

STATE OFFICE OF ADMINISTRATIVE HEARINGS  
300 West 15th Street, Suite 502  
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ALAN BERG, D.O.,	§	BEFORE THE STATE OFFICE
	§	
PETITIONER	§	
V.	§	OF
	§	
TRAVELERS' INSURANCE	§	
COMPANY,	§	
	§	
RESPONDENT	§	ADMINISTRATIVE HEARINGS

**DECISION AND ORDER**

**I. SUMMARY**

Alan Berg, D.O., (Petitioner) sought reimbursement for a job site assessment that was performed to assess Claimant \_\_\_\_'s workplace in order to design appropriate activities for Claimant's work hardening program, aimed at preparing her to return to work. Travelers' Insurance Company (the Carrier) denied payment for the assessment as not medically necessary. Pursuant to Petitioner's request for medical dispute resolution, an independent review organization (IRO) considered the disputed claim and recommended it not be paid. The Texas Workers' Compensation Commission (Commission) adopted the IRO recommendation, and Petitioner appealed, arguing the claim should be reimbursed because the assessment was medically necessary and was allowed under the Commission's Medical Fee Guideline (MFG). After considering the evidence and arguments, the ALJ concludes that Petitioner's claim should be paid.

The hearing in this case was convened on July 7, 2003, by ALJ Ruth Casarez. The Commission opted not to participate in the hearing. Petitioner was represented by H. Douglas Pruett, attorney, and the Carrier was represented by Dan Flanagan. Neither party contested notice or jurisdiction; therefore, those matters will be detailed in the findings and conclusions below without further discussion here. The record of the hearing closed on the hearing date.

**II. EVIDENCE, ISSUE, AND DISCUSSION**

1. Evidence

Petitioner relied on Provider's Submission to the IRO and Other Relevant Documents (Pet. Ex. 1) that were filed with the State Office of Administrative Hearings prior to the hearing. Petitioner also testified as to the medical necessity for the job site analysis.

Dr. Berg began treating Claimant on November 7, 2001, after she injured her neck, back, and right shoulder on \_\_\_\_, when she fell against a metal railing as she stocked merchandise at her place of work with \_\_\_\_. Initially, he prescribed medication to reduce the inflammation and took her off work and also referred her to other health care providers for various tests, including a functional capacity evaluation (FCE) on January 15, 2002.<sup>1</sup> After the FCE, Dr. Berg considered Claimant a good candidate for work hardening (WH) in order to get her back to work, and in fact, WH was preauthorized in January 2002. The evidence was unclear whether Claimant participated in WH during the first part of 2002. However, on May 1, 2002, Claimant presented to Dr. Berg reporting

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<sup>1</sup> Dr. Berg testified he had sent Claimant for a functional capacity evaluation (FCE) on January 15, 2002. He also sent her to another doctor for EMG study in March 2002.

pain down her right arm and into her right wrist. On the following day, she underwent a physical performance test for the affected muscles.<sup>2</sup>

Dr. Berg believed that additional WH sessions should be requested.<sup>3</sup> Before making such a request, Dr. Berg believed a job site assessment would help to determine what Claimant's job duties actually were, how she was required to perform those duties and what her place of work was like so that he could tailor the type of exercises and job simulations that would be developed for the additional WH sessions. By getting a firsthand view of Claimant's job site, Dr. Berg believed he could develop an individualized WH program, as is required in the MFG. Furthermore, such an assessment is allowed under Medicine Ground Rule I.E. Testing.<sup>4</sup> Although he could have asked Claimant the "where, what, and how" of her work duties, he has found that claimants rarely give good, detailed descriptions of their work environment and duties. Thus, he decided that a job site assessment was necessary for Claimant's proper treatment.

The job site assessment of Claimant's work place was performed on May 1, 2002, and a report was generated. The report set out specific types of activities that Claimant's work required, the number of hours such activities consumed, as well as provided a detailed description of Claimant's work place where she perform the activities. (See pp. 10-11, Pet.'s Ex. 1). Petitioner testified that information obtained in the job site assessment would be used to develop the individualized WH program for Claimant.<sup>5</sup> Thereafter, Petitioner submitted a bill for the job site assessment, and Carrier denied payment, giving nothing but the following exception codes: T, U.

Petitioner argued the job analysis was appropriate in order to determine the work environment to which Claimant would return, determine what, if any, accommodations or alterations might be required from her employer to get her back to work on restrictions, and to tailor the WH program that would be requested for Claimant. Petitioner further argued that such an analysis was allowed by the Commission's 1996 MFG (See CPT Code 97799-JA) and, since it was medically necessary and allowable under the MFG, Carrier should be ordered to pay for the assessment.

The Carrier introduced Respondent's Ex. 1 (consisting of 13 pages)<sup>6</sup> and presented Lisa Wells, the claims specialist for \_\_\_\_\_. Ms. Wells testified that she did not give authorization for a representative of Dr. Berg to conduct a job site assessment of Claimant's work place. Ms. Wells recalled having talked with someone from Dr. Berg's Office, but she referred the person to either the district manager for \_\_\_\_\_ or to the insurance carrier. She also testified she had not received a copy of the job site assessment report.

The Carrier argued that the IRO decision was correct. That decision found the job site assessment was not medically necessary because the treating doctor's goal should have been to get Claimant back to her regular job. The treating doctor should have obtained Claimant's job description and perhaps a functional capacity evaluation to restore Claimant to her job. In agreeing with Carrier, the IRO indicated:

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<sup>2</sup> The physical performance test was billed as muscle testing, under CPT Code 97750MT. Pet. Ex. 1, pp. 25-37.

<sup>3</sup> Dr. Berg testified that WH was approved for Claimant sometime in January 2002, presumably following the FCE. However, no evidence was presented that Claimant had participated in WH prior to May 2002.

<sup>4</sup> Medicine Ground Rules, Physical Medicine, Paragraph I E, found at p. 34 of the 1996 MFG indicates that job site visit/assessment is one type of testing that is permitted. A job site visit/assessment that is performed shall be identified and billed as code 97799-JA. A report is required and shall not be billed separately. CPT Code 97799 is described as Documentation of Procedure (DOP)--Unlisted physical medicine/rehabilitation service or procedure. (1996 MFG, p. 60) Functional Capacity Evaluations (FCEs) are also included under the testing section.

<sup>5</sup> Carrier preauthorized 20 sessions of work hardening for Claimant in a letter dated May 15, 2002. (See Pet. Ex. 1, p. 38).

<sup>6</sup> Petitioner objected to pages 6, 7, 8, 12, and 13 in Respondent's Ex. 1. The objection was sustained and those pages were not admitted or considered by the ALJ in preparing the decision.

. . . since there was no light duty for [Claimant]<sup>7</sup> at \_\_\_\_\_, the goal was to get her to the point that she could do her regular work. Even though a job site assessment does identify situations that can fatigue and harm a worker and an [sic] prevent injuries and provides other information for the injured employee and employer, those were not the issues that needed to be addressed in determining whether [Claimant] could do her regular work or not.

Carrier argued that it should not be required to pay for the job site assessment because Provider should have obtained Claimant's job description in order to ascertain what she could or could not do if she returned to work on restrictions. The IRO agreed with Carrier when it found the assessment was not medically necessary. Additionally, Provider did not have permission from the employer to conduct the assessment. Thus, because the assessment was not medically necessary and because it was conducted without authorization, the Carrier should not be required to pay for it.

## **B. Issues Presented and Discussion**

The main issue in this case is whether the Carrier should be required to pay for the job site assessment performed by Petitioner in treating Claimant. Sub-issues related to this question are

1. Did the Carrier properly deny reimbursement for the assessment?
2. If the denial was proper, did Provider prove that the job site assessment was medically necessary in treating Claimant?

Petitioner's first argument is that Carrier did not properly deny reimbursement of the claim. The basis for this argument is that Carrier simply used the AT" and AU" codes<sup>8</sup> in the explanation of benefits (EOB), and that the Commission rule at 28 TEX. ADMIN. CODE (TAC) § 133.304(c) requires the Carrier to include the correct exception codes . . . and shall provide sufficient explanation to allow the sender to understand the reason(s) for the insurance carrier's action(s)." Petitioner argues that Carrier's use of only the exceptions codes to deny the claim violates the rule, and Carrier, therefore, should be ordered to reimburse the claim.

While aware of the requirements set out in the rule, the ALJ believes the main objective of the rule is to have the parties in workers' compensation disputes give each other sufficient information so that they understand the reasons for their decisions, *e.g.*, denial of claim. Parties in these disputes routinely use acronyms and shorthand jargon.<sup>9</sup> Thus, even though rule 133.304(c) requires that a carrier give more than the exception code when it denies or reduces a claim, it is very rare that a provider who receives an EOB indicating "U" as the reason for denial does not understand that the carrier is questioning the medical necessity for the procedure. If a provider understands why its claim was denied, even if only the exception code was given, the intent of the rule has been met. Thus, the ALJ is not inclined to strictly construe the requirements of rule 133.304(c). That is not to say, however, that the ALJ would never consider an exception code as

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<sup>7</sup> While the IRO included Claimant's surname, this decision does not include the injured worker name, but simply refers to her as "Claimant."

<sup>8</sup> The Commission has adopted form TWCC-62 "Explanation of Benefits," which may be used by Carriers in explaining reasons for denial or reduction of claims submitted by health care providers. The TWCC-62 includes a list of exception codes that may be used in denying or reducing payment of claims. The Codes range from "A" to "X."

Exception code "T" is described as "Treatment guidelines"--"Used when the insurance carrier (IC) is reducing or denying payment because the treatments and/or services (t/s) fall outside the parameters set in the appropriate TWCC treatment guideline AND is not sufficiently documented to support the medical necessity of providing the t/s outside the parameters. An IC can NOT deny payment solely because t/s is outside the parameters in a treatment guideline."

"U" is described as "Unnecessary treatment (without peer review)"--"Used when the IC is denying payment because the IC deems the t/s to be medically unreasonable and/or unnecessary, and the IC is NOT basing that judgment on a peer review."

<sup>9</sup> Examples of such shorthand are EOBs, FCE, CPT Codes, MFG, DME, PDL, etc. For the most part, parties involved in workers compensation disputes are quite familiar with such acronyms and terms and understand what they mean.

insufficient under the rule. If evidence were presented, for example, proving that a provider did not understand why a carrier had denied a claim based on “U” for a procedure that the Carrier had pre-approved, the ALJ would consider the argument valid. In this case, however, there was no showing that Petitioner did not understand the reason for Carrier’s denial of the claim.

Petitioner’s second argument is based on the fact that the job site assessment was medically necessary because Claimant was being evaluated for work hardening.<sup>10</sup> The Commission’s MFG Fee Guideline’s (MFG) Medicine Ground Rules include a section on Physical Medicine that describes work hardening as follows:

*A highly structured, goal-oriented, individualized 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 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 bio-mechanical, neuromuscular, cardiovascular/metabolic, behavioral, attitudinal, and vocational functioning of the persons served. (Emphasis added).*

Petitioner established that Claimant had been approved for WH. In preparing to enroll her in an effective program that would eventually get Claimant back to work, Petitioner worked to develop an individualized program for Claimant. He indicated that information related to Claimant’s specific duties and work environment would contribute to tailoring an individualized and appropriate program for Claimant. Indeed, the description of WH, set out in the MFG, appears to require a provider to get that type of information to develop real or simulated work activities for a claimant to perform in a WH program. Further, the Commission anticipated that assessments, such as a job site assessment, would be conducted, as it included “job site assessment” as a type of testing that was available under the Medicine Ground Rules. Thus, the ALJ concludes that Petitioner proved that the job site assessment was medically necessary for Claimant’s treatment.

### III. FINDINGS OF FACT

1. Claimant \_\_\_\_, a district manager employed by \_\_\_\_, sustained an injury to her neck, back and right shoulder when she fell against a metal railing on \_\_\_\_, while working.
2. At the time of the injury, Claimant’s employer had workers’ compensation insurance through Travelers’ Insurance Company (Carrier).
3. Alan Berg, D.O. (Petitioner) began treating Claimant on November 7, 2001. He treated her with medication to reduce inflammation and also referred her to other providers for testing.
4. In January 2002, Petitioner had Claimant undergo a functional capacity evaluation (FCE) to determine if she might benefit from work hardening (WH).
5. The FCE established that Claimant was an appropriate candidate for work hardening. The Carrier preauthorized WH for Claimant in January 2002.
6. In May 2002, Claimant continued to suffer pain in her right arm and wrist. Petitioner sent her to have a physical performance test; the test indicated Claimant continued to have physical deficits.
7. Petitioner decided that additional WH would be appropriate for Claimant.

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<sup>10</sup> See description of WH in the Medicine Ground Rules, Physical Medicine, Paragraph II E, found at p. 37 of the 1996 MFG.

8. Petitioner ordered a job site assessment of Claimant's work place in order to design an effective WH program for Claimant.
9. A job site assessment of Claimant's work place was conducted on May 1, 2002, and a report was prepared for use by Petitioner.
10. Information obtained through a job site assessment can be used to design effective, individualized activities and job simulations for performance by a claimant in a work hardening program, which is meant to get a claimant back to work.
11. On May 15, 2002, the Carrier approved 20 additional sessions of WH for Claimant.
12. Petitioner billed the Carrier for the job site assessment of Claimant's work place.
13. Carrier denied reimbursement of the claim, indicating the assessment was not medically necessary.
14. Petitioner appealed the Carrier's denial to the Medical Review Division (MRD) of the Texas Workers' Compensation Commission (the Commission). The dispute was sent to an independent review organization (IRO) for consideration.
15. After reviewing the disputed claim, the IRO agreed with the Carrier. On March 24, 2003, the MRD adopted the recommendation of the IRO and denied reimbursement of Petitioner's claim for the job site assessment.
16. On April 4, 2003, Petitioner appealed the MRD's decision, and sought reimbursement for the claim.
17. The Commission sent notice of the hearing to the parties on June 2, 2003. The hearing notice informed the parties of the matter to be determined, the right to appear and be represented, the time and place of the hearing, and the statutes and rules involved.
18. The hearing was held on July 7, 2003. Petitioner was represented by attorney H. Douglas Pruett, and the Carrier was represented by Dan Flanagan. The record of the hearing closed on the same day.

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

1. The Texas Workers' Compensation Commission has authority to decide the issue presented, pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 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 ANN. §§ 402.073 and 413.031(k) and TEX. GOV'T CODE ANN. ch. 2003.
3. The Petitioner timely filed notice of appeal of the MRD decision, as specified in 28 TEX. ADMIN. CODE (TAC) §148.3.
4. Proper and timely notice of the hearing was given to the parties according to TEX. GOV'T CODE ANN. ch. 2001 and 28 TAC § 148.4(b).
5. Pursuant to 28 TAC §148.21(h) and (i), Petitioner had the burden of proving by a preponderance of the evidence that its claim should be reimbursed.
6. The Commission's 1996 Medical Fee Guideline, Medicine Ground Rules for Physical Medicine, Section I.E. allows job site assessments as a testing procedure.
7. Petitioner proved that information obtained through the job site assessment was used in tailoring an individualized and effective WH program for Claimant.

- 8 Petitioner proved by a preponderance of the evidence that a job site assessment of Claimant's work place was medically necessary and permitted under the Commissions' MFG.
9. Based on the foregoing findings of fact and conclusions of law, the Carrier should reimburse Petitioner for the job site assessment of Claimant's work place that was conducted on May 1, 2002.

**ORDER**

IT IS HEREBY ORDERED that the appeal of Petitioner Alan Berg, D.O., is granted. Accordingly, Carrier Travelers' Insurance Company is required to reimburse Petitioner for the job site assessment conducted on May 1, 2002.

**SIGNED this 9<sup>th</sup> day of September 2003.**

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