

**SOAH DOCKET NO. 453-04-7156.M5**

**J. C. PENNEY CORPORATION, INC.,** § **BEFORE THE STATE OFFICE**  
**Petitioner** §  
§  
**V.** § **OF**  
§  
**MAIN REHAB AND DIAGNOSTIC,** §  
**Respondent** § **ADMINISTRATIVE HEARINGS**

**SOAH DOCKET NO. 453-04-6428.M5**

**MAIN REHAB AND DIAGNOSTIC,** § **BEFORE THE STATE OFFICE**  
**Petitioner** §  
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**V.** § **OF**  
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**J. C. PENNEY CORPORATION, INC.,** §  
**Respondent** § **ADMINISTRATIVE HEARINGS**

**DECISION AND ORDER**

J. C. Penney Corporation, Inc. (J. C. Penney) and Main Rehab and Diagnostic (Main Rehab) requested hearings on two decisions rendered by Independent Review Organizations (IRO) regarding services rendered to a workers' compensation claimant. The requests were consolidated and a single hearing held. The Administrative Law Judge (ALJ) finds none of the services were medically necessary and concludes J. C. Penney should not be required to reimburse Main Rehab for any of them.

**I. DISCUSSION**

The workers' compensation claimant, \_\_\_ (the Claimant), injured her right shoulder on\_\_\_\_\_, while employed at J. C. Penney.<sup>1</sup> The Claimant underwent physical therapy, followed by shoulder surgery on July 18, 2002, followed by more physical therapy. She remained able to perform only light lifting, while her job required the ability to perform moderate lifting. On April 16 and 17, 2003, she had an office visit and underwent testing at Main Rehab. On April 18, 2003, she began a work hardening program.

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<sup>1</sup> J. C. Penney is a self-insured provider of workers' compensation coverage.

Main Rehab provided medical services to the Claimant from April 16 through June 12, 2003, plus an additional office visit on August 21, 2003.

J. C. Penney declined to pay for the services provided by Main Rehab.<sup>2</sup> Main Rehab filed two requests for medical dispute resolution regarding those services with the Texas Workers' Compensation Commission (the Commission). The dates of service for the two requests overlapped, but were not identical. The Commission referred each of the disputes to an IRO. The IROs reached different conclusions regarding the medical necessity of the services.

One IRO found the services before it, provided from April 16 through June 12, 2003, were not medically necessary. Main Rehab filed a timely request for a hearing before SOAH. That request became Docket No. 453-04-6428.M5. The amount in dispute in that case is \$7,566.00.<sup>3</sup>

The other IRO considered services provided from April 18 through August 21, 2003. It found the services provided from April 18 through June 4, 2003, were medically necessary. It found services provided after June 4, 2003, were not. J. C. Penney filed a timely request for a hearing before SOAH regarding that decision. That request became Docket No. 453-04-7156.M5. The amount in dispute in that case is \$4,002.00.<sup>4</sup>

The two cases were consolidated, and the hearings were continued. The hearing in the consolidated case was held March 29, 2005, with ALJ Henry D. Card presiding. Both parties appeared, represented by counsel. The hearing was adjourned and the record closed the same day.

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<sup>2</sup> J. C. Penney also refused to pay for the August 21, 2003, office visit, but that is not at issue in this case.

<sup>3</sup> In that case, the Commission's Medical Review Division (the MRD) also addressed services provided from April 22 through May 5, 2003, and from May 13 through May 15, 2003. J. C. Penney has denied those for reasons other than lack of medical necessity. The MRD ordered reimbursement for those dates of service. J. C. Penney did not file a request for a hearing on that decision, so those services are not at issue at SOAH.

<sup>4</sup> Main Rehab did not file a request for a hearing regarding that decision.

The following types of services are at issue:

<u>CPT Code</u>	<u>Type of Service</u>
99204	new patient office visit
99080-73	special report
73030-WP	shoulder x-ray-whole procedure
73070-WP	elbow x-ray-whole procedure
99213	established patient office visit
97750-FC	functional capacity evaluation
99455-L5-WP	work related or medical disability exam
A4558	conductive paste or gel
E0745	neuromuscular stimulator
97545-WH	work hardening-initial two hours
97546-WH	work hardening-each additional hour

The two work hardening codes comprise most of the disputed amount.

Three doctors, including the Claimant's previous treating physician and a physician designated by the Commission, determined the Claimant had reached maximum medical improvement before the services at issue were provided. The previous treating physician, Miguel B. Banta, Jr., did not believe the Claimant would be able to return to her previous employment.

The Claimant's subsequent treating physician at Main Rehab, Robert Bedford, D.C., believed the Claimant could return to her previous employment after completing a work hardening program. Although the Claimant showed initial improvement in some areas during Main Rehab's treatment, she regressed in other areas. She did return to work, but was reinjured approximately two weeks later.

The ALJ found the analysis of Dr. Banta and the designated examination doctor to be persuasive. Dr. Banta had provided extensive therapy for the Claimant and finally determined that further treatment was not warranted. Although Dr. Bedford hoped for improvement by the Claimant, the records did not provide persuasive objective reasons for that belief, which proved to be incorrect.

Even if additional treatment had been warranted, the work hardening program actually provided was not medically necessary. The program did not address the Claimant's particular job requirements. For example, in the program the Claimant practiced activities such as kneeling and crouching which, according to the medical records, were not part of her daily job duties.

The ALJ finds the services at issue were not medically necessary. He concludes that Main Rehab should not be reimbursed for them.

## II. FINDINGS OF FACT

1. Workers' compensation claimant \_\_\_\_ (the Claimant) injured her right shoulder on \_\_\_\_, while employed at J. C. Penney Corporation, Inc. (J. C. Penney).
2. The Claimant underwent physical therapy, followed by shoulder surgery on July 18, 2002, followed by more physical therapy.
3. After the course of treatment described above, the Claimant remained able to perform only light lifting, while her job required the ability to perform moderate lifting.
4. On April 16 and 17, 2003, the Claimant had an office visit and underwent testing at Main Rehab and Diagnostic (Main Rehab). On April 18, 2003, she began a work hardening program.
5. Main Rehab provided medical services to the Claimant from April 16 through June 12, 2003, plus an additional office visit on August 21, 2003.
6. J. C. Penney declined to pay for the services provided by Main Rehab.
7. Main Rehab filed two requests for medical dispute resolution regarding those services with the Texas Workers' Compensation Commission (the Commission). The dates of service for the two requests overlapped, but were not identical. The Commission referred each of the disputes to an IRO.
8. The IROs reached different conclusions regarding the medical necessity of the services.
9. One IRO found the services before it, provided from April 16 through June 12, 2003, were not medically necessary. Main Rehab filed a timely request for a hearing before SOAH. That request became Docket No. 453-04-6428.M5. The amount in dispute in that case is \$7,566.00.
10. The other IRO considered services provided from April 18 through August 21, 2003. It found the services provided from April 18 through June 4, 2003, were medically necessary. It found services provided after June 4, 2003, were not. J. C. Penney filed a timely request for a hearing before SOAH regarding that decision. That request became Docket No. 453-04-7156.M5. The amount in dispute in that case is \$4,002.00.
11. The August 21, 2003, office visit is not at issue in this case.

12. Notice of the hearing in Docket No. 453-04-6428.M5 was provided to the parties June 17, 2004.
13. Notice of the hearing in Docket No. 453-04-7156.M5 was provided to the parties July 9, 2004.
14. Each 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.
15. The two cases were consolidated and the hearings were continued. The parties received timely notice of the new hearing date.
16. The hearing was held March 29, 2005, with ALJ Henry D. Card presiding. Both parties appeared, represented by counsel. The hearing was adjourned and the record closed the same day.
17. The following types of services are at issue:

<u>CPT Code</u>	<u>Type of Service</u>
99204	new patient office visit
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The two work hardening codes comprise most of the disputed amount.

18. The Claimant reached maximum medical improvement before the services at issue were provided.
19. Although the Claimant showed initial improvement in some areas during Main Rehab's treatment, she regressed in other areas. She did return to work, but was reinjured approximately two weeks later.
20. The records did not provide persuasive objective reasons for Dr. Bedford's belief that additional treatment would improve the Claimant's condition.
21. Even if additional treatment had been warranted, the work hardening program did not address the Claimant's particular job requirements.
22. The services Main Rehab provided the Claimant were not medically necessary.

### III. CONCLUSIONS OF LAW

1. SOAH 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. J. C. Penney should not be required to reimburse Main Rehab for the services provided the Claimant.

### ORDER

It is, therefore, ordered that J. C. Penney Corporation, Inc. shall not be required to reimburse Main Rehab and Diagnostic for the services provided Claimant \_\_\_ from April 16 through June 12, 2003, that are the subject of this consolidated case.

**SIGNED May 26, 2005.**

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**HENRY D. CARD  
ADMINISTRATIVE LAW JUDGE  
STATE OFFICE OF ADMINISTRATIVE HEARINGS**