

<b>SUHAIL AL-SAHLI, D.C.,</b>	§	<b>BEFORE THE STATE OFFICE</b>
<b>Petitioner</b>	§	
	§	
<b>VS.</b>	§	<b>OF</b>
	§	
<b>LIBERTY MUTUAL INSURANCE</b>	§	
<b>COMPANY,</b>	§	
<b>Respondent</b>	§	<b>ADMINISTRATIVE HEARINGS</b>

**DECISION AND ORDER**

Suhail Al-Sahli, D.C. (Provider) is appealing the decision of the Texas Workers' Compensation Commission's (Commission's) designee, an independent review organization (IRO), which upheld Liberty Mutual Insurance Company's (Carrier's) denial of a claim for reimbursement for work hardening provided to Claimant \_\_\_ 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 January 21, 2004, before the undersigned Administrative Law Judge (ALJ) at the State Office of Administrative Hearings, 300 West 15<sup>th</sup> Street, Austin, Texas. Provider appeared representing himself. Carrier appeared through its attorney, Charlotte Salter. The record closed after the hearing.

**II. DISCUSSION**

**A. Background Facts**

Claimant is a pipe fitter who suffered a compensable injury on \_\_\_, while lifting a fulcrum assembly on a pasteurizer. He experienced abdominal and groin pain, but he sought no treatment until May 31, 2002, at which time he consulted Provider. Provider initiated chiropractic physical therapy on June 21, 2002. Also on June 21, 2002, Claimant first visited Texas Pain Solutions, Inc. On June 25, 2002, Claimant had a surgical consult with Kenneth Hollis, M.D. who determined that surgery was indicated for the patient's complaints of abdominal and groin pain. Claimant underwent surgical repair of bilateral inguinal hernia on July 22, 2002, without apparent complications.<sup>1</sup>

Provider provided postoperative services to Claimant beginning August 9, 2002, which consisted of physical therapy and chiropractic care that included ultrasound, myofascial release, and exercises. Carrier reimbursed Provider for twelve sessions.

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<sup>1</sup> Carrier Ex. 1at A8-A12.

Provider continued treating Claimant beyond the twelve sessions with seven sessions of care, including work hardening, payment for which was denied by the Carrier based on its peer review evaluation stating that work hardening for this patient was not medically necessary. The disputed dates of service are from September 18, 2002, through October 14, 2002. Provider asked for an independent review by the Commission's IRO of Carrier's denial. The IRO upheld Carrier's denial, and Provider then requested a hearing before the State Office of Administrative Hearings.

## **B. The Parties' Arguments**

### **1. Provider's Position**

Provider based his work hardening treatments on his own belief that Claimant needed them, as well as on a letter by Dr. Hanna Francis, M.D. with Nassau Bay Rehab sent to him on September 30, 2002.<sup>2</sup> After Claimant's Functional Capacity Evaluation (FCE)<sup>3</sup> performed on September 12, 2002, Dr. Francis stated that Claimant should participate in three to four weeks of a work hardening program with a gradual return to work in order to educate him on proper biomechanical and postural techniques, to improve his lifting abilities, and thereby enable him to return safely to his job.<sup>4</sup> Provider contends that the work hardening treatments were helping Claimant alleviate his pain and enable him to return to work and lift much more than the 50 lbs. required by his job description.<sup>5</sup> Provider asserted that Claimant's limited knowledge of proper body mechanics could further his risk for bodily damage; thus, he needed work hardening. During the hearing, Provider alleged that Carrier's expert witness did not review all the pertinent documents he needed to review in order to evaluate the medical necessity of the work hardening treatments.

### **2. Carrier's Position**

Carrier's expert witness, Kevin Tomsic, O.D., testified that the work hardening provided to Claimant was not medically necessary. Carrier asserts that work hardening is designed to enhance an injured worker's ability to resume his normal work duties, and that there are four criteria used to determine whether an injured worker qualifies for work hardening as defined in the 1996 Medical Fee Guideline, Physical Medicine II.E.:

- (1) a person who is likely to benefit from work hardening;
- (2) a person whose current level of functioning due to injury or illness interferes with his ability to carry out specific tasks in the workplace;
- (3) a person whose medical, psychological or other condition does not prohibit participation in the program; and
- (4) a person who is capable of obtaining specific employment upon completion of the program.

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<sup>2</sup> Provider Ex. 1 at 50-51.

<sup>3</sup> IRO documents submitted with Carrier Ex. 5 at 14-27; Provider Ex.1 at 88-101.

<sup>4</sup> At the hearing, Provider presented a second letter from Dr. Francis dated December 27, 2002, in which the doctor reiterated his support for work hardening treatments for Claimant. Provider Ex. 1 at 49-51.

<sup>5</sup> Carrier Ex. 1 at A14.

Carrier witness, Dr. Tomsic, asserts that Claimant does not qualify for work hardening under any of these criteria because from the date at least of the FCE, he already had the same job to return to, and he was already physically capable of fulfilling the requirements of that job. According to Carrier, Provider's position that Claimant's limited knowledge of proper body mechanics could lead to further injury on the job is also not a criterion for entering a work-hardening program. Carrier asserts that learning the proper body mechanics for lifting can be done much less expensively and much more efficiently in a one-time back safety class. Work hardening is usually a six to eight-hour day and involves a multi-disciplinary program. It is simply not required for limited knowledge of proper body mechanics.

Carrier further argues that even if Claimant was not physically capable of returning to his full work duties, his employer was willing to accommodate his physical condition, even offering him a completely sedentary position if need be.<sup>6</sup> Work hardening, therefore, did not enhance Claimant's ability to return to work.

Carrier notes that during the FCE performed on Claimant by Nassau Bay Rehab on September 12, 2002, Claimant was able to lift the weight, about 50 lbs., required of him in his job.<sup>7</sup> The patient denied any pain during the FCE,<sup>8</sup> but Provider began work hardening on Claimant anyway.

### III. ANALYSIS

The ALJ finds that Provider failed to meet his burden to show that the seven sessions of work hardening were medically necessary. To the contrary, the preponderance of the record evidence supports Carrier's position that work hardening was not necessary for Claimant to recover from his hernia surgery.

Twelve sessions of chiropractic care were approved in a Preliminary Chiropractic Modality Review, issued September 20, 2002.<sup>9</sup> The review by Shawn Jones, D.C., recommended that these visits be followed by transition into a home exercise program, and that treatment beyond these guidelines would not be recommended without additional documentation to support necessity. Provider continued with work hardening treatments past the twelve sessions. In a Preliminary Work Hardening Review performed for Carrier by Thomas B. Sato, D.C. on January 6, 2003,<sup>10</sup> Dr. Sato stated that in his opinion, a patient with hernia repair would not require work hardening, and additional information would be needed to support any additional treatment.

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<sup>6</sup> Carrier Ex. 1 at A14.

<sup>7</sup> Provider Ex. 1 at 51.

<sup>8</sup> Provider Ex. 1 at 91; IRO documents submitted with Carrier Ex. 5 at 17 (Oct. 6, 2003).

<sup>9</sup> IRO documents submitted with Carrier Ex. 5 at 3-7 (Oct. 6, 2003).

<sup>10</sup> Carrier Ex. 2 at B7-B9.

Claimant was subjectively ready to return to work long before work-hardening treatments began. Provider included in his Exhibit 1 three reports prepared by Masroor Ahmed, M.D., with Texas Pain Solutions after visits to him by Claimant.<sup>11</sup> Carrier included seven reports of Dr. Ahmed, which were submitted to the IRO at the time of the IRO review.<sup>12</sup> These reports range in date from June 21, 2002, to September 27, 2002. The report dated September 27, 2002, and signed by Dr. Ahmed,<sup>13</sup> states that after a follow-up visit to him by Claimant, Claimant “is stable; no limitation; and [i]n my opinion he is ready for work.” Yet Provider continued to provide work hardening treatments to Claimant after that date.

Also in the record is Claimant’s release on July 31, 2002, to go back to work as of August 15, 2002, with “no restrictions.”<sup>14</sup> This status report was signed by Beth Kramer, a clinical nurse specialist working under the supervision of Kenneth Hollis, M.D., with BayChoice Surgeons, who had performed the hernia surgery. So, the services rendered during the disputed dates of service could not possibly have enhanced Claimant’s ability to return to work because on July 15, 2002, he was already released to return to work on August 15, 2002. Furthermore, Claimant’s employer was willing “to accommodate any restrictions that will allow Claimant to return to work.” The employer offered to provide a completely sedentary office position as well, if need be.<sup>15</sup>

The ALJ further finds persuasive Carrier’s arguments that proper biomechanical and postural techniques required for safe heavy lifting do not require work hardening treatments. A straightforward one-time class would be sufficient to teach these techniques.

Only Provider claimed that his work hardening treatments were helping Claimant. His Daily Notes Reports<sup>16</sup> submitted to the IRO for its review beginning with September 9, 2002, state that Claimant was referred to a work hardening program for further treatment and that his “condition to date is improving greatly.” By the date of the last Daily Note Report in the record, on October 14, 2002, Provider was still referring Claimant to work hardening and noting that Claimant’s response is improving greatly.”

The preponderance of the evidence shows that Claimant did not need work hardening. The record shows that Claimant was not in any pain by at least September 12, 2002; he had been released for work with no limitations by his surgeon as of August 15, 2002; his employer was willing to accommodate whatever his physical condition might be, even with a completely sedentary position if need be; Claimant was able to lift the 50 lbs. required by his job description as of September 12, 2002; and work hardening is not a proper forum for teaching the proper mechanics of lifting.

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<sup>11</sup> Provider Ex. 1 at 103-105.

<sup>12</sup> IRO documents submitted with Carrier Ex. 5 at 31-37.

<sup>13</sup> IRO documents submitted with Carrier Ex. 5 at 37 (Oct. 6, 2003). This document was omitted from Provider Ex. 1.

<sup>14</sup> Carrier Ex. 1 at A12.

<sup>15</sup> Carrier Ex. 1 at A14.

<sup>16</sup> IRO documents submitted with Carrier Ex. 5 at 38-44 (Oct. 6, 2003).

#### IV. FINDINGS OF FACT

1. Claimant \_\_\_ sustained a compensable, work-related injury on or about \_\_\_.
2. Liberty Mutual Insurance Company (Carrier) is the insurance carrier providing workers' compensation insurance coverage for the Claimant's employer.
3. Claimant had surgery to repair a hernia, his compensable injury, on \_\_\_.
4. Chiropractic treatments consisting of therapeutic procedures, office visits, myofascial release, joint mobilization, osteopathic manipulations, and ultrasound therapy were provided by Suhail Al-Sahli, D.C., between September 9, 2002, and October 14, 2002. In addition, work hardening was provided to Claimant in the offices of Dr. Al-Sahli between October 1, 2002, and October 9, 2002.
5. The Carrier refused to reimburse Dr. Al-Sahli for chiropractic treatments and work hardening between September 9, 2002, and October 14, 2002. Upon reconsideration, the Carrier paid for chiropractic treatments provided on September 9, 2002, but continued to refuse reimbursement for the remainder of the dates in question.
6. Dr. Al-Sahli requested medical dispute resolution through the Texas Workers' Compensation Commission. The Commission referred the matter to an Independent Review Organization (IRO) for determination.
7. The IRO reviewed the dispute and issued a decision on July 15, 2003, finding that the chiropractic treatments and work hardening on the dates in dispute were not medically necessary.
8. Provider requested a hearing before the State Office of Administrative Hearings (SOAH) on August 21, 2003. The notice provided to the parties 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.
9. A hearing was held on January 21, 2004, with Administrative Law Judge Bill Zukauckas presiding. Provider Dr. Suhail Al-Sahli represented himself. Carrier appeared through its attorney, Charlotte Salter. The Commission staff did not participate in the hearing.
10. Chiropractic treatments and work hardening provided to Claimant between September 18, 2002, and October 14, 2002, were not medically necessary.
11. The treatments including work hardening were not needed to educate the Claimant with regard to the mechanics of lifting.
12. The treatments, including work hardening, were not necessary to assist the Claimant in returning to work, nor were the treatments necessary to alleviate pain associated with a compensable injury.

## 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 injury 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 seven sessions of work hardening.

## ORDER

**IT IS, THEREFORE, ORDERED** that the claim of Suhail Al-Sahli, D.C., against Liberty Mutual Insurance Company for work hardening provided to Claimant from September 18, 2002, through October 14, 2002, is denied.

**SIGNED February 25, 2004.**

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**BILL ZUKAUCKAS**  
**ADMINISTRATIVE LAW JUDGE**  
**STATE OFFICE OF ADMINISTRATIVE HEARINGS**