

**DOCKET NO. 453-04-3450.M5
MDR Tracking No. M5-03-1682-01**

MEDWAY HEALTH, INC., PETITIONER	·	BEFORE THE STATE OFFICE
	·	
	·	
VS.	·	OF
	·	
WAUSAU UNDERWRITERS INSURANCE COMPANY, RESPONDENT	·	ADMINISTRATIVE HEARINGS

DECISION AND ORDER

Medway Health, Inc. (Medway), requested a hearing to contest a decision by an Independent Review Organization (IRO) that denied reimbursement of \$10,240.00 for four weeks of work-hardening services provided to Claimant ___ during March and April 2002. Medway contends the services were medically reasonable and necessary. Medway also disputes a decision by the Medical Review Decision (MRD) of the Texas Workers Compensation Commission (TWCC), which denied reimbursement of \$1,536.00 for three days of additional services that were not a part of the services reviewed by the IRO. MRD denied reimbursement for these services because they were not preauthorized, but Medway argues that preauthorization was not required because it is a CARF certified facility. Wausau Underwriters Insurance Company (Carrier) argues that the work hardening services reviewed by the IRO were not reasonable and necessary, but Carrier did not address reimbursement for the additional three days of services reviewed by MRD.

This Decision and Order finds that the disputed work-hardening services were not medically reasonable and necessary for ___ and that Medway is not entitled to reimbursement for those services. However, Medway did establish that it was CARF certified and not required to obtain preauthorization for the additional services reviewed by MRD. Therefore, the ALJ finds that Medway is entitled to recover \$1,536.00 for those additional services.

I. PROCEDURAL HISTORY

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. Administrative Law Judge (ALJ) Deborah Ingraham convened a hearing in this case on June 17, 2004, at the State Office of Administrative Hearings in Austin, Texas. Attorney William Maxwell appeared on behalf of Medway, and attorney Charlotte Salter appeared on behalf of Carrier. The parties filed written closing statements on July 6, 2004, at which time the record closed.

II. DISCUSSION

A. Medical Records

The parties offered into evidence various medical records concerning _____. The relevant records show that _____ is currently a 68-year-old male who suffered a compensable injury to his left hand on _____, when he fainted and fell on the hand. When the accident occurred, _____ was working as an ATM repairman for _____. He was taken to the emergency room of Presbyterian Hospital of Dallas, where he was examined primarily for the fainting episode and released the same day.

_____ received several sessions of physical therapy and examination by Dr. Roger Beadoing at Brookhaven Occupational Medicine in Dallas. He continued to complain of wrist pain, and on December 20, 2001, Dr. Beadoing referred _____ to Charles Neagle, M.D., an orthopaedic surgeon, for further evaluation and treatment. Based on X-rays and a CT scan, Dr. Neagle diagnosed R.M.'s condition as a nondisplaced metacarpal bone fracture. Dr. Neagle provided _____ therapy and two cortisone injections, the first on January 8 and the second on February 5, 2002. The injections provided little relief for R.M., so on March 7, 2002, Dr. Neagle referred _____ to Medway for a Functional Capacity Evaluation (FCE) and four weeks of work hardening services.

Medway performed an initial FCE on _____ on March 25, 2002. The FCE showed that _____ could lift 20 lbs. and carry 25 lbs., which met a light physical demand level (PDL). _____ told Medway that his job required him to push and pull heavy doors up to 50 lbs. The evaluator concluded that _____ had significant strength and flexibility deficits in his left hand, and _____ reported increased pain with static push/pull exercises, lifting, and fine handling activities. With these limitations, _____ could not perform the requirements of his prior job. _____ also completed a checklist on a Stress and Lifestyle Survey. _____ checked off problems typical of an injured worker, such as

worrying about finances and problems sleeping. He listed his stress level prior to his injury at medium, but at the time he completed the survey he listed his stress level at mild. ___ rated his status on the date of the survey at 70, which indicated some depression and anxiety and mild problems sleeping. But he rated his status for the week at 90, which indicated good functioning in all areas with only everyday problems.

Medway provided four weeks of work hardening services to ___ between March 27 and April 25, 2002. These services generally lasted eight hours per day, five days per week. Medway was not required to obtain preauthorization for work hardening because it is CARF certified. Medway had ___ perform a final FCE on April 25, 2002. That FCE indicated that ___ improved within the light PDL. His lifting and carrying strength and flexibility in his left arm and hand improved, but ___ reported that his left hand continued to feel numb and tired. Medway discharged ___ from the work hardening program and stated that he appeared capable of performing at a light level of work.

On May 6, 2002, Dr. Jack Kern performed an independent medical examination of ___ on behalf of Carrier. Dr. Kern reviewed the history of R.M. 's injury and treatment. At the time of the evaluation, ___ reported that after the injury he had aching pain in his left wrist, but it was much improved. After reviewing the December 4, 2001, bone scan of R.M. 's wrists, Dr. Kern concluded there was no evidence of fracture. Examination showed that the appearance and mobility of both wrists was essentially the same. Further, there ___ had no numbness, tingling, or other nerve compression related complaints. Dr. Kern concluded that ___ could return to work and there was no need for further testing or treatment. He also felt that ___ had some minor grip strength deficit in the left wrist that could be improved with home exercises.

On May 28, 2002, William Culver, M.D., made a retrospective review of the work hardening services for Carrier. Dr. Culver stated that work hardening services were not necessary because they are not appropriate for a hand injury:

Work hardening for a hand injury is not reasonable or necessary. . . . [W]ork hardening is generally reserved for injuries to major body regions, i.e. the spine, knee, and not a hand, and is not appropriate, in my opinion.

Carrier denied payment for the work hardening services and Medway appealed the decision to the MRD, which referred the matter to an IRO. On May 12, 2003, the IRO reviewer agreed with Carrier and found that the work hardening services provided by Medway were not medically reasonable and necessary. The IRO reviewer's rationale was that lower levels of tertiary care were not exhausted and that the normal sequelae for ___'s injury would be for the pain and limited range of motion to decrease over time with exercise. The IRO reviewer noted that ___'s stress indicator questionnaire indicated only mild stressors inherent with any type of injury that temporarily removes the worker from the work environment. The reviewer also noted that ___'s psychological status was based solely on a questionnaire without any review by a qualified mental health provider. Therefore, the IRO reviewer concluded that a multi-disciplinary work hardening program was not medically reasonable and necessary for ___

Medway timely requested a contested case hearing before the State Office of Administrative Hearings (SOAH).

B. Testimony

At hearing, Medway called Ms. Gretchen L. Jones as a witness, and Carrier called Mr. Bryan Hannley. Their testimony is summarized below.

Ms. Gretchen L. Jones: Ms. Jones is a certified Occupational Therapist. She received a Bachelor of Health Science degree in Occupational Therapy from the University of Missouri in 1991. Currently, she is director of rehabilitation for Medway, which is a CARF accredited facility. Ms. Jones explained that work hardening is a multidisciplinary program that includes an occupational therapist, physical therapist, psychologist, rehabilitation counselor, and a medical director (physician).

Ms. Jones testified that ___suffered a fracture to one of the metacarpal bones in his left hand, and that cortisone injections by Dr. Neagle did not relieve his pain or limitations. Weakness in the hand prevented ___from returning to work at his prior job, so Dr. Neagle referred ___to Medway for work hardening. Ms. Jones emphasized that Dr. Neagle is an experienced physician who knows the difference between work hardening and work conditioning, and he specifically requested four weeks

of work hardening for ____ However, she did not know whether ____had received physical or occupational therapy prior to his referral to Medway.

Before enrolling ____in the work hardening program, Medway had him perform an FCE to determine his physical abilities and to screen him for psychological problems and vocational needs. Ms. Jones explained that if a patient does not show psychological problems, then a multidisciplinary work hardening program is not necessary and the patient may be enrolled in a more basic work conditioning program. Also, a work hardening program is designed to prepare a patient for a specific type of job, but Ms. Jones stated that it is not necessary for the patient to actually have a specific job available and waiting for him. In other words, even if the patient 's prior job is no longer available, work hardening is appropriate to return the patient to his pre-injury capacity in order to re-enter the work force at a suitable job. In this case, Ms. Jones thought that ____returned to work about a month after work hardening concluded, although he did not return to his prior job.

Concerning ____ 's psychological component, ____stated in a survey that he had a mild stress severity level. But Ms. Jones contends that it is more important to look at a patient 's symptoms than the patient 's subjective rating, and in this case ____indicated that he had problems with anxiety and poor sleep. In her view, these types of problems can be appropriately addressed in group sessions during a work hardening program. She also thought it was important for ____to enroll in work hardening in order to meet with a vocational counselor and consider other work possibilities, since his prior job was no longer available. However, she reiterated that the goals ____ 's during the work hardening program were set based on the physical demands of his prior job.

Mr. Jones disagreed with testimony of Carrier 's witness that ____appeared to give submaximal effort on the initial FCE. She noted that the FCE report stated that ____had muscle bulging, sweating, and tremors, and the coefficient of variation showed good effort. Further, Ms. Jones added, most of ____ 's deficit concerned his handling abilities, not his strength.

On cross examination, Ms. Jones stated that a stress survey was not taken after ____completed the work hardening program. She also agreed that a rehabilitation program less intensive than work hardening can be designed for a hand injury such as ____ 's. Although Ms. Jones had no

documentation concerning ___'s return to work, she spoke to him by telephone on the morning of the hearing and he reported that he had been working for two years since his release from work hardening. But Ms. Jones did not know the PDL for ___'s current job.

Mr. Bryan Hannley: Mr. Hannley is a licensed physical therapist from Austin, Texas. He testified for Carrier that he did not think work hardening was medically reasonable or necessary for ___. He pointed out that for grip strength testing, ___ appeared to give inconsistent efforts on the FCE when compared with R.M.'s results during prior testing with Dr. Neagle. He thought repeat testing should have been performed to determine if ___ gave maximum effort. In addition, Mr. Hannley stated that work hardening should be performed only when the patient is capable of obtaining specific employment, but he contended that ___ did not have any specific employment available when he underwent this work hardening program. Mr. Hannley agreed with Medway that work hardening can be appropriate for a hand injury in appropriate circumstances, but he did not believe that appropriate circumstances existed in this case.

Mr. Hannley emphasized that ___'s prior job only required a light PDL and that ___ performed at or beyond a light PDL during Medway's first FCE, prior to the work hardening program. Further, when ___ performed the final FCE at the conclusion of work hardening, he remained at a light PDL classification and showed only minimal gains within that classification. In his view, work hardening was not necessary for this minimal gain and could have been accomplished with home exercises or physical therapy once or twice per week. Mr. Hannley agreed with the IRO reviewer that lower levels of tertiary care should have been tried for ___ before going to work hardening, and that the psychological stressors indicated by ___ are inherent in any person missing work for a period of time and did not require a multidisciplinary work hardening program.

On cross examination, Mr. Hannley agreed that he cannot prescribe work hardening services since he is not a doctor. He also acknowledged that ___ underwent some passive modalities and received cortisone injections prior to being referred to work hardening, and he agreed that it would be unwise to unnecessarily delay treatment for ___ as he was 65 years old. Finally, Mr. Hannley stated that he did not disagree with the information contained in the reports of Dr. Kern or Dr. Neagle, except for Dr. Neagle referring ___ to work hardening.

III. ALJ's Analysis and Decision

The ALJ finds Medway did not establish by a preponderance of the evidence that the work hardening program provided to ___ was medically reasonable and necessary. Therefore, the ALJ denies reimbursement to Medway for these services. Although the ALJ agrees with Medway that work hardening can be appropriate for a hand injury in some cases, the nature and extent of ___'s wrist injury in this case did not justify a multi-disciplinary work hardening program. Although ___ did not report any problems other than his wrist pain, the work hardening program Medway provided included aerobics, cardiovascular exercises (treadmill), aquatic therapy, a nutrition session, and psychological sessions, in addition to exercises and work simulation for his wrist. But there is no evidence in the record to establish the medical necessity for these other services.

Medway suggests that the psychological profile questionnaire filled out by ___ supported the need for psychological counseling. However, that profile indicated that ___ was only feeling mild stress and his worry about finances and trouble sleeping are likely common among any worker who is off work due to an injury. ___ rated his status for the week of the survey at 90, which indicated good functioning in all areas with only everyday problems. Further, ___ was not evaluated by a qualified mental health professional, there is nothing in the record concerning the nature of psychological services provided to ___ during the work hardening program, and his psychological status was not evaluated at the conclusion of work hardening. In short, ___'s limited answers on the psychological profile questionnaire, without more, did not establish the necessity for a multi-disciplinary work hardening program. Therefore, the ALJ finds that the work hardening program provided by Medway to ___ was not medically reasonable or necessary because ___ did not have any physical or psychological problems that warranted a multi-disciplinary program. The ALJ denies reimbursement for the work hardening services provided by Medway to ___

However, Medway did establish that it was CARF certified and not required to obtain preauthorization for the additional services reviewed by MRD for the dates March 27 and 29 and April 18, 2002. The only reason given for MRD for denying reimbursement for these services was lack of preauthorization, and Carrier offered no evidence to challenge Medway's claim for those additional services. Therefore, the ALJ finds that Medway is entitled to recover \$1,536.00 for these services provided to ___.

IV. FINDINGS OF FACT

1. On ____, Claimant ____sustained a compensable injury during the course and scope of his employment with ____ West. ____'s compensable injury involved a non-displaced metacarpal bone fracture in his left hand. ____had no other significant injuries.
2. Wausau Underwriters Insurance Company (Carrier) was the workers' compensation insurance carrier for____'s employer at the time of ____'s compensable injury.
3. At the time of his injury, ____was working as an ATM repairman.
4. Dr. Charles Neagle was ____'s treating doctor for the hand injury. Dr. Neagle provided ____therapy and two cortisone injections on January 8 and February 5, 2002.
5. On March 7, 2002, Dr. Neagle referred ____to Medway Health Inc. (Medway) for a Functional Capacity Evaluation (FCE) and four weeks of work hardening services.
6. On March 25, 2002, Medway performed a FCE on ____ The FCE indicated that ____functioned at a light physical demand level (PDL). ____'s prior ATM repairman job required a light PDL. However, the FCE also indicated that ____had strength and flexibility deficits in his left hand, along with increased pain with static push/pull exercises, lifting, and fine handling activities.
7. As part of the FCE, ____completed a checklist on a Stress and Lifestyle Survey. ____checked off problems typical of an injured worker, such as worrying about finances and problems sleeping. He listed his stress level prior to his injury at medium, but at the time he completed the survey he listed his stress level at mild. ____rated his status on the date of the survey at 70, which indicated some depression and anxiety and mild problems sleeping. But he rated his status for the week at 90, which indicated good functioning in all areas with only everyday problems.
8. From March 27, 2002, through April 25, 2002, Medway provided a work hardening program for ____ The program included aerobics, cardiovascular exercises (treadmill), aquatic therapy, a nutrition session, and group psychological counseling sessions, in addition to exercises and work simulation for his wrist.
9. Carrier denied payment for the work hardening services provided by Medway to ____based on lack of medical reasonableness and necessity.
10. Medway appealed Carrier's denial of payment.
11. On May 12, 2003, Independent Review Incorporated, an Independent Review Organization (IRO), denied Medway's appeal and found the work hardening services were not medically reasonable and necessary.
12. Carrier also denied reimbursement to Medway for other services provided to ____on March 27 and 29 and April 18, 2002. The fees for these services totaled \$1,536.00.

13. The IRO did not review the medical necessity of the services described in Finding of Fact No. 12. However, the Medical Review Division (MRD) of the Texas Workers Compensation Commission (TWCC) reviewed these services and denied reimbursement based on lack of preauthorization.
14. Medway timely filed a request for a hearing before the State Office of Administrative Hearings.
15. The nature and extent of ___'s wrist injury in this case did not justify a multi-disciplinary work hardening program.
16. The work hardening services provided by Medway to ___ were not medically reasonable and necessary.
17. Medway was CARF certified at the time it provided the services described in Finding of Fact No. 12.
18. A hearing was conducted in this case on June 17, 2004. The parties filed written closing statements on July 6, 2004, at which time the record closed.
19. Carrier and Medway attended the hearing.
20. 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.
21. All parties were allowed to respond and present evidence and argument on each issue involved in the case.

V. CONCLUSIONS OF LAW

1. The Texas Workers' Compensation Commission has jurisdiction to decide the issues presented pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ' 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, pursuant to TEX. LAB. CODE §§402.073(b) and 413.031(d) and TEX. GOV'T CODE, Ch. 2003.
3. Carrier timely requested a hearing pursuant to 28 TEX. ADMIN. CODE ' ' 102.3, 102.5(h), 102.7 and 148.3.
4. The parties received adequate and timely notice of the hearing pursuant to TEX. GOV'T CODE §2001.051.
6. Medway 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).

7. Medway was not required to obtain preauthorization for the services it provided to ___ as described in Finding of Fact No. 12.
8. Carrier is not required to reimburse Medway for work hardening services provided to___.
9. Carrier is required to reimburse Medway in the amount of \$1,536.00 for additional services provided to ___ on March 27 and 29 and April 18, 2004.

ORDER

THEREFORE, IT IS ORDERED that Petitioner Medway Health, Inc. shall have and recover \$1,536.00 from Respondent Wausau Underwriters Insurance Company.

SIGNED September 3, 2004.

**DEBORAH INGRAHAM
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS**