

**SOAH DOCKET NO. 453-04-2300.M5
TWCC MRD NO. M5-03-0776-01**

TEXAS MUTUAL INSURANCE COMPANY, Petitioner	§ § § § § § § § §	BEFORE THE STATE OFFICE OF ADMINISTRATIVE HEARINGS
V.		
30/60/90 LLC, Respondent		

DECISION AND ORDER

This case is a dispute over whether Texas Mutual Insurance Company (Carrier) should reimburse 30/60/90 LLC (Provider) \$2,252.80 for work hardening services provided to Claimant from December 10, 2001, through December 21, 2001.¹ The medical necessity of the disputed services is the only issue to be resolved. The Administrative Law Judge (ALJ) concludes that Carrier met its burden of proving the work hardening services were not medically necessary. Therefore, reimbursement is not ordered.

I. JURISDICTION, NOTICE, AND VENUE

There were no contested issues of jurisdiction, notice or venue. 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) Suzanne Formby Marshall convened a hearing in this case on May 4, 2004, at the State Office of Administrative Hearings, William Clements State Office Building, Austin, Texas. Carrier appeared through its attorney, Patricia Eads. Provider appeared

¹ Although Claimant also participated in the work hardening program through January 18, 2002, the only dates of service in issue are December 10-21, 2001.

through Charles Blevins, occupational therapist. The record closed the same day.

III. DISCUSSION

A. Introduction

Claimant injured her left elbow in a work-related injury on _____.² On November 20, 2001, Provider evaluated Claimant to determine whether she was a suitable candidate for work hardening. As a result of the evaluation, Claimant's physician referred her to Provider's work hardening program.

Claimant began the work hardening program on December 10, 2001, and continued in the program until she was discharged by her physician in January, 2002, for other medical reasons. Provider sought payment for the work hardening services provided to Claimant.³ Carrier denied reimbursement based on lack of medical necessity. Provider requested reconsideration, but Carrier again refused reimbursement on medical necessity grounds. Provider appealed Carrier's decision to the Texas Worker's Compensation Commission (Commission) Medical Review Division (MRD).

The MRD issued a decision that Provider was entitled to reimbursement of \$ 2,252.80.⁴ Carrier filed an appeal of the MRD decision.

B. Carrier's Evidence and Arguments

Carrier offered twenty-three pages of records which were introduced into evidence as Carrier's Exhibit 1. Additionally, Carrier presented the testimony of Neta Parker.

² There is no evidence in the file to show how Claimant was injured or to describe the treatment she received for her injury until the work hardening services at issue here.

³ Claimant received work hardening on December 10, 11, 12, 13, 14, 17, 18, 19, 20, and 21.

⁴ The decision denied reimbursement for work hardening services on January 7 through 10, 2002, on the basis that they were not preauthorized. Provider did not appeal this determination.

Ms. Parker has been employed by the Carrier for approximately ten and a half years. Her current position is utilization review specialist. In that capacity, she interprets the Commission's fee guidelines, and trains and develops protocols for the Carrier's audit staff.⁵

Ms. Parker reviewed the records in this case on two occasions, *i.e.*, when they were submitted to the MRD for review and in preparation for this hearing. Ms. Parker testified that the Carrier properly denied reimbursement to Provider because the work hardening program did not comply with the Commission's Medical Fee Guidelines (Guidelines). First, Ms. Parker stated that the Guidelines require a work hardening program to be a multi-disciplinary program. In reviewing the Provider's records, she noted that there was no indication of treatment from a qualified mental health care provider, a necessary component of the Guidelines. Carrier's Ex. 1, p. 36. According to Ms. Parker, mental health treatment is the feature which distinguishes a work hardening program from a work conditioning program. The lack of any care from a qualified mental health care provider, as determined from Provider's records, prevents the services from being reimbursed by Carrier as a work hardening program.

Second, Ms. Parker noted that the work hardening records did not include Claimant's job description, making it difficult to determine whether Claimant's specific job functions were considered in the choice of exercises included in the work hardening program. For example, Ms. Parker observed that Claimant engaged in lifting exercises and extensive walking as part of the program. She testified that it was her understanding that Claimant's worked as a clerical worker who primarily answered telephones and sat at a desk. Without the Claimant's actual job description, Ms. Parker said it was impossible to determine the connection between the work hardening exercises of lifting and walking and Claimant's actual job duties. Because a work hardening program must include work simulation activities, Ms. Parker said that the lack of the job description or other information establishing a connection between Claimant's job activities and the exercises prevented a conclusion that the exercises could be considered work simulation exercises. According to

⁵ Ms. Parker has also worked as an auditor for the Carrier and is a licensed worker's compensation insurance adjuster.

Ms. Parker, it was not possible to tell from the documentation whether Claimant was being prepared to return to her previous job or whether she was being prepared for other employment.

Lastly, Ms. Parker said that the Provider's records do not contain a clear treatment plan that was individualized for the Claimant's condition, as required by the Guidelines for a work hardening program.

3. Provider's Evidence and Arguments

Provider offered forty-one pages of records which were admitted into evidence as Provider's Exhibit 1. Provider did not call any witnesses.

Provider argued that the MRD found the documentation of the work hardening program to be sufficient and that it met the Guideline's criteria for such a program. According to Provider, Claimant made progress in the program and was discharged for other reasons by her physician. Provider stated that the Guidelines did not provide specific directions on "what should be documented." Provider requested that the MRD decision be upheld.

4. ALJ's Analysis and Decision

The ALJ finds that Carrier met its burden of proving that the work hardening program in this case was not sufficiently documented so as to show medical necessity. As noted by Carrier's witness, Ms. Parker, there is no indication that Claimant received any therapy from a qualified mental health provider, a necessary component of a multi-disciplinary work hardening program. The only documentary evidence which seemed relevant to this issue was one page titled "Behavioral Notes." Provider's Ex. 1, p. 40. These notes contained entries from December 10, 2001, through December 28, 2001, prepared by a physical therapist, documenting that Claimant needed verbal cuing to stay on task and extra one-to-one attention as she performed her exercises.

One entry dated December 20, 2001, noted that Claimant attended “group therapy,” but it provides no additional legible information describing the group therapy in order to determine whether this entry referred to group therapy conducted by a qualified mental health provider.⁶

Additionally, the ALJ finds that it is not possible to determine whether Claimant's exercises constituted work simulation exercises due to the lack of Claimant's job description or any other information which described her job duties in sufficient detail so as to support reimbursement for a work hardening program. The “Work Hardening Viability Evaluation Form,” contains a section describing essential job requirements. This section notes that the requirements were reported by the patient and consisted only of lifting and carrying job duties. Provider's Ex. 1, p. 27. A purported self-report of Claimant as to her job duties is insufficient to develop a credible work hardening program containing work simulation exercises. At most, this information was given by Claimant in the context of an evaluation of suitability for a work hardening program. There is no indication that after Claimant actually began the program, Provider attempted to verify her actual job duties to develop an individualized plan for her that would include appropriate work simulation exercises.

Additionally, the ALJ agrees that the record does not contain an individualized treatment plan for Claimant. The work hardening progress letters and work hardening flow show sheets are merely descriptive of the activities Claimant performed while in the program. As such, Provider has failed to document the existence of a necessary component of a work hardening program and reimbursement was properly denied by Carrier.⁷

IV. FINDINGS OF FACT

1. On _____, Claimant suffered a compensable work-related injury to her left elbow.

⁶ This entry appears to be written in a different handwriting and is signed by someone other than the physical therapist who signed all the other entries on this page.

⁷ The ALJ does not find that the services at issue should be reimbursed as work conditioning due to the lack of an individualized treatment plan and insufficient documentation of credible work simulation exercises.

2. Claimant's employer carries workers' compensation insurance through Texas Mutual Insurance Company (Carrier).
3. A work hardening viability evaluation was performed by 30/60/90 LLC (Provider) on November 20, 2001. The evaluation measured Claimant's active range of motion for her elbow and wrist, strength, and ability to lift, in accordance with Claimant's essential job requirements, as reported by the Claimant.
4. Claimant was referred to a work hardening program by her doctor.
5. Claimant received services from Provider during December 10 through 21, 2001.
6. The services referred to in Finding of Fact No. 5 consisted of exercises to increase Claimant's flexibility, strength, and aerobic activities.
7. Claimant also performed lifting exercises and walking as part of the program.
8. The work hardening treatment records do not contain a job description for Claimant.
9. The work hardening treatment records do not indicate that Claimant received group therapy provided by a Qualified Mental Health Provider.
10. The work hardening treatment records do not provide a nexus between the program's exercises, particularly walking and lifting, and Claimant's job duties.
11. The work hardening treatment records do not indicate whether the treatment goal is to return Claimant to her job or prepare her for other employment.
12. There was no individualized treatment plan for Claimant as required for a work hardening program.
13. Claimant's doctor discharged her from the work hardening program prior to its conclusion.
14. Provider billed Carrier \$3,264 for the work hardening program performed on December 10 through 21, 2001.
15. Carrier denied reimbursement to Provider for the work hardening program on the basis that it was not medically necessary.
16. On November 14, 2002, Provider filed a Request for Medical Dispute Resolution with the Texas Workers' Compensation Commission (the Commission).
17. On December 3, 2003, the Commission's Medical Review Division (MRD) granted Provider's request for reimbursement after finding the work hardening was medically necessary. However, the requested reimbursement amount was reduced to \$ 2,252.80.

18. On December 19, 2003, Carrier filed a timely request for a hearing before the State Office of Administrative Hearings (SOAH).
19. Notice of the hearing was sent to the parties on January 21, 2004.
20. 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.
21. The hearing convened before ALJ Suzanne Formby Marshall on May 4, 2004. Carrier was represented by Patricia Eads, attorney. Provider was represented by Charles Blevins. The hearing adjourned and the record closed that same day.

V. CONCLUSIONS OF LAW

1. The State Office of Administrative Hearings has jurisdiction over this proceeding, including the authority to issue a decision and order, pursuant to TEX. LAB. CODE ANN. §413.031(k) and TEX. GOV'T CODE ANN. ch. 2003.
2. Adequate and timely notice of the hearing was provided in accordance with TEX. GOV'T CODE ANN. §2001.052.
3. Carrier, as the petitioner, has the burden of proof in this matter, pursuant to 28 TEX. ADMIN. CODE §148.21(h).
4. Carrier met its burden of proving reimbursement is not warranted due to Provider's insufficient documentation of a work hardening program components.
5. Based on the above Findings of Fact and TEX. LAB. CODE ANN. §408.021(a), the work hardening program was not medically necessary to promote Claimant's recovery and enhance her ability to return to or retain employment.
6. Based on the above Conclusions of Law, Provider is not entitled to reimbursement for work hardening performed on from December 10 through 21, 2001.

ORDER

IT IS, THEREFORE, ORDERED that Texas Mutual Insurance Company should not reimburse 30/60/90 LLC for work hardening services provided to Claimant from December 10 through 21, 2001.

SIGNED May 24, 2004.

**SUZANNE FORMBY MARSHALL
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS**