

WORK READY REHAB, PETITIONER	§	BEFORE THE STATE OFFICE
	§	
	§	
V.	§	OF
	§	
TRANSCONTINENTAL INSURANCE COMPANY, RESPONDENT	§	ADMINISTRATIVE HEARINGS
	§	
	§	

DECISION AND ORDER

Work Ready Rehab (Petitioner) appeals from a decision by an Independent Review Organization that denied reimbursement for six weeks of work-hardening services provided to Claimant ___ between May 13 and June 21, 2002. Transcontinental Insurance Company (Carrier) contends that the IRO decision should be upheld because the work hardening program was not medically reasonable or necessary, or alternatively, that Petitioner should have promptly terminated the program due to ___'s poor attendance. The amount in dispute is \$5,417.00. This Decision and Order denies Petitioner's appeal because Petitioner did not prove by a preponderance of the evidence that work-hardening services were medically reasonable and necessary for ___

I. JURISDICTION, NOTICE, AND VENUE

There were no contested issues of jurisdiction, notice, or venue. Therefore, those issues are addressed in the Findings of Fact and Conclusions of Law without further discussion here.

II. STATEMENT OF THE CASE

Administrative Law Judge (ALJ) Thomas H. Walston convened a hearing in this case on January 14, 2004, at the State Office of Administrative Hearings, William Clements State Office Building, Austin, Texas. Petitioner appeared through its administrator, Ms. Pam Walker, and Carrier appeared through its counsel, Mr. James Loughlin. The record closed the same day.

III. Discussion

A. Introduction

___ is a ___ who suffered a compensable injury on ___, while working for ___. ___ felt a pain in his back when he lifted a CO₂ tank weighing between 50-100 lbs. ___ received a long, extensive course of conservative treatment, including physical therapy, pain medications, multiple epidural steroid injections with lysis of adhesions, and a chronic pain management program. An early MRI showed mild disc protrusions at L4-5 and L5-S1 but no nerve root impingement. All doctors who saw ___ agreed that he was not a surgical candidate and a later discogram confirmed no need for surgery. ___ continued to make subjective complaints of low back pain for over two years but had few objective findings. In May 2002, his treating doctor recommended six weeks of work

hardening, which Work Ready Rehab provided. Because it is a CARF certified facility, Work Ready was not required to obtain preauthorization. During the work hardening program, ___ missed 10 of the 29 scheduled sessions, he failed to participate for the minimum required four hours on three additional days, and he never participated more than five hours per day. However, at the end of the program ___ was released to return to work and he did eventually return to his job.

Carrier refused to pay for the work hardening program and Petitioner appealed. On August 12, 2003, Envoy Medical Systems, an Independent Review Organization (IRO), upheld the Carrier's position based on the following rationale:

Work hardening programs are not as successful as one would like them to be, especially, as in this case, when the patient misses a number of sessions, and when the physical activity is not targeted to clear specific problems related to a particular job. The program certainly should have been discontinued when it was determined that the patient's need to care for his wife and son interfered with his attendance. That was obviously apparent in the first week or two of the program, and this situation should have been noted before the program was instituted. In addition, the patient had had extensive therapy prior to initiation of the program. The documents presented for this review do not indicate the necessity of a multi-disciplinary program.

This appeal followed.

B. Evidence and Arguments

Both parties relied on ___'s extensive medical records. These records show the following:

- 8/11-12/4/00 U.S. HealthWorks - 14 sessions of physical therapy.
- 9/8/00 Exam by Dr. Pakzaban (M.D.) - acute low back pain radiating into right buttock and thigh; exacerbated by sitting; x-rays unremarkable; has undergone two weeks of physical therapy without improvement; takes Advil; on light duty and can drive a forklift for about 30 minutes. Physical exam normal except for some muscle spasm, right sciatic notch tenderness, and straight leg raising positive on the right at 30 degrees. Diagnosed as right-sided radicular pain; recommended MRI to rule out herniated disc.
- 9/20/00 Lumbar spine MRI by River Oaks Imaging - normal except at L4-5 a mild loss of disc height and disc desiccation and a small to moderate central protrusion abutting but not distorting both L5 nerve root sleeves; at L5-S1, very small central disc protrusion with no significant stenosis or nerve root impingement.
- 9/22/00 Dr. Pakzaban reviewed MRI results; concluded that ___ did not require surgery; continued therapy; should improve with conservative care.
- 10/30/00 Dr. Pakzaban - continues with significant low back pain; no significant radicular pain; referral to Dr. Shay for lumbar epidural steroid injections; stay off work until symptoms improve.

- 11/15/00 Dr. Jose Acevedo (M.D.) - work status report; diagnosis of “lumbar strain/sprain, disc disorder”; release to work on 11/15/00 with restricted duty for one week.
- 12/5/00 Dr. Jed Shay (M.D.) - River Oaks Pain Management - working on light duty as forklift operator; left lower back pain radiating into left buttocks; reduced range of motion on extension and flexion; multiple trigger points on left paraspinal muscles; sciatic notch tender on the left; straight leg raising test negative on the left; impression was suspected facet pain and nerve root irritation; prescribed Neurontin and recommended that ___ stay off work until further diagnosis and treatment.
- 12/14/00 Dr. Shay - epidural steroid injections with lysis of adhesions on the left at L5-S1.
- 12/19/00 Dr. Shay - follow up; ___ did not respond positively to steroid injections; second procedure scheduled; if no relief after second procedure, will reconsider diagnosis.
- 1/4/01 Dr. Shay - second steroid injection with lysis of adhesions on the left at L4-5.
- 1/8/01 Dr. Shay - follow up; again, ___ did not respond positively; noted that physical therapy and pain medication have also not helped; recommended further evaluation for possible neurosurgery.
- 2/1/01 Dr. William Culver (M.D.) - required medical evaluation for Carrier; Dr. Culver noted the patient history and prior treatment and diagnostics; exam was essentially normal except for reported pain and two positive Waddell signs [which suggest symptom exaggeration]; diagnosis as lumbar strain/sprain, L4-5 small disc protrusion, chronic low back pain, and mild to moderate symptom magnification. Dr. Culver reported that ___ had reached maximum medical improvement [MMI] as of 2/1/01 and he assessed a 7% whole person impairment.
- 3/12/01 Dr. Avner Robert Griver (M.D.) - designated doctor examination by TWCC; reviewed history, records, and treatment; ___ complained of intermittent low back pain radiating into left buttocks, rated pain at 7/10; physical exam generally normal, tenderness reported at L3-4, no spasms; negative straight leg raising and FABER; diagnosis of L4-5 herniated disc. Dr. Griver recommended a discogram at L4-5; if positive, consider surgery; if negative, consider at MMI at that time.
- 3/13/01 Physical Therapist Mansre Oreta rated ___ as having a 4% whole body impairment based on reduced range of motion on lateral flexion.
- 3/27/01 Dr. Shay - R.L reported that he no longer wanted Dr. Acevedo as his treating doctor; Dr. Shay recommended that he return to Dr. Pakzaban. Exam was essentially normal except for tenderness at left sciatic notch. ___ referred to Dr. Pakzaban.
- 4/10/01 Dr. Shay - ___ had not been able to see Dr. Pakzaban yet; condition remained unchanged; Vicodin prescribed for pain.
- 5/9/01 Dr. Shay - follow-up; condition unchanged; requested pre-certification for additional injections.
- 6/4/01 Dr. Shay - follow-up; will refer for discogram.
- 6/5/01 Dr. Shay - performed discogram at L4-5 and L5-S1; no provocative pain reported at either level [i.e., negative discogram].

- 6/13/01 Dr. Shay - reported that discogram was negative; that ___ was at MMI, and that he was released to return to work on 6/17/01 without restriction.
- 8/24/01 Dr. Anjali Jain (M.D.) - EMG and nerve conduction study showed evidence of bilateral L4-5 nerve root irritation.
- 8/31/01 FCE by Texas Medical Rehabilitation and Pain Center; ___'s job requires very heavy physical demand (75-100 lbs.) while ___ was functioning at a medium physical demand level (51 lbs.); recommended a work hardening program.
- 9/12/01 Dr. Bernard Gerber (M.D.) (same office as Dr. Shay) - chronic pain assessment; continued pain in low back radiating into left buttocks and thigh; noted that ___ returned to work in 7/01 but stopped working in 8/01 because pain interfered with ability to function on the job; mild to moderate depression noted; testing indicated exaggeration of symptoms; due to ___'s non-surgical status but lack of progress with conservative treatment, Dr. Gerber recommended a multi-disciplinary chronic pain management program; Dr. Gerber noted that "The program would run on a daily basis, Monday through Friday, for a full day over a 6-week course. The day would be split between physical medicine and behavioral medicine modalities . . ."
- 10/08-22/01 twelve sessions of a chronic pain management program at Dr. Shay's office [authorized for two weeks only].
- 10/27/01 Dr. Culver - repeat evaluation upon referral by Carrier (see 2/1/01 above); history and treatment reviewed; ___ again reported pain in low back radiating into buttocks and thigh; exam normal, no objective findings; agrees with designated doctor that ___ reached MMI effective 3/13/01 with a 7% whole person impairment.
- 12/3/01 Dr. Shay - follow-up; ___ reported that pain had increased and was radiating down his left leg; Zanaflex and Vicodin prescriptions renewed.
- 12/11/01 Dr. Shay - single dorsal median branch block injections given at L2, L3, L4, L5, and S-1, all on the left.
- 1/2/02 Dr. Shay - follow-up; ___ reported 35% decreased pain, but still complained of pain in legs and buttocks.
- 1/7/02 Dr. Griver - reported that ___ reached MMI on 6/17/01 with a 12% whole person impairment based on lumbar pain and decreased range of motion.
- 2/27/02 Dr. Shay - complains that prior chronic pain management program was too short; states that ___'s condition is deteriorating and that he is not at MMI.
- 3/8/02 Dr. Griver - report to respond to Dr. Shay's statement that ___ had not reached MMI. Dr. Griver stated: "To date [___] has had physical therapy, multiple medications, 2 lumbar injections, a negative discogram and trigger point injections. It is my medical opinion that this consists of a complete and comprehensive treatment of [___] and that his MRI finding[s] were only that of a small protrusion at the L4, 5 and L5, S1 levels. . . . In short, I feel that [___] has ha
- 4/1/02 Note from Dr. Shay's office, apparently written by a physicians assistant, Amanda Fischer; noted that TWCC benefits terminated and ___ requested release to return to work at light duty; ___ reported pain

was essentially at the same level and requested refill of prescriptions.

- 5/2/02 Dr. Shay - follow-up; ___ reported that his pain level had decreased and he requested 3 weeks of physical therapy to strengthen himself to return to work; Dr. Shay recommended work hardening program and renewed prescriptions.
- 5/8/02 Work Ready Rehabilitation Center - Functional Capacity Evaluation (FCE) - lack of maximum effort on right and left grip strength; complaints of pain on climbing, no complaints on other activities; two of five positive Waddell signs; assessed ___ at “light-medium” physical demand level; psychologically stable with mild anxiety and depression.
- 5/17/02 Work Ready Rehab - Although work hardening is scheduled for 8 hours per day, 5 days per week, the weekly report on work hardening for ___ showed:
 - Monday - absent
 - Tuesday - 5 hours
 - Wednesday - absent
 - Thursday - 5 hours
 - Friday - 4 hours___ missed the group discussion due to his absence and was not tested since he only recently had an FCE.
- 5/24/02 Work Ready Rehab - weekly report on work hardening; ___ participated as follows:
 - Monday - absent
 - Tuesday - 3 hours
 - Wednesday - 5 hours
 - Thursday - 5 hours
 - Friday - absentWeekly testing was not performed due to ___’s absence. He reported problems attending due to dealing with problems at his son’s school while his wife worked.
- 5/31/02 Work Ready Rehab - weekly report on work hardening; ___ participated as follows:
 - Monday - Memorial Day
 - Tuesday - absent
 - Wednesday - 5 hours
 - Thursday - 4 hours
 - Friday - 2 hours___ missed the group discussion due to leaving early and was not tested due to difficulty attending back-to-back full treatment sessions.
- 6/6/02 Dr. Culver - retrospective peer review - in response to a specific peer review question about whether work conditioning or work hardening were medically reasonable and necessary, Dr. Culver stated: “If the individual has a job to return to and plans to return to work, then work hardening would be appropriate up to four to six weeks maximum based on his diagnosis and length of time off work.”
- 6/7/02 Work Ready Rehab - weekly report on work hardening; ___ participated as follows:
 - Monday - absent
 - Tuesday - absent
 - Wednesday - 3 hours
 - Thursday - 4 hours
 - Friday - absent

Weekly testing showed some improvement in some areas.

- 6/14/02 Work Ready Rehab - weekly report on work hardening; ___ participated as follows: Monday - 4 hours
Tuesday - 4 hours
Wednesday - 4 hours
Thursday - 3 hours
Friday - 4 hours
Weekly testing showed increase in lumbar range of motion and improvement in other areas as well.
- 6/18/02 Dr. Shay - follow-up; ___ reported decreased pain; medications reduced.
- 6/21/02 Work Ready Rehab - weekly report on work hardening; ___ participated as follows: Monday - 4 hours
Tuesday - absent
Wednesday - absent
Thursday - 4 hours
Friday - 4 hours
___ missed the group discussion due to his absence; he reported improved strength and achieved several of the goals set for him.
- 6/27/02 Dr. Shay - follow-up; ___ reported that he was feeling good with reduced pain and wanted to go back to work. Dr. Shay recommended an FCE and then a release to full duty.
- 7/3/02 Work Ready Rehab - FCE - details are not included, recommendation states that ___ can return to work at a “medium-heavy” physical demand level.
- 7/15/02 Dr. Shay - follow-up; released to return to work with 75 lb. lifting restriction.
- 8/14/02 Dr. Shay - follow-up; ___ working full time as a forklift operator, no new problems; released for full duty without restrictions.

In addition, Ms. Pam Walker testified for Work Ready Rehab, and Carrier called Mr. Robin Van Clearman and Dr. Samuel Bierner to testify:

Pam Walker: Ms. Walker is a physical therapist and the office administrator for Work Ready Rehabilitation Centers. She testified about ___’s medical history, as described above, and noted that Dr. Shay referred R.L to Work Ready for work hardening in May 2002. Ms. Walker stated that Work Ready is CARF certified and does not require carrier pre-certification for work hardening. She also pointed out that on the final FCE, ___ had reduced pain and normal range of motion and had progressed to a medium-heavy physical demand level. Ms. Walker also emphasized that the retrospective peer review by Dr. Culver (6/6/02) stated that work hardening would be appropriate if ___ had a job to return to and planned to return to work.

Robin Van Clearman: Mr. Van Clearman is an occupational therapist and a part owner of Work Ready Rehab. He did not testify in Work Ready’s direct case, but Carrier called him as an adverse witness. Mr. Clearman stated that neither Dr. Shay nor any other doctor has an ownership interest in Work Ready Rehab. He agreed that the work hardening services in dispute were provided after June 17, 2001, the MMI date found by the designated doctor (Dr. Griver). He also acknowledged that ___ missed a number of his work hardening sessions. ___ attended work hardening all five days during only one week of the six-week program. He also appears to have

attended only two or three sessions of group therapy. Mr. Clearman also agreed that the minimum participation requirements for work hardening are at least two hours per day during the first two weeks and four hours per day for all following weeks. Yet, on three occasions during the last four weeks ___ failed to participate at least four hours. Adding those three dates to ___'s ten absences shows that ___ only had 16 valid days of work hardening out of 29 scheduled days.¹ In addition, ___ never attended more than five hours per day, although the program called for eight-hour daily sessions. Finally, Mr. Van Clearman acknowledged that the 5/31/02 weekly report stated that ___ would be discharged from the program if his attendance remained sporadic, yet nothing was done when ___ missed three days and attended only three hours one day during the following week.

Samuel Michael Bierner, M.D.: Dr. Bierner testified for Carrier. He is board certified in physical and rehabilitation medicine and maintains a private practice in the Dallas area. Dr. Bierner stated that, in his opinion, the work hardening program was not medically necessary for ___. In addition, he stated that ___ should have been terminated from the program after the second week for failing to attend regularly.

Dr. Bierner discussed ___'s medical records to support his position on lack of medical necessity. He noted that early in his treatment, ___ attended numerous sessions of physical therapy with U.S. HealthWorks, gave good effort, and had no problems performing the exercises. Dr. Bierner criticized Dr. Shay for taking ___ off work when he had virtually all negative findings. He pointed out that Dr. Shay gave ___ multiple injections and performed lysis of adhesions, even though these were not helpful or necessary. Further, Dr. Bierner stated, the IME in February 2001 showed two positive Waddell signs, which suggests symptom magnification, exaggerated pain behavior, and possible malingering by ___. Likewise, the TWCC designated doctor found that ___ reached MMI effective June 17, 2001, after a negative discogram. In short, Dr. Bierner disagreed with Dr. Shay's diagnosis and treatments, and he considered Dr. Shay responsible for prescribing excessive treatment, causing a "disability mindset," and keeping ___ off work longer than necessary. Further, Dr. Bierner stated that once ___ started missing the work hardening sessions, he should have been discharged because he was not motivated to be a full participant in the program.

On cross examination, Dr. Bierner acknowledged that after the work hardening program, ___ increased his lifting ability from 35 lb. to 75 lb., reduced his subjective pain level from 7 to 3, and increased his physical demand level from light/medium to medium/heavy. He also agreed that ___ was a chronic patient, and that the longer such patients are off work, the more difficult it is to get them back to work. Yet, after the work hardening, ___ returned to work after more than two years off. However, Dr. Bierner added that he did not think the improvements resulted from the work hardening program, especially considering ___'s poor attendance.

In argument, Work Ready Rehab stated that ___'s treating physician prescribed the work hardening program, Work Ready provided the services, ___'s condition improved, and he returned to work. Therefore, Work Ready argued that it should be reimbursed.

In its argument, Carrier noted that Dr. Griver, an independent doctor selected by TWCC, found that ___ reached MMI before the work hardening services were provided and that no further treatment was necessary. Likewise, both the independent IRO doctor and Dr. Bierner concluded that work hardening services were not medically necessary or, alternatively, should have been terminated

¹ Only 29 days were scheduled instead of 30 because the Memorial Day holiday occurred during this time.

when ___ failed to attend regularly. Carrier also argued that a less intensive, less expensive program such as work conditioning or physical therapy could have provided the same outcome as work hardening, and there was no evidence that a multi-disciplinary program such as work hardening was necessary.

C. ALJ's Analysis and Decision

The ALJ finds that Petitioner did not establish by a preponderance of the evidence that work hardening services were medically reasonable and necessary for the treatment of ____. Therefore, the ALJ denies Petitioner's appeal and upholds the IRO decision. Although ___ did return to work a few weeks after the work hardening program ended, the evidence did not establish that a multi-disciplinary work hardening program was necessary to accomplish this result. Instead, the ALJ finds that, at most, ___ needed a less intensive, less expensive program such as physical therapy or work conditioning. Indeed, ___ himself only requested physical therapy to improve his conditioning, but Dr. Say referred him for a more intensive and more expensive work hardening program. Further, the ALJ finds that ___ was not a suitable candidate for work hardening due to personal problems that kept him from regularly attending the work hardening program. As discussed previously, ___ was absent 10 days and failed to participate the minimum required four hours on three additional days. And he never participated more than five hours even though the program called for eight-hour days. Also, ___ only attended two or three (the record is not clear) counseling sessions and his physical status was tested during only three of the six weeks. The fact that ___ returned to work despite his poor attendance and lack of participation in the work hardening program supports the conclusion that such a multi-disciplinary program was unnecessary in the first place.

Dr. Shay recommended work hardening and Dr. Culver's report stated that work hardening could be appropriate. In contrast, Dr. Bierner testified that work hardening was not medically reasonable or necessary, and a report from Dr. Griver B the TWCC designated doctor B stated that ___ had received complete and comprehensive treatment and had reached MMI well before the work hardening program began. Further, the IRO doctor concluded that a multi-disciplinary work hardening program was not necessary. The ALJ finds that the evidence against the work hardening program from Dr. Bierner, Dr. Griver, and the IRO doctor was more persuasive. Therefore, the ALJ upholds the IRO decision and denies Petitioner's appeal.

IV. FINDINGS OF FACT

1. Transcontinental Insurance Company (Carrier) is the workers' compensation insurance carrier responsible for ___'s compensable injury.
2. Prior to the work hardening services at issue in this case, ___ received an extensive course of diagnostic tests and conservative treatment for his compensable injury, including physical therapy, multiple medications, two epidural steroid injections with lysis of adhesions, an MRI, a discogram, and a chronic pain management program.
3. ___ reached maximum medical improvement on June 17, 2001.
4. Despite his treatment and essentially normal objective findings, ___ continued to make subjective complaints of low back pain through June 2002.

5. In January 2002, ___'s workers' compensation benefits terminated.
6. On May 2, 2002, ___ requested three weeks of physical therapy to strengthen himself to return to work. At that time, Dr. Jed Shay (M.D.) referred ___ to Work Ready Rehab (Petitioner) for six weeks of work hardening services.
7. Petitioner is a CARF facility and was not required to obtain preauthorization from the Carrier for the work hardening services.
8. Petitioner provided work hardening services to ___ between May 13 and June 21, 2002. Work hardening is a highly structured, goal oriented, multi-disciplinary program designed to address functional, physical, behavioral, and vocational needs of an injured worker.
9. ___ was absent for two days of scheduled work hardening sessions during both the first and second weeks of the program.
10. Out of the total 29 scheduled days of work hardening, ___ was absent 10 times and he failed to participate at least four hours for three additional sessions during the last four weeks of the program. After the second week of a work hardening program, four hours per day is the minimum acceptable amount of work hardening services. Thus, ___ had only 16 valid days of work hardening sessions out of 29 scheduled days.
11. ___ attended only two or three group counseling sessions during the six-week work hardening program.
12. Due to poor attendance, ___'s physical strength level was not tested during the first three weeks of the work hardening program.
13. After the work hardening program, ___ tested at a medium-heavy physical demand level compared to a light-medium physical demand level before the program.
14. On July 15, 2002, Dr. Shay released ___ to return to work with a 75 lb. lifting restriction. On August 14, 2002, Dr. Shay released ___ to return to work without restrictions.
15. At the time the work hardening services were provided, ___ did not have mental or emotional problems that required a multi-disciplinary work hardening program involving psychological counseling. At most, ___ needed physical conditioning.
16. ___ was not a suitable candidate for work hardening due to personal family problems that prevented him from regularly attending and fully participating in the work hardening sessions.
17. The evidence did not establish that six weeks of work hardening services in dispute were medically reasonable and necessary for ___ at the time the services were provided.
18. Carrier denied payment for the work hardening services provided to ___ by Petitioner based on lack of medical reasonableness or necessity.
19. The total amount in dispute between Petitioner and Carrier is \$5,417.00.

20. Petitioner appealed Carrier's denial of payment.
21. On August 12, 2003, Envoy Medical Systems, an Independent Review Organization (IRO), denied Petitioner's appeal and upheld the Carrier's denial of payment.
22. Petitioner timely filed a request to appeal the decision of the IRO.
23. A hearing was conducted in this case on January 14, 2004, and the record closed the same day.
24. Petitioner and Carrier attended the hearing.
25. All parties received not less than 10 days notice of the time, place, and nature of the hearing; the legal authority and justification under which the hearing would be held; a reference to the particular sections of the statutes and rules involved; and a short, plain statement of the matters asserted.
26. All parties were allowed to respond and present evidence and argument on each issue involved in the case.

V. CONCLUSIONS OF LAW

1. 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 §§402.073(b) and 413.031(d) and TEX. GOV'T CODE, Ch. 2003.
2. Petitioner timely requested a hearing pursuant to 28 TEX. ADMIN. CODE §§102.3, 102.5(h), 102.7 and 148.3.
3. The parties received adequate and timely notice of the hearing pursuant to TEX. GOV'T CODE §2001.051.
4. Venue was established pursuant to 28 TEX. ADMIN. CODE §148.6.
5. Petitioner had the burden of proof in this matter to establish its claim by a preponderance of the evidence. 28 TEX. ADMIN. CODE §148.21(h) and (i).
6. Based on Findings of Fact Nos. 16-18, Petitioner failed to establish by a preponderance of the evidence that work-hardening services were medically reasonable and necessary for ____
7. Based on Conclusion of Law No. 6, Petitioner's appeal should be denied.

ORDER

THEREFORE, IT IS ORDERED that Petitioner's appeal of the IRO decision in Medical Dispute Resolution Docket No. ___ is Denied, and that Petitioner Work Ready Rehab and Diagnostic shall have and recover nothing in this case from Respondent Transcontinental Insurance Company for the claims made the subject of this proceeding.

SIGNED February 6, 2004.

**THOMAS H. WALSTON
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS**