADMINISTRATIVE HEARINGS

DECISION AND ORDER

I. Summary

Final Stage (Petitioner or Provider) sought review of a decision by the Medical Review Division (MRD) of the Texas Workers' Compensation Commission (TWCC) that denied reimbursement for services it provided to Claimant ____ between January 2 and January 23, 2002. The MRD concluded the Provider was not entitled to reimbursement because it had not obtained preauthorization for the work hardening (WH) services provided in January 2002, as required by TWCC 's current rule. Provider appealed the decision arguing that the WH had begun prior to the effective date of TWCC's new rule that requires such preauthorization, and that the entire program should be paid because the rule in effect in 2001 did not require preauthorization. Having reviewed the TWCC rules in effect in 2001 and in 2002, the Administrative Law Judge (ALJ) concluded that the pre-2002 rule applied, and that Provider was not required to obtain preauthorization for the fifth and sixth weeks that fell on the first two weeks of January 2002, but was required to get preauthorization for WH services beyond the sixth week. Therefore, Connecticut Indemnity Company (Carrier) should reimburse Provider for the fifth and sixth weeks that were provided.

The hearing was held on July 7, 2003, and the record closed on July 11, 2003, with the filing of written closing arguments.

II. Issues and Analysis

There were no factual issues in this case. The only issue involved was the amount that should be reimbursed. Carrier did not challenge the medical necessity of the WH program.¹

Indeed, Carrier already paid Provider for WH services provided through December 27, 2001.

¹ Work hardening is defined, in the Medicine Ground Rules of TWCC's 1996 Medical Fee Guideline, as a highly structured, goal-oriented, individualized treatment 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. . . . (The Medical Fee Guideline (MFG) was adopted by reference as TWCC rules in 28 TEX. ADMIN. CODE (TAC) § 134.201).

However, Provider argued it should be reimbursed for the entire WH program because it began in 2001, prior to the effective date of the new rule, when preauthorization was *not* required. Carrier countered that preauthorization was required for WH services provided in January 2002 under the new TWCC rule, which took effect on January 1, 2002. Additionally, even under the rule in effect in 2001, Carrier urged that preauthorization was required for WH beyond the first six weeks.

The parties did not dispute that:

1. Claimant suffered a work-related injury, that she needed medical treatment for the injury, and that she received medical treatment for the injury;²
2. Provider rendered WH services for Claimant from December 3, 2001, through January 23, 2002;
3. Provider was not CARF-accredited at the time the WH services were rendered;
4. The maximum allowable reimbursement (MAR) is governed by the Medical Fee Guideline (MFG) in effect at the time.³

The decision in this case hinges on whether TWCC Rule 134.600(h),⁴ in effect in 2001, permitted *eight* weeks of WH services without the need for preauthorization. The version of the rule in effect at the time of the questioned WH services, read as follows:

(h) The health care treatments and services requiring preauthorization are:

* * * * *

(11) work hardening, *in excess of six weeks* (limited to a one-time two-week extension); . . . (emphasis added).

² Each party introduced one exhibit. Petitioner's Ex. 1 consisted of eight individually marked sub exhibits: the first separate, unmarked packet was followed by sub exhibits B - H. Carrier introduced Ex. C-1, consisting of a cover letter dated July 1, 2003, and 137 pages thereafter. Both exhibits were admitted without objection. For the sake of brevity, the details of Claimant's injury and treatment are covered only in the findings of fact.

³ Medicine Ground Rules in the Commission's MFG relating to WH provide that CARF-accredited entities may charge \$64 per hour. Non accredited entities are allowed to charged 20% less than that rate. Therefore, Provider, a non accredited entity, was allowed to charge of \$51.20 per hour for WH services provided in this case.(seven 8-hour days: 56 hours x \$51.20 = 2,867.20). (See Pet. Ex. B, pp. 95-98 and 1996 MFG p. 36.)

⁴ This rule was first adopted in December 1991, amended to be effective on April 1, 1997, and subsequently on January 1, 2002, and on January 1, 2003. The amendment in January 1, 2002, changed the preauthorization procedures for work hardening services.

As amended, the rule reads as follows:

(h) The non-emergency health care requiring preauthorization includes:

* * * * *

(9) work hardening and/or work conditioning programs that have not been approved for exemption by the commission. For approval, facilities must submit documentation of current program accreditation by the Commission on Accreditation of Rehabilitation Facilities (CARF), to the commission. A comprehensive occupational rehabilitation program or a general occupational rehabilitation program constitutes work hardening and/or work conditioning programs, regardless of accreditation, will be subject to preauthorization and concurrent review after December 31, 2003. . . .

The ALJ determines that the rule in effect in 2001 applies to the disputed services in this case because the WH program or treatment began in 2001. TWCC's rule at 28 TEX. ADMIN. CODE (TAC) § 134.600(o) provides that

The effective date of this section is January 1, 2002. Requests for preauthorization submitted prior to January 1, 2002 shall be subject to the rule in effect at the time the request was submitted.

The ALJ interprets this subsection to mean that services that did not require preauthorization prior to January 1, 2002, could be rendered without preauthorization under the rule in effect in 2001, even if they were concluded in 2002. TWCC rule 134.600(h)(11) stated that a provider could render up to six weeks of WH to a claimant without seeking preauthorization. However, if more than six weeks was to be administered, the provider was required to seek preauthorization for additional WH services. In this case, after Provider rendered six weeks of WH, it was obligated to obtain preauthorization for any additional WH services. Because it did not, it is not entitled to reimbursement for the dates of service after the sixth week, which ended on January 11, 2002.

Therefore, the ALJ concludes that Carrier is required to reimburse Provider for the fifth and sixth weeks of WH rendered to Claimant during the first two weeks of January 2002.

III. Findings of Fact

1. On ____, ____ (Claimant) suffered a cervical sprain/strain and left shoulder sprain/strain, as she pulled 36-pound boxes of ham onto a pallet while working for ____.
2. ____ had workers' compensation insurance through Connecticut Indemnity Company.

3. Claimant began treatment with John T. Randolph, Jr., D.C., of Final Stage (Petitioner or Provider) on January 14, 2000. She also underwent various diagnostic tests by various other doctors from January 2000 through June 20, 2001.
4. Dr. Bear, who had examined Claimant on May 3, 2000, re-evaluated her on June 20, 2001, and determined that she had reached maximum medical improvement (MMI) with zero percent impairment.
5. On October 12, 2001, however, Dr. Randall Burdett, a designated doctor, determined that Claimant was not yet at MMI and should enroll in the work hardening (WH) program that had been recommended.
6. Claimant began a WH program offered by Provider on December 3, 2001, and continued in the program for eight weeks, until January 23, 2002.
7. Work hardening is an approved treatment for Claimant's injury under the Medical Fee Guideline, Medicine Ground Rule II.E.
8. TWCC rule, 28 TAC § 134.600(h)(11), in effect in December 2001, stated that WH, up to six weeks, could be provided without preauthorization; WH services in excess of six weeks did require preauthorization.
9. TWCC amended the rule indicated in Finding No. 8. The amendment, which required preauthorization for WH that was to be provided by a non-CARF-accredited provider, became effective on January 1, 2002.
10. Provider did not obtain preauthorization prior to providing the WH services to Claimant.
11. In January 2002, Petitioner was not a health care provider accredited by CARF.
12. Connecticut Indemnity Company (Carrier) reimbursed Petitioner for the work hardening services that were provided in December 2001.
13. The Carrier declined to reimburse the Provider for the WH services provided in January 2002 because Provider had not obtained preauthorization prior to the provision of services in January 2002, as required by TWCC's current rule, 28 TAC § 134.600(h)(9).
14. Provider submitted its claim to Texas Workers' Compensation Commission's (TWCC's) Medical Review Division (MRD) for resolution.

15. The MRD issued an order on April 9, 2003, denying Provider's request for reimbursement for the work hardening services rendered from January 2 - 23, 2002, because the services were not preauthorized.
16. Provider timely requested a hearing to contest the MRD's decision.
17. By letter dated May 30, 2003, TWCC issued a notice of hearing to the parties 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 section of the statutes and rules involved; and a short plain statement of the matters asserted.
18. The hearing was convened by Administrative Law Judge Ruth Casarez on July 7, 2003. Provider appeared by telephone. William Weldon represented Carrier. The record of the hearing closed on July 11, 2003, with filing of closing arguments.

IV. Conclusions of Law

1. The Texas Workers' Compensation Commission (TWCC) has jurisdiction to decide the issues presented pursuant to the Texas Workers Compensation Act, TEX. LAB. CODE (the Act) § 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 of the Act and TEX. GOV'T CODE ch. 2003.
3. The notice of hearing issued by TWCC conformed to the requirements of TEX. GOV'T CODE § 2001.052.
4. The Petitioner has the burden of proving by a preponderance of the evidence that it should prevail in this matter. § 413.031 of the Act and 28 TAC § 148(h) and (i).
5. Work hardening services provided to Claimant on December 3, 2001 through January 23, 2002, were medically necessary to treat Claimant's compensable injury, within the meaning of § 413.015 of the Act, and the Medical Fee Guideline.
6. The TWCC rule, 28 TAC § 134.600(h)(11), in effect in 2001 did not require a provider to obtain preauthorization to administer up to six weeks of WH services. The rule did require preauthorization for WH services beyond six weeks.

7. Provider complied with the applicable TWCC rule, when it rendered six weeks of WH services to Claimant beginning in December 2001, without seeking preauthorization.
8. Provider was not required to obtain preauthorization for the fifth and sixth weeks of WH (January 2-4 and January 7-11, 2002) because the WH began in December 2001. Therefore, Carrier should reimburse Provider for the fifth and sixth weeks of WH.
9. Provider was not required to obtain preauthorization for the fifth and sixth weeks of WH (January 2-4 and January 7-11, 2002) because the WH began in December 2001. Therefore, Carrier should reimburse Provider for the fifth and sixth weeks of WH.
10. Because Provider did not seek the required preauthorization after the sixth week, Carrier should not be required to reimburse Provider for the seventh and eighth weeks (January 15-23, 2002) of WH that were provided.

ORDER

THEREFORE IT IS ORDERED that request of Petitioner Final Stage for payment for work hardening services from January 2, 2002, through January 11, 2002, is **GRANTED**. Payment for work hardening services beyond January 11, 2002, is **DENIED**.

SIGNED this 15th of August 2003.

**RUTH CASAREZ
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS**