

MEDWAY HEALTHCARE CENTERS,
Petitioner

V.

CONTINENTAL CASUALTY
COMPANY,
Respondent

§
§
§
§
§
§
§
§

BEFORE THE STATE OFFICE

OF

ADMINISTRATIVE HEARINGS

DECISION AND ORDER

This case is a dispute over whether Continental Casualty Company (Carrier) should reimburse Medway Healthcare Centers (Provider) \$400 for a functional capacity evaluation (FCE) performed on Claimant on April 15, 2002, and \$3,272 for work hardening services provided to Claimant from April 30, 2002, through June 5, 2002. The Administrative Law Judge (ALJ) concludes Provider met its burden of proving the FCE and work hardening services meet the requirements of the Texas Workers' Compensation Commission's Medical Fee Guideline (MFG). Therefore, reimbursement of \$3,672 is warranted.

I. FINDINGS OF FACT

1. On ____, Claimant suffered a compensable injury while doing repetitive typing on a keyboard. She experienced tingling and discomfort in her hands and wrists with pain extending up the proximal aspect of her shoulder, diagnosed to be bilateral carpal tunnel syndrome.
2. Treatment for Claimant's compensable injury included conservative care with physical therapy and chiropractic therapy, followed by a right carpal tunnel release in September 2001 and a left carpal tunnel release in December 6, 2001.
3. In a peer review dated February 28, 2002, Greg Diamond, M.D., stated that the recommendation that Claimant have spinal surgery would not be related to her compensable injury of carpal tunnel syndrome, and further treatment of Claimant's *cervical* region was not reasonable or medically necessary. [emphasis added]
4. On April 9, 2002, Robert Yanney, D.C., referred Claimant to Recovery Analysis, Inc., for a functional capacity evaluation (FCE) and six weeks of work hardening.
5. On April 15, 2002, Julie Yancey, MPT, with Recovery Analysis, Inc.¹, conducted an FCE on Claimant:

¹ Provider and Recovery Analysis, Inc. share the same physical address. Medway Healthcare Centers was named Recovery Analysis, Inc., on the disputed dates of service. The name change occurred around May 2000. Recovery Analysis, Inc. was accredited by the Commission on Accreditation of Rehabilitation Facilities (CARF), as is Provider.

- a. Ms. Yancey prepared a summary report of the FCE.
 - b. The start and stop times of the FCE are documented on the first page of the report.
 - c. The FCE did not include a neurological evaluation.
 - d. The FCE included a physical capacity evaluation of the injured area.
 - e. The FCE included a complete set of functional abilities tests.
 - f. Claimant reported moderate stress with significant stress symptoms related to her injury.
 - g. The FCE showed that Claimant should be placed in a work hardening program because Claimant did not meet the strength requirements or positional tolerances for her pre-injury job, she demonstrated decreased hand strength, she could benefit from education in safe lifting techniques, and exercise in water would facilitate improved mobility and endurance training of the injured area.
6. Claimant underwent psychological screening on April 15, 2002, which indicated she was an appropriate candidate for work hardening.
 7. On May 16, 2002, Claimant reported to William E. Blair, Jr., M.D., that she suffers from anxiety and depression.
 8. Medway Healthcare Centers (Provider) provided work hardening for Claimant from April 30, 2002, through June 5, 2002, with disputed dates of service of April 30, May 9, May 10, May 23, May 28, and June 5, 2002.
 - a. Claimant was likely to benefit from the program; her pre-work hardening levels of functioning due to her compensable injury interfered with her ability to carry out specific tasks required in the workplace; her medical, psychological or other conditions did not prohibit participation in the program; and she was capable of attaining specific employment upon completion of the program.
 - b. Claimant participated in work hardening at least four hours and up to eight hours per day for the weeks ending May 3, May 10, and May 24, May 31, and June 7, 2002.
 - c. A physical therapist, occupational therapist, and psychologist were members of the work hardening interdisciplinary team for Claimant.
 - d. Claimant participated in group therapy.
 - e. The program supervisor provided direct on-site supervision of work hardening activities; participated in the initial and final evaluation of the patient; wrote the treatment plan for the patient and wrote changes to the plan based on documented changes in the patient's condition; directed the interdisciplinary team when providing treatment and services; and reviewed the patient's program on a systemic basis. Ms. Jones electronically signed each progress note.

- f. Daily treatment and patient response to treatment were documented and reviewed to ensure continued progress.
- g. Work simulation began during the first week of Claimant's work hardening program.
- h. Work simulation is documented in the work hardening notes and the work hardening exercise flow sheets for weeks ending May 3 - June 7, 2002.
- i. The work hardening exercise flow sheets document exercise activities and the exact weight and repetition activity. The work flow sheets are signed and documented for individual dates of therapy either by a physical therapist.
- j. The work hardening documentation notes that Claimant's job duties consist of constant data entry and typing, and is sedentary in nature, so work specific training was directed toward typing and data entry.
- k. Claimant made the following improvements over the course of the work hardening program:
 - 1. Keyboarding improved from 5-minute to 60-minute intervals, and full-time tolerance for constant keyboarding rose from 1 hour to 8 hours.
 - 2. Discomfort improved from "intense" to "minimal."
 - 3. There was no change in right wrist flexion (80 degrees), but left wrist flexion improved from 40 to 75 degrees.
 - 4. Grip strength increased from 30 pounds to 54 pounds on the right, and from 15 pounds to 47.5 pounds on the left.
 - 5. Key pinch strength rose from 2.1 to 11.7 on the right and from 1.7 to 13.2 on the left.
 - 6. Palmar pinch strength increased from 1.6 to 10.5 on the right, and from 1.3 to 10.6 on the left.
 - 7. Wrist flexion strength improved from 8.3 to 29.8 on the right, and from 7.4 to 21.4 on the left.
 - 8. Wrist extension strength increased from 7.9 to 15.6 on the right, and from 7 to 13.8 on the left.
 - 9. Pronation strength improved from 16.6 to 33.8 on the right, and from 9.3 to 41.8 on the left.
 - 10. Supination strength increased from 10.8 to 39.5 on the right, and from 10.4 to 32.8 on the left.

9. Claimant's work hardening treatment consisted of a highly structured, goal oriented program, with individualized treatment designed to maximize the ability of the Claimant to return to work.
10. Claimant was terminated from her employment during the course of the work hardening program, but completed the program with the functional abilities and full-time tolerances that would allow her to return to gainful employment in a position such as her pre-injury job.
11. Continental Casualty Company (Carrier) denied payment for the FCE conducted April 15, 2002, on the basis that it was not medically necessary; and for the work hardening provided April 30 - June 5, 2002, on the grounds that it was not medically necessary.
12. On April 7, 2003, Provider filed a Request for Medical Dispute Resolution with the Texas Workers' Compensation Commission (the Commission), seeking \$3,672.00 in reimbursement.
13. The Commission assigned the appeal to an independent review organization (IRO).
14. In a June 24, 2003 letter to the Commission, the IRO stated it had determined reimbursement for the FCE and work hardening should be denied because the medical record failed to substantiate the need and rationale for the work hardening program and associated testing dated April 15, 2002, and beyond. The IRO doctor stated the documentation is devoid of any indications that Claimant possessed or exhibited any psycho-social issues that would naturally complicate recovery and warrant a tertiary care program such as work hardening.
15. After reviewing the IRO decision, the Commission's Medical Review Division (MRD) denied the request for reimbursement on June 30, 2003, on the basis that the disputed treatment was not found to be medically necessary.
16. On July 11, 2003, Provider filed a request for a hearing before the State Office of Administrative Hearings (SOAH).
17. Notice of the hearing was sent to both parties on August 12, 2003.
18. 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.
19. The hearing convened October 8, 2003, with Administrative Law Judge Sharon Cloninger presiding. Attorney H. Douglas Pruett represented Provider. Attorney Julie B. Tebbets appeared via telephone and represented Carrier. The hearing adjourned and the record closed that same day.

II. 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(d) and TEX. GOV'T CODE ANN. ch. 2003.
3. Adequate and timely notice of the hearing was provided in accordance with TEX. GOV'T CODE ANN. § 2001.052.
4. Provider, as the petitioner, has the burden of proof in this matter. 28 TEX. ADMIN. CODE (TAC) § 148.21(h).
5. Based on Findings of Fact Nos. 4-9, Provider met its burden of proving it was entitled to reimbursement pursuant to TEX. LAB. CODE ANN. § 408.021.
6. The requirements of the work hardening program pursuant to Medicine Ground Rule II. E. were met as listed in Finding of Fact No. 8.
7. Provider's request for reimbursement should be granted.

ORDER

IT IS, THEREFORE, ORDERED that Continental Casualty Company pay \$400 plus interest to Medway Healthcare Centers for the FCE provided to Claimant on April 15, 2002, and \$3,272 plus interest for the work hardening provided to Claimant from April 30, 2002, through June 5, 2002, for a total of \$3,672 plus interest.

SIGNED December 8, 2003.

**SHARON CLONINGER
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS**