

DOCKET NO. 453-03-3772.M5
MDR Tracking No. M5-03-1402-01

SUHAIL AL-SAHLI, D.C.,	§	BEFORE THE STATE OFFICE
Petitioner	§	
	§	
VS.	§	OF
	§	
TRANSCONTINENTAL INSURANCE	§	
COMPANY,	§	
Respondent	§	ADMINISTRATIVE HEARINGS

DECISION AND ORDER

Suhail Al-Sahli (Provider) is appealing the decision of the Texas Workers' Compensation Commission's (Commission's) designee, an independent review organization (IRO), which upheld Transcontinental Insurance Company's (Transcontinental's) denial of a claim for reimbursement for work hardening provided to Claimant A.F. based on lack of medical necessity. This decision concludes that Suhail Al-Sahli is not entitled to reimbursement because he failed to establish that the work-hardening program was medically necessary.

I. PROCEDURAL HISTORY

A hearing convened in this case on September 16, 2003, before the undersigned Administrative Law Judge (ALJ) at the State Office of Administrative Hearings, 300 West 15th Street, Austin, Texas. Provider appeared representing himself. Transcontinental did not appear. The record closed after the hearing.

II. DISCUSSION

A. Background Facts

Claimant suffered a compensable injury on ____, while working as a housekeeper at a motel in the ____ area. She was trying to remove a heavy arm chair from a high position when the chair fell directly on her right knee. She reports that the chair slipped and struck her on the anterolateral aspect of the right thigh just above the knee. Since that time she has been receiving chiropractic/physical therapy and was ultimately entered into the work-hardening program at issue. She has also received non-steroidal anti-inflammatories, corticosteroid injections, and synvisc, all of which she said provided some temporary relief.

An MRI from May 14, 2002, revealed that Claimant had a Grade III chondromalacia of the patella with severe degenerative joint disease at the patellofemoral articulation with osteonecrosis, along with a probable full-thickness tear of the posterior horn of the medial meniscus, possibly representing a partial-thickness tear. The overall conclusions from the MRI reading indicated the Claimant exhibited advanced grade IV chondromalacia patella and a meniscal tear identified to the posterior horn of the medial meniscus extending from the posterior horn to the body without disrupting the femoral or tibial articular surfaces.

Provider rendered the work-hardening services in question between June 12, 2002, and December of 2002.

B. The Parties' Arguments

Provider's Position

Provider saw the Claimant soon after the accident and performed an orthopedic examination. He suspected she had torn meniscus and possibly knee sprain/strain and referred her for an MRI in her right knee. He also immediately started Claimant on passive and active treatment. The MRI showed degenerative changes and possible torn meniscus. Provider reported that Claimant initially showed some signs of progress as she went through work-hardening.

Provider agrees that the first MRI report said she "probably" had torn meniscus. Notwithstanding that report and the June 18, 2002, peer review report from Dr. James Hood indicating more active modalities would not be helpful, he provided a work-hardening program to Claimant between June 16, 2002, and December 2002.

On September 4, 2002, Claimant had a functional capacity examination performed by Dr. Hanna E. Francis. Provider noted that Dr. Francis recommended a "work conditioning" program. Provider testified that he based his decision to begin the work-hardening program on this recommendation, although he does not really give an explanation of why he was already approximately 10 weeks into the work-hardening program at the time of Dr. Francis' evaluation. He believes work-hardening was a prudent and conservative approach because he believes the work hardening could have helped avoid the surgery, even knowing about the torn meniscus.

Sometime during the work hardening program (after the fifth week of the program), Claimant began experiencing severe pain in her knee and was again referred to an orthopedic surgeon. Provider notes that the orthopedic surgeon reported that Claimant would continue to have pain in a work hardening program with the torn meniscus. In November of 2002, that surgeon recommended Claimant undergo an arthroscopic condroplasty to repair her knee.

The Carrier denied the recommended surgery based on extent-of-injury concerns.

Provider disagrees with Dr. Hood's opinion that Claimant's condition should have resolved within six-eight weeks. Provider says that because Claimant's knee did not resolve as quickly as Dr. Hood projected, it is clear that Dr. Hood was in error about the cause and severity of the injury.

Carrier's Position

Carrier did not appear at the hearing.

III. ANALYSIS

The ALJ agrees with the IRO decision. There is little evidence that Claimant's work injury caused anything more than a knee sprain or a contusion. Both the insurance company doctor, Dr. Trotter, and the peer review physician, Dr. Hood, did not believe the work injury, as described by

Claimant, could have resulted in anything more than a contusion. Those doctors did believe a falling chair would have provided the sudden deceleration or twisting mechanism that would have produced a torn meniscus. If the injury was mechanism was more elaborate than reported as a result of Claimant having a language barrier or inadequate communication skills, Provider nonetheless failed to meet his burden.

Dr. Trotter persuasively noted that, based on Claimant's age and body habitus, she likely had significant preexisting degenerative condition within her right knee and the torn meniscus. While it is not clear how Claimant tore her meniscus, Provider has not shown that it was caused by her ____, work injury.

IV. FINDINGS OF FACT

1. Claimant suffered a compensable injury on ____, while working as a housekeeper at a motel in the ____ area. She was lowering a heavy chair from a high position and had that chair fall onto her knee, causing a strain/sprain.
2. Suhal Al-Sahli (Provider) provided Claimant with work hardening program from June 12, 2002, through December, 2002.
3. Transcontinental Insurance Company (Transcontinental) denied reimbursement on the basis that the work hardening program was not medically unnecessary.
4. Provider appealed the denial to the Texas Worker's Compensation Commission (Commission).
5. The Commission's designee, an independent review organization, issued a decision on April, 21, 2003, denying reimbursement because the work-hardening was not medically necessary.
6. Provider filed a request for a hearing on June 6, 2003.
7. The Commission sent notice of the hearing to the parties on July 9, 2003. The hearing notice informed the parties of the time, place, and nature of the hearing; the legal authority and jurisdiction under which the hearing was to be held; the statutes and rules involved; and the matters asserted.
8. Provider failed to show that Claimant suffered a work-related injury that warranted a work hardening program. Claimant's report of a chair falling and hitting her knee is consistent with contusion to the knee that would likely have resolved within two to three weeks.
9. Claimant had a preexisting advanced degenerative joint disorder in her right knee prior to her work related injury and likely suffered a tear to the meniscus of her right knee at some point.

V. CONCLUSIONS OF LAW

1. The Commission has jurisdiction over this matter 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. TEX. LAB. CODE ANN. §§ 402.073 and 413.031(k) and TEX. GOV'T CODE ANN. ch. 2003.
3. Suhail Al-Sahli (Provider) filed a timely notice of appeal as specified in 28 TEX. ADMIN. CODE (TAC) § 148.3.
4. Adequate and timely notice of the hearing was provided. TEX. GOV'T CODE ANN. §§ 2001.051 and 2001.052.
5. Provider had the burden of proof in the case. 28 TAC §148.21(h).
6. Provider failed to show that Claimant's mechanism of injury would have caused an injury that would be appropriately treated by a work hardening program.
7. Enrollment in a work hardening program was not reasonably required health care to treat Claimant's compensable injury under TEX. LAB. CODE ANN. § 408.021.
8. Based on the foregoing findings of fact and conclusions of law, Provider is not entitled to reimbursement for the work hardening program.

ORDER

IT IS, THEREFORE, ORDERED that the claim of Suhail Al-Sahli, D.C., against Transcontinental Insurance Company for work hardening provided to the Claimant from June 12, 2002, until some unspecified date in December 2002, is denied.

SIGNED November 18, 2003.

BILL ZUKAUCKAS
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS