

**DOCKET NO. 453-03-3458.M5**  
**TWCC NO. M5-03-0887-01**

<b>TRUMAN A. DAVIDSON, D.C.</b>	§	<b>BEFORE THE STATE OFFICE</b>
<i>Petitioner</i>	§	
	§	
<b>VS.</b>	§	<b>OF</b>
	§	
<b>ST. PAUL FIRE &amp; MARINE</b>	§	
<b>INSURANCE COMPANY</b>	§	
<i>Respondent</i>	§	<b>ADMINISTRATIVE HEARINGS</b>

**DECISION AND ORDER**

This case is a dispute over whether reimbursement is appropriate for a work hardening program, office visits, and echography exams rendered to \_\_\_\_ (Claimant) by Truman A. Davidson, D.C. (Provider), between December 10, 2001, and January 18, 2002. Provider sought reimbursement from St. Paul Fire & Marine Insurance Company (Carrier) for the treatment rendered to Claimant, which Carrier denied as not medically necessary. The Texas Workers' Compensation Commission (the Commission) Medical Review Division (MRD) adopted the findings of an Independent Review Organization (IRO) that held Provider was not entitled to reimbursement. In this Order, the Administrative Law Judge (ALJ) concludes Provider is not entitled to reimbursement.

**I. JURISDICTION, NOTICE AND PROCEDURAL HISTORY**

There were no contested issues of jurisdiction or notice. Therefore, those matters will be addressed in the findings of facts and conclusions of law without further discussion here.

A hearing convened and closed on October 2, 2003, before the State Office of Administrative Hearings (SOAH) with ALJ Steven M. Rivas presiding. Provider appeared and represented himself. Carrier appeared and was represented by Steve Tipton, attorney.

**II. DISCUSSION**

**A. Background Facts**

Claimant was employed as a bootmaker and sustained a compensable back injury on \_\_\_\_, \_\_\_\_, as he attempted to pick up some boot material from the floor. Claimant was diagnosed with a lumbar sprain/strain. As part of his treatment, Claimant was referred to Provider to undergo physical therapy modalities. Provider administered treatment to Claimant from July 30, 2001, through January 18, 2002. The treatment included a work conditioning program, aquatherapy, a work hardening program, and echography. Provider was reimbursed for the treatment rendered from July 30, 2001, through December 7, 2001. Carrier denied reimbursement for the treatment rendered from December 10, 2001, through January 18, 2002, as not medically necessary.

## **B. Applicable Law**

The Texas Labor Code contains the Texas Workers' Compensation Act (the Act) and provides the relevant statutory requirements regarding compensable treatment for workers' compensation claims. In particular, the Act, as noted in § 408.021, provides that an employee who sustains a compensable injury is entitled to all health care reasonably required by the nature of the injury as and when needed. Under the same statute, the employee is 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.

### **3. Evidence and arguments**

Provider testified that the treatment rendered to Claimant, especially the work hardening program, was designed to allow Claimant the opportunity to regain his prior physical abilities that had diminished because of the injury. Carrier argued the disputed treatment that began on December 10, 2001, was not medically necessary in light of Claimant's prior treatment from July 30, 2001, through December 7, 2001. The prior treatment was primarily office visit evaluations, work conditioning, and work hardening. The work-conditioning program required 21 sessions, and the work hardening program required 27 sessions. Additionally, Claimant participated in an aquatic therapy program where Claimant was required to perform various exercises in a swimming pool using kick-boards and floats. Despite the prior treatment rendered to Claimant, he showed little or no improvement.

The disputed services began on December 10, 2001, and involved 30 work hardening sessions, a functional capacity evaluation (FCE), 18 office visits, and a few echography diagnostic tests. Carrier argued the disputed treatment was not medically necessary based on Claimant's job duties and diagnosis. Following this second round of treatment, Provider released Claimant back to work.

Provider described Claimant's job duties as a bootmaker consisted of sitting on a chair or stool and sewing material onto a boot. Occasionally, Claimant was required to pick up boot material that fell to the floor, and at least 10-12 times a day, Claimant was required to push a box of finished boots along a conveyor belt. Carrier did not agree that two months of work hardening was necessary especially after he just completed five months of therapy that included work hardening and work conditioning.

Carrier also pointed out that the work hardening program administered by Provider did not meet the standards set out in the Commissions' Medical Fee Guideline (MFG). Carrier argued under the MFG, a work hardening program must be a "highly structured, goal-oriented treatment program" designed to prepare an injured worker to return to work. Provider submitted records that some type of treatment had been rendered to Claimant on the disputed dates, but Carrier argued the records were vague at best as to what exactly was performed and how the exercises were related to Claimant's actual job duties. Carrier pointed out Provider's records of the work hardening program gave only the name of an exercise, the amount of repetitions performed, the amount of sets performed, the level of fatigue, and the level of discomfort. However, Carrier noted, the records merely identified the exercises with one or two-word names like "cervicals" and "upper back." The number of repetitions for each exercise were identified as "8-10." The sets were labeled "2-3," the fatigue level was measured as "none" and the discomfort was noted as "some." Carrier argued this kind of documentation does not comply with Commission's MFG because it does not accurately

reflect what kind of exercises Claimant is performing, how well Claimant is performing the exercises, how much Claimant is improving, if any, and how the exercises relate to Claimant's job duties.

Carrier additionally asserted the echography exams were not medically necessary given the time at which they were performed in January 2001. Kelly T. Lancaster, D.C., testified for the Carrier that echography is a diagnostic test much the same as an MRI in that it is designed to determine the cause of a patient's pain complaints. Dr. Lancaster testified the echography exams performed on Claimant in January 2002 were not medically necessary because the source of Claimant's pain had already been determined in July 2001. Furthermore, Dr. Lancaster asserted there was no basis to administer any additional diagnostic tests in January 2002 because Claimant had already undergone an extensive work hardening program, which is usually administered at the conclusion of a treatment plan in preparation of returning to work.

#### 4. Analysis and Conclusion

Provider is not entitled to reimbursement because the treatment rendered to Claimant was not medically necessary. Claimant had already undergone extensive therapy with Provider before the disputed dates of service, and no improvement was reported. Although Claimant was released back to work following the disputed dates of service, Provider offered insufficient evidence that the prescribed treatment was necessary in order to treat the effects of Claimant's compensable injury. For the foregoing reasons, the ALJ believes Carrier should not be ordered to reimburse Provider for the treatment rendered.

### III. FINDINGS OF FACT

1. Claimant \_\_\_ suffered a compensable injury on \_\_\_, and was diagnosed with a lumbar sprain/strain.
2. Truman A. Davidson, D.C. (Provider), treated Claimant from July 30, 2001, through December 7, 2001, and December 10, 2001, through January 18, 2002.
3. Claimant's treatment from July 30, 2001, through December 7, 2001, included office visits, a work hardening program, a work condition program, and aquatherapy.
4. Claimant's treatment from December 10, 2001, through January 18, 2001, included office visits, a work hardening program, and echography.
5. Provider billed St. Paul Fire and Marine Insurance Company (Carrier) for the treatment rendered.
6. Carrier reimbursed Provider for the treatment rendered from July 30, 2001, through December 7, 2001, but denied reimbursement for the treatment rendered from December 10, 2001, through January 18, 2002, as not medically necessary.
7. Provider filed a Request for Medical Review Dispute Resolution with the Texas Workers' Compensation Commission (the Commission), seeking reimbursement for the treatment rendered to Claimant.

8. The dispute was referred to an Independent Review Organization (IRO), which found Provider was not entitled to reimbursement.
9. Provider timely appealed the IRO decision and filed a request for hearing before the State Office of Administrative Hearings (SOAH).
10. Notice of the hearing was sent July 25, 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 convened and closed on October 2, 2003, with Steven M. Rivas, Administrative Law Judge (ALJ) presiding. Provider appeared and represented himself. Carrier appeared and was represented by Steve Tipton, attorney.
13. Provider's records of the work hardening program in dispute gave only the name of an exercise, the amount of repetitions performed, the amount of sets performed, the level of fatigue, and the level of discomfort.
14. Provider's records of the disputed work hardening program identified the exercises with one or two-word labels like "cervicals" and "upper back."
15. Provider's records of the disputed work hardening program identified the number of repetitions for each exercise as "8-10." The sets were labeled "2-3," the fatigue level was measured as "none" and the discomfort was noted as "some."
16. Echography exams are administered to investigate and determine the source of a patient's pain complaints.
17. Provider administered echography exams to Claimant in January 2002 even though Claimant's source of pain had already been determined in July 2001.
18. Provider presented insufficient evidence that the treatment in dispute was medically necessary to treat Claimant's compensable injury.

#### **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. SOAH 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. Provider timely filed its request for hearing as specified by 28 TEX. ADMIN. CODE § 148.3.

4. Adequate and timely notice of the hearing was provided in accordance with TEX. GOV'T CODE ANN. § 2001.052 and 28 TEX. ADMIN. CODE § 148.4.
5. The Provider, as Petitioner, has the burden of proof in this matter under 28 TEX. ADMIN. CODE § 148.21(h).
6. Under TEX. LAB. CODE ANN. § 408.021(a), an employee who sustains a compensable injury is entitled to all health care reasonably required by the nature of the injury that: (1) cures or relieves the effects naturally resulting from the compensable injury; (2) promotes recovery; or (3) enhances the ability of the employee to return to or retain employment.
7. Under the Commission's Medical Fee Guideline (MFG), a work hardening program must be a "highly structured, goal-oriented treatment program" designed to prepare an injured worker to return to work.
8. Provider's records of the disputed work hardening program did not comply with the Commission's MFG.
9. The echography exams administered by Provider in January 2002 were not medically necessary because the source of Claimant's pain had already been determined in January 2001.
10. Provider did not meet its burden of showing, by a preponderance of the evidence, that the treatment rendered to Claimant was medically necessary.
11. Pursuant to the foregoing Findings of Fact and Conclusions of Law, Provider is not entitled to reimbursement for the treatment rendered to Claimant.

### **ORDER**

IT IS, THEREFORE, ORDERED that Provider, Truman A. Davidson, D.C., is not entitled to reimbursement from the Carrier, St. Paul Fire and Marine Insurance Company, for the treatment rendered to Claimant from December 10, 2001, through January 18, 2002.

**SIGNED November 26, 2003.**

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**STEVEN M. RIVAS  
ADMINISTRATIVE LAW JUDGE  
STATE OFFICE OF ADMINISTRATIVE HEARINGS**