

REHAB 2112,	§	BEFORE THE STATE OFFICE
Petitioner	§	
	§	
V.	§	OF
	§	
CONTINENTAL CASUALTY	§	
COMPANY,	§	
Respondent	§	ADMINISTRATIVE HEARINGS

DECISION AND ORDER

Rehab 2112 (Provider) challenged the decision of the Medical Review Division (MRD) of the Texas Workers' Compensation Commission upholding Continental Casualty Company's (Carrier) denial of reimbursement for physical therapy and a course of work hardening, administered consecutively between November 20, 2001, and March 15, 2002. The MRD also denied reimbursement for the administration of a functional capacity evaluation (FCE) on January 22, 2002. Both Carrier and the MRD found that the treatment and related testing were not medically necessary to treat _____ (Claimant).

Based on the evidence, the ALJ concluded that Provider failed to demonstrate that either physical therapy or work hardening was needed between November 2001 and March 2002 to treat Claimant's injury, so declines to order Carrier to reimburse Provider. However, Provider did demonstrate the need for objective testing in order to evaluate Claimant's physical condition. Carrier is ordered to reimburse Provider for the test conducted on January 22, 2002.

The hearing in this matter convened September 2, 2003, in Austin, Texas, with Administrative Law Judge (ALJ) Cassandra Church presiding. Provider was represented by H. Douglas Pruett, attorney. Carrier was represented by David L. Swanson, attorney. The Commission did not participate in the hearing.

I. DISCUSSION

On _____, Claimant, an administrative assistant, was lifting and moving boxes. While stacking boxes, Claimant suffered two injuries, an abdominal hernia and a lower back strain/sprain. Her hernia was repaired surgically in September 2001; she did not injure her spine.

Although the medical records were voluminous, the key facts were straightforward. The medical record in this case simply failed to justify physical therapy and work hardening seven or more months after the date of injury. The medical records did show that Claimant experienced a considerable degree of anxiety about her injury and also that she was depressed and anxious about her overall health, employment, and personal life. As, discussed below, it is of some significance that in October 2001, during a medical examination, Claimant showed signs of symptom magnification. However, neither Provider nor the doctor referring Claimant for physical therapy and work hardening appeared to have addressed this factor in their treatment plans. John Hoper, Ph.D, the psychologist who evaluated Claimant in October 2001, also suggested that her mental state would tend to result in her overreaction to or misinterpretation of her physical symptoms. Provider Exh 1, pp. 257-265. He concluded that while her condition would not be a barrier to participation in a work rehabilitation program, therapists in such a program should minimize their reliance on Claimant's subjective reports of her condition. Carrier Exh. 1, p. 27. The ALJ was unable to ascertain from the record the exact medical reasons for initiating a course of active physical therapy in the last two months of 2001, five months after a simple sprain/strain injury, when medical examination in October showed her leg, back and abdomen strength to be normal or near normal.

Claimant apparently also had a fall and a minor automobile accident after the date of the on-the-job injury. Her degree of injury from those events, if any, was not documented.

The medical record shows even less support for the work hardening program that was initiated on January 28, 2002. Work hardening is a highly-structured, goal-oriented, individualized treatment program designed to address functional, physical, behavioral, and vocational needs of an injured worker. 28 TEX. ADMIN. CODE § 134.202. *Medicine Ground Rules*, Sec. II, Single and Interdisciplinary Programs.¹ The medical evidence here did not support the conclusion that Claimant had any vocational deficits or required retraining. Her previous employer has apparently offered Claimant a clerical position, with a sedentary physical demand level.² While she apparently

¹ The ALJ notes that the MFG applies to professional medical services rendered prior to September 1, 2002, notwithstanding some changes made to the multidisciplinary programs in January 2003. 28 TEX. ADMIN. CODE § 134.202, eff. date January 5, 2003, 27 Tex Reg 4048 and 12304, as modified by the Final Judgment in Cause No. GN 202203, Travis County District Court, 126th Judicial District. (J. John Dietz) (Appeal pending).

² Carrier argued that the work-hardening program was designed and intended to serve primarily the special needs of manual laborers rendered incapable of performing their former jobs, with the consequent vocational and emotional dislocation. As such, carrier argued it would not be applicable to clerical workers such as Claimant. However, the MFG does not so limit application of the program. As a decision in this case can be rendered strictly on the medical evidence, particular to Claimant, this decision does not need to reach the applicability of the rule to a particular class of workers.

undertook counseling for her anxiety and depression, the record does not make clear that any component of the work hardening program addressed these needs, or that her levels of anxiety and depression were so debilitating as to prevent her holding a job. Provider Exh. 1, p. 325. It was not clear that Provider's treatment plan was individualized. It is not evident in the record whether therapists lessened their reliance on her subjective reports, as her counselor had recommended. Additionally, there is some indication that, as of December 15, 2001, Claimant's hernia repair had not healed correctly. Provider Exh. 1, p. 249-250. This suggests that she may not have been physically ready in January 2002 for an intensive multi-hour-per-day rehabilitation program, were she have been a qualified individual in other respects. In sum, Provider had the burden of proof in this case to demonstrate that the treatment provided was necessary to treat Claimant appropriately at the time provided. Provider did not sustain that burden in regard to either physical therapy or work hardening.

As decisions on entry into a course of physical therapy or work hardening must be based on objective measurements, Provider proceeded properly in testing her capacity in January 2002. Thus, the Provider did demonstrate that objective measurement was needed to evaluate Claimant's readiness for therapy.

II. FINDINGS OF FACT

1. On _____, _____ (Claimant) injured her back and abdomen while stacking boxes, an injury compensable under the Texas Workers' Compensation Act and for which Continental Casualty Company (Carrier) was the responsible insurer.
2. On _____, Claimant was employed as an administrative assistant.
3. Claimant was diagnosed as having suffered a back sprain/strain and an abdominal hernia.
4. Claimant's abdominal hernia was surgically repaired on September 7, 2001.
5. An MRI examination of Claimant on May 30, 2001, showed her lumbar spine to be normal and free of injury.
6. At no time after her injury did Claimant manifest signs of any neurological deficit attributable to the injury.
7. Claimant suffered two additional injuries after the injury on _____. She fell on September 24, 2001, and was involved in an automobile accident on November 24, 2001. The degree of injury Claimant sustained in these events was not documented.
8. In an examination conducted on October 25, 2001, by Dorothy Ann Leong, M.D., Claimant's leg strength and function were within normal range, as was her strength in her back and abdominal muscles. Claimant tested positive for Waddell's sign, a test for symptom magnification by a patient. Dr. Leong examined Claimant to make a determination on her degree of medical improvement.

9. Claimant could return to full duty by the end of November 2001, with light duty before that during the period she was completing healing from the hernia repair.
10. In October 2001, Claimant showed some depression and high levels of anxiety, including anxiety about her physical condition, her injury, and her personal life. From October 2001 through March 12, 2002, Claimant underwent psychological counseling to enable to better manage her anxieties and depression.
11. During the dates of service at issue, Claimant's mental condition led her to overreact to or misinterpret her physical symptoms.
12. On December 15, 2001, Robert J. Coolbaugh, D.C., the TWCC-designated doctor, found it possible that Claimant's hernia had not completely healed.
13. Her employer at the time of the injury had promised to re-employ Claimant in a sedentary clerical position at such time as she was physically able to work. Claimant did not require retraining or any vocational redirection as a result of her injury.
14. On January 22, 2002, Provider administered a functional capacity evaluation (FCE) to Claimant. The FCE provided information on Claimant's level of physical functioning.
15. Chad Blackmon, D.C., authorized Rehab 2112 (Provider) to proceed with a course of active therapy in 2002 which included 10 sessions between November 20, 2001, and January 4, 2002, and also to proceed with eleven sessions of work hardening between January 28 and March 15, 2002.
16. Neither Dr. Blackmon's referral nor Provider's treatment plan for the dates of service at issue evaluated her need for treatment as it may have been affected by the two instances of injury, described in Finding of Fact No. 7 which occurred after the compensable injury in May 2001.
17. The work hardening included therapeutic exercises and general life-skills and work management training or classes. Provider's treatment plan did not address possible symptom magnification concerns, or reduce the therapists' use of subjective reporting of symptoms and pain levels.
18. In the FCE conducted before work hardening began, Claimant's tolerances for sitting and standing were based on subjective reports by Claimant. Claimant reported being able to sit for two minutes and being able to stand for three minutes.
19. The sitting and standing tolerances for the job which Claimant had been offered were undocumented.
20. At the time work handling was initiated, there were no objective measures of Claimant's inability to function at a sedentary level job.
21. Provider appealed the Carrier's denial of reimbursement on the basis of lack of medical necessity to the Medical Review Division (MRD) of the Texas Workers' Compensation Commission's (Commission).

22. On May 1, 2003, the MRD denied reimbursement to Provider, based on the review by an Independent Review Organization (IRO), Maximus. The MRD determined that the physical therapy, work hardening, and administration of an FCE were not medically necessary.
23. On May 20, 2003, Provider requested a hearing on the MRD decision.
24. On June 24, 2003, the Commission issued a notice of hearing that included the date, time, and location of the hearing, the applicable statutes under which the hearing would be conducted, and a short, plain statement of matters asserted.
25. Administrative Law Judge Cassandra Church conducted a hearing on the merits of this case on September 2, 2003, and the record closed that day.

III. CONCLUSIONS OF LAW

1. The Texas Workers' Compensation Commission (Commission) has jurisdiction related to this matter pursuant to 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. §413.031 and TEX. GOV'T CODE ANN. ch. 2003.
3. Provider timely requested a hearing, as specified in 28 TEX. ADMIN CODE § 148.3.
4. Proper and timely notice of the hearing was provided in accordance with TEX. GOV'T CODE ANN. §§ 2001.051 and 2001.052.
5. Provider, as the petitioning party, has the burden of proof in this proceeding pursuant to TEX. LAB. CODE ANN. § 413.031 and 28 TEX. ADMIN CODE § 148.21 (h).
6. Physical therapy and work hardening sessions for dates of service between November 20, 2001, and March 15, 2002, were not medically necessary to treat nor reasonably required to relieve the effects of or promote recovery from a compensable injury suffered by Claimant, within the meaning of TEX. LAB. CODE ANN. §§ 408.021 and 401.011(19).
7. Administration of a functional capacity evaluation (FCE) on January 22, 2002, was medically necessary to treat or reasonably required to relieve the effects of or promote recovery from a compensable injury suffered by Claimant, within the meaning of TEX. LAB. CODE ANN. §§ 408.021 and 401.011(19).

ORDER

IT IS ORDERED that Carrier is not required to reimburse Rehab 2112 for work hardening and physical therapy sessions administered on behalf of ____ (Claimant) for all dates of service between November 20, 2001, and March 15, 2002. Carrier is required to reimburse Provider for administration of a functional capacity evaluation (FCE) on January 22, 2002.

SIGNED November 25, 2003.

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