

TEXAS MUTUAL INSURANCE COMPANY	§	BEFORE THE STATE OFFICE
	§	
	§	
V.	§	OF
	§	
SYZYGY ASSOCIATES, L.P.		ADMINISTRATIVE HEARINGS
		DECISION AND ORDER

Texas Mutual Insurance Company (Carrier) requested a hearing on a decision by an Independent Review Organization (IRO) granting reimbursement to Syzygy Associates, L.P. (Provider) for work hardening provided to injured worker (Claimant). After considering the evidence and arguments, the Administrative Law Judge (ALJ) concludes that Carrier has shown that the treatments in dispute were not medically necessary and should not be reimbursed.

I. BACKGROUND

Claimant suffered a compensable, work-related injury to his back while lifting heavy objects on _____. Claimant received extensive chiropractic modalities and therapy, which proved to be unsuccessful in fully restoring his ability to return to work. Claimant then underwent back surgery in July 2002, and thereafter again received extensive chiropractic and therapy treatments. Claimant participated in a work conditioning program in December 2002 and January 2003. On January 16, 2003, immediately after completing work conditioning, Claimant began a work hardening program with Provider. Carrier, as the workers' compensation insurer for Claimant's employer, declined to reimburse for the work hardening, contending it was not medically necessary. So, the sole issue in this case is the work hardening provided to Claimant on 20 dates of service between January 16, 2003, and February 14, 2003. The total amount in dispute is \$9,856.

Based on Carrier's denial of reimbursement, Provider sought medical dispute resolution through the Texas Workers' Compensation Commission (Commission). The matter was referred to an IRO designated by the Commission for the review process. The IRO determined that the services in issue were medically necessary treatment for Claimant's compensable injury. Carrier then requested a hearing before the State Office of Administrative Hearings (SOAH). The hearing convened on April 27, 2005, with ALJ Craig R. Bennett presiding. Carrier appeared through its

attorney, Katie Kidd. Provider appeared by telephone through its representative, Linda Kinney. The hearing concluded and the record closed that same day. No parties objected to notice or jurisdiction.

II. PARTIES' ARGUMENTS

Carrier argues that the treatment that Provider rendered to Claimant was generally excessive, including four months of intensive post-operative chiropractic care and therapy, a month of work conditioning, and then a month of work hardening. N.F. Tsourmas, M.D., an orthopedic surgeon, testified that the care provided to Claimant was excessive and that there was no medical justification evident from the records to support work hardening immediately after work conditioning and four months of therapy. Similarly, William DeFoyd, D.C., testified that work hardening was not necessary under the circumstances.

Carrier argues that work hardening was not appropriate for Claimant because he was not going to return to his former job and, therefore, until a determination was made as to the type of work that Claimant would attempt to obtain, one could not know whether work hardening was necessary. One of the entrance criteria for work hardening is that the injured worker be a person whose current level of functioning interferes with his ability to carry out specific identifiable tasks required in the workplace. So, ultimately, work hardening is only appropriate if there is a specific work objective and the Claimant has clearly identifiable deficits that would preclude him from meeting that objective and carrying out the functions of the intended job. Carrier notes that Provider never contacted Claimant's employer to determine what job Claimant might return to and what skills or functioning that job would require. Instead Provider merely used a reference sheet for Claimant's prior position as the basis for its determination to conduct work hardening.

In response, Provider asserts that the documentary evidence shows that work hardening was necessary for Claimant. In particular, Provider contends that Claimant still had pain, limited range of motion, and limited strength even after the various chiropractic and other treatments were provided. Based on this, Provider concluded that Claimant would not be able to perform his prior job duties. Provider points out that the Dictionary of Occupational Titles (DOT) job description that Provider obtained for Claimant's former position provided sufficient information for it to structure a work hardening program without input from his employer. Provider notes that work hardening was

successful in that Claimant was able to perform the functions of his prior position after completing the treatment, although Claimant never returned to that job.

III. ALJ'S ANALYSIS

After considering the arguments and evidence presented, the ALJ concludes the disputed services were not medically necessary for treatment of Claimant's compensable injury. Therefore, the ALJ finds that Provider is not entitled to reimbursement.

Work hardening is defined as:

Work Hardening: A highly structured, goal-oriented, individualized program designed to maximize the ability of the persons served to return to work. Work hardening programs are interdisciplinary in nature with a capability of addressing the functional, physical, behavioral, and vocational needs of the injured worker. Work Hardening provides a transition between management of the initial injury and return to work while addressing the issues of productivity, safety, physical tolerances, and work behaviors. Work Hardening programs use real or simulated work activities in a relevant work environment in conjunction with physical conditioning tasks. These activities are used to progressively improve the biomechanical, neuromuscular, cardiovascular/metabolic, behavioral, attitudinal, and vocational functioning of the persons served.¹

To support the necessity of work hardening, the medical records should contain adequate justification of the need for an interdisciplinary program to allow Claimant to return to work. Further, the records should reflect specific impairments of the Claimant's ability to perform some or all of the functions of his expected job before work hardening is deemed necessary. Finally, work hardening should be directed at training Claimant to return to a specific expected job.

While the evidence indicates that Claimant had ongoing pain and some limited functioning, there is no basis in the record for work hardening to have been provided. Work hardening is not simply therapy to rehabilitate an injured worker to be able to perform the functions of his last held position. Rather, it is intended to be a tool for removing existing obstacles, whether physical or psychological, to Claimant's being able to return to a specific job. As noted above, one of the

¹ See 28 TEX. ADMIN. CODE §134.201, which adopts the Commission's 1996 Medical Fee Guideline. The Medicine Ground Rules, at II. E., define and describe Work Hardening. Although there have been, and continue to be, legal challenges to the Commission's various guidelines, the ALJ is unaware of any dispute as to the reliability of the Commission's definition of work hardening.

entrance criteria for work hardening is that the injured worker be a person whose current levels of functioning due to illness or injury interfere with [his] ability to carry out specific tasks required in the workplace. Further, the injured worker must be a person who is capable of attaining specific employment upon completion of the program. Both of these entrance requirements show that work hardening is to be tied to the specific duties of a specific job to which the injured employee is expected to return or attain.

In this case, the evidence is undisputed that Provider made no effort to contact Claimant's former employer to determine whether he could return to his former job or any other position. Instead, Provider simply attempted to rehabilitate Claimant based upon a DOT job description for Claimant's last-held position. In this regard, Provider was really doing nothing more than attempting to restore Claimant to his pre-injury functionality, without regard for whether he was actually going to perform that job or not. In fact, the evidence shows that his employer never returned him to work in his former position. Further, the record contains ample indications that Claimant's employer was not going to return him to his former job. Provider appears to have recognized this to some degree, having requested a meeting with the Texas Rehabilitation Commission (to discuss potential jobs for Claimant) before the conclusion of work hardening.

Further, the ALJ agrees with Dr. Tsourmas and Dr. DeFoyd that the records do not show a sufficient underlying basis for work hardening. The records do not demonstrate specific job functions in which Claimant was lacking, nor do they demonstrate any psychological barriers to Claimant returning to work. Finally, some of the tasks involved in the work hardening were repetitive of the work conditioning program, and there is no reasonable basis under the circumstances of this case for work hardening to have been provided immediately on the heels of work conditioning.

For the reasons identified above, the Carrier established by a preponderance of the evidence that the services in dispute were not medically necessary treatment for Claimant. Accordingly, reimbursement is denied.

IV. FINDINGS OF FACT

1. (Claimant) suffered a compensable, work-related injury to his back on ____.
2. Texas Mutual Insurance Company (Carrier) is the provider of workers' compensation insurance covering Claimant for his compensable injury.
3. After his compensable injury, Claimant received extensive chiropractic modalities and therapy, which proved to be unsuccessful in fully restoring Claimant's ability to return to work.
4. Claimant then underwent back surgery in July 2002, and thereafter again received extensive chiropractic and therapy treatments.
5. Claimant participated in a work-conditioning program in December 2002 and January 2003.
6. On January 16, 2003, immediately after completing work conditioning, Claimant began a work hardening program with Provider.
7. At no point did Provider contact Claimant's employer to determine the job duties of any position to which Claimant could return to work.
8. The medical records do not demonstrate specific job functions in which Claimant was lacking, nor do they demonstrate any psychological barriers to Claimant returning to work.
9. Some of the tasks involved in the work hardening were repetitive of the work-conditioning program, and it was not medically necessary under the circumstances of this case for work hardening to have been provided immediately on the heels of work conditioning.
10. Provider billed Carrier the amount of \$9,856 for the work hardening provided to Claimant between January 16, 2003, and February 14, 2003.
11. Carrier, as the workers' compensation insurance carrier for Claimant's employer, declined to reimburse the work hardening provided to Claimant, contending it was not medically necessary.
12. Provider requested medical dispute resolution by the Texas Workers' Compensation Commission's Medical Review Division (MRD), which referred the matter to an Independent Review Organization (IRO).
13. MRD ordered reimbursement on February 27, 2004, based on the IRO physician reviewer's determination that the services in issue were medically necessary.
14. Carrier received the MRD decision on March 2, 2004.
15. On March 22, 2004, Carrier requested a hearing and the case was referred to the State Office of Administrative Hearings (SOAH).

16. Notice of the hearing was sent by the Commission to all parties on April 27, 2004. Based upon the parties' agreement, the hearing was continued.
17. On April 27, 2005, Administrative Law Judge Craig R. Bennett convened a hearing in this case. Carrier appeared through its attorney, Katie Kidd. Provider appeared by telephone through its representative, Linda Kinney. The hearing concluded and the record closed that same day.

V. CONCLUSIONS OF LAW

1. SOAH has jurisdiction over this proceeding, including the authority to issue a decision and order, pursuant to the Texas Workers' Compensation Act, specifically TEX. LABOR CODE ANN. §413.031(k), and TEX. GOV'T CODE ANN. ch. 2003.
2. The hearing was conducted pursuant to the Administrative Procedure Act, TEX. GOV'T CODE ANN. ch. 2001 and 28 TEX. ADMIN. CODE ch. 148.
3. The request for a hearing was timely made pursuant to 28 TEX. ADMIN. CODE §148.3.
4. Adequate and timely notice of the hearing was provided according to TEX. GOV'T CODE ANN §§2001.051 and 2001.052.
5. Carrier has the burden of proof. 28 TEX. ADMIN. CODE §§ 148.21(h) and 133.308(w).
6. Carrier has shown, by a preponderance of the evidence, that the work hardening provided to Claimant between January 16, 2003, and February 14, 2003 was not medically necessary for treatment of Claimant's compensable injury.
7. Carrier is not liable to reimburse Provider for the work hardening provided to Claimant between January 16, 2003, and February 14, 2003.

ORDER

IT IS ORDERED that Texas Mutual Insurance Company is not required to reimburse Syzygy Associates, L.P. for the work hardening provided to Claimant between January 16, 2003, and February 14, 2003.

SIGNED May 12, 2005.

**CRAIG R. BENNETT
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS**