

**DOCKET NO. 453-04-4643.M5
M5-04-1013-01**

CENTRAL DALLAS REHAB,	'	BEFORE THE STATE OFFICE
Petitioner	'	
	'	
Vs.	'	
	'	OF
LIBERTY MUTUAL FIRE INSURANCE	'	
COMPANY,	'	
Respondent	'	ADMINISTRATIVE HEARINGS

DECISION AND ORDER

I. SUMMARY

Central Dallas Rehab (Provider) sought reimbursement for work hardening services, physical therapy services, and office visits provided to Claimant ___ Liberty Mutual Fire Insurance Company (Carrier) denied payment for all treatments as medically unnecessary. The Independent Review Incorporated, an Independent Review Organization (IRO), reviewed the claim. The IRO denied reimbursement for outpatient services including office visits, therapeutic procedures, myofascial release, joint mobilization, physical treatment between February 4, 2003 through August 11, 2003, and work hardening from August 25, 2003, through September 19, 2003. Provider appealed the IRO's decision.

After reviewing the evidence and arguments, the Administrative Law Judge (ALJ) concludes the work hardening program and office visits billed under CPT codes 99213-MP and 99211, were not medically necessary, but that all physical therapy and associated chiropractic care provided on April 10, 14, 23, 24, and 28, 2003, were medically necessary. Petitioner is entitled to additional reimbursement for those five days in the amount of \$1,545.00.

II. PROCEDURAL HISTORY

On July 19, 2004, ALJ Bill Zukauckas convened the hearing at the William P. Clements Building, 300 West 15th Street, Austin, Texas. Provider was represented by Scott Hilliard, attorney, and Carrier was represented by Kevin Franta, attorney. The parties did not contest notice or jurisdiction, and those matters are discussed only in the findings and conclusions. At the close of the hearing, the parties were asked to submit a stipulation about payments for post-operative physical therapy. The ALJ received that additional stipulation on July 21, 2004, at which time the record closed.

III. BACKGROUND

Claimant suffered a compensable injury on _____, when he attempted to pull a heavy cart from a trailer as part of his job duties as a loading dock worker at _____. The wheels became stuck in a rut or gap, and he hurt his back while trying to pull the cart backwards. Claimant underwent quite a bit of chiropractic care and even work hardening in 2002, but on December 10, 2002, he ultimately ended up undergoing a lumbar microdiscectomy, laminectomy, foraminotomy, and partial facetectomy at L5/S1 on the left.

Provider requests reimbursement for dates of service between February 4, 2003 through September 19, 2003, consisting mostly of physical therapy and chiropractic services for five unreimbursed dates of service in April 2003, and a work hardening program with dates of service between August 25 and September 19, 2003.

IV. EVIDENCE AND ARGUMENTS

In support of its position that the services provided to Claimant were necessary for the treatment of his injuries, Provider argues the following:

- ! Carrier's witness agreed that between 18 and 24 physical therapy sessions post operatively were appropriate to rehabilitate Claimant's type of injury. The parties stipulated that Provider was compensated for 19 of 24 physical therapy days. Provider argues that the other five visits in April 2003 were medically necessary and should be reimbursed just like the ones Carrier already paid, because they were within the range of reasonable (18-24) total number of visits.
- ! Claimant was placed in the work hardening program because he was not yet able to perform at the heavy-duty level, consistent with the requirements of his former job as a loading dock worker at ____.
- ! Claimant is entitled to be retrained to the same strength level for the same type of job he was injured at if he is reasonably capable of achieving that hardening level when at maximum medical improvement.

Carrier responded by pointing out the following:

- ! Provider had no written treatment goals or treatment plan for Claimant's work hardening program.
- ! Provider did not show that Claimant was a candidate for work hardening because there was no anxiety, depression, or psychological overlay to warrant the expensive multi-disciplinary program.
- ! Provider did not show Claimant made significant progress or improvement within the work hardening program.
- ! Provider did not show Claimant had a valid deficit from a specific job, to which he intended to return, prior to entering the work hardening program.

V. ANALYSIS AND CONCLUSION

Provider did show that it was entitled to reimbursement for an additional five days of physical therapy, and associated chiropractic modalities, provided on April 10, 14, 23, 24, and 28, 2003. The parties stipulated that Provider has been was reimbursed for 19 of 24 days of physical therapy following a December 10, 2002, lumbar surgery. Even Carrier's witness, Casey Cochran, D.O., agreed that somewhere in the range of 18-24 physical therapy visits would be reasonable following a surgery like the Claimant had undergone.

The ALJ assumes that the five remaining April dates of service that were not reimbursed by the Carrier were likely denied based on the Carrier's reliance of a reviewing physician's opinion that some number less than 24 was appropriate for this kind of post-surgical rehabilitation. The ALJ finds that Provider has shown, though its own witness, and through the testimony of Dr. Cochran, that up to 24 sessions of physical therapy would be reasonable. The ALJ finds that the additional five days of unreimbursed physical therapy sessions were reasonable and should be reimbursed.

Conversely, Provider failed to prove it is entitled to reimbursement for the work hardening program. The ALJ agrees with Carrier that prior to entering the work hardening program Provider should have been able to show that Claimant needed a multi-disciplinary program like work hardening with a psychological overlay. Without establishing the requisite admission criteria, the ALJ finds that some less expensive program, such as work conditioning or home exercise, should have been used to treat Claimant.

The ALJ agrees with Carrier that the Provider should have had specific written goals for the Claimant prior to entering him in the relatively expensive work hardening program. Some explanation about why Claimant needed this multidisciplined program should have been articulated

and specific goals should have been established to measure whether Claimant was achieving these goals. No evidence was produced showing this was done.

The evidence indicated Claimant met light physical demand levels prior to entering the work hardening program. This light demand level would not be adequate for the heavy-duty demands of a loading dock worker. In general terms, the ALJ agrees the Claimant may be entitled to rehabilitation help from the Carrier for the least expensive reconditioning alternative. The ALJ believes the Carrier has an obligation to help the Claimant attain the conditioning level needed for his previous job type, if it is clear that his post-injury medical condition would not preclude that level and Carrier has not provided evidence rebutting the presumption that he would again seek this type of work. The Carrier's showing that Claimant did not have his specific loading dock job at ____, did not rebut the presumption that he might seek the same sort of heavy duty job somewhere else. But, for the other reasons stated above, the ALJ finds that Claimant was not otherwise shown to be an appropriate candidate for the work hardening program.

VI. FINDINGS OF FACT

1. Claimant suffered a compensable injury on ____, when he attempted to pull a heavy cart from a trailer as part of his job duties as a loading dock worker at ____.
2. At the time of Claimant's injury, his employer had workers' compensation insurance coverage with Liberty Mutual Fire Insurance Company (Carrier).
3. As a result of the injury, Claimant received chiropractic treatment and work hardening in 2002, and ended up undergoing a lumbar microdisectomy, laminectomy, foraminotomy, and partial facetectomy at L5/S1 on the left side on December 10, 2002.
4. Claimant received physical therapy and chiropractic care from Provider for dates of services from February 4, 2003, to September 19, 2003, for which Provider seeks reimbursement.
5. Carrier denied reimbursement for the services as not medically necessary.

6. In response to Carrier's denial of reimbursement, Provider requested medical dispute resolution.
7. An Independent Review Organization (IRO) concluded Provider was not entitled to reimbursement for the disputed services.
8. Upon receiving the IRO decision, Provider timely requested a hearing before the State Office of Administrative Hearings (SOAH).
9. Notice of the hearing was sent to the parties on April 28, 2004. The notice informed the parties of the date, time, and location of the hearing, a statement of the matters to be considered, the legal authority under which the hearing would be held, and the statutory provisions applicable to the matters to be considered.
10. The hearing convened on July 19, 2004.
11. Claimant's job responsibilities as a loading dock worker at ____ required working at the heavy duty work level.
12. Prior to entering the work hardening program with Provider, Claimant met light work requirements on a current functional capacity evaluation.
13. Claimant received 24 sessions of physical therapy, with associated chiropractic care, following the surgery on December 10, 2002.
14. Each of the physical therapy sessions, with the associated chiropractic modalities, were medically necessary to treat Claimant's compensable injury, including those unreimbursed sessions on April 10, 14, 23, 24, and 28, 2003.
15. The office visits billed by Provider as CPT code 99213-MP or 99211, on February 4, 12, June 10, 16, 23, 30, July 14, 21, 28, August 4, and 11, 2003, were not shown to be medically necessary.
16. Provider failed to document reasons why Claimant was an appropriate candidate for a multi-disciplinary work hardening program. More specifically, nothing was documented to show that Claimant needed the psychological components of a work hardening program.
17. Provider failed to establish any written treatment goals for the Claimant in the work hardening program.

18. Provider failed to document any significant progress by the Claimant within the work hardening program.

VII. CONCLUSIONS OF LAW

1. SOAH has jurisdiction over this proceeding pursuant to TEX. LABOR CODE § 413.031 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. §§2001.051 and 2001.052.
3. As Petitioner, Central Dallas Rehab bears the burden of proof in this matter. 28 TEX. ADMIN. CODE (TAC) §148.21(h).
4. Petitioner failed to prove the disputed work hardening services and office visits billed under CPT codes 99213-MP and 99211, were reasonably required by the nature of the Claimant's injury, cured or relieved the effects naturally resulting from the compensable injury, promoted Claimant's recovery, or enhanced Claimant's ability return to or retain employment as contemplated by TEX. LAB. CODE ANN. §408.021(a).
5. Petitioner is not entitled to reimbursement for the disputed services referenced in Conclusion of Law No 4.
6. Petitioner did prove that the physical therapy and associated chiropractic services rendered on April 10, 14, 23, 24, and 28, 2003, were reasonably required by the nature of the Claimant's injury, cured or relieved the effects naturally resulting from the compensable injury, promoted Claimant's recovery, or enhanced Claimant's ability return to or retain employment as contemplated by TEX. LAB. CODE ANN. §408.021(a).

IT IS ORDERED that Liberty Mutual Fire Insurance Company is to reimburse Central Dallas Rehab for physical therapy and chiropractic services provided to Claimant on April 10, 14, 23, 24, and 28, 2003, is the amount of \$1,545.00. All claims for reimbursement on other dates of service are denied.

SIGNED September 21, 2004.

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