

**SOAH DOCKET NO. 453-05-0977.M5
MDR NO. M5-04-2567-01**

TEXAS MUTUAL INSURANCE COMPANY, Petitioner, § **BEFORE THE STATE OFFICE**
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§
§
VS. § **OF**
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§
REHAB 2112, Respondent. § **ADMINISTRATIVE HEARINGS**

DECISION AND ORDER

Texas Mutual Insurance Company (Carrier) appealed the decision of the Texas Workers' Compensation Commission's (Commission's) Medical Review Division (MRD), which found, based on a review by an independent review organization (IRO), that some of the contested therapeutic exercises and work hardening services provided by Rehab 2112 to Claimant ___ were medically necessary. The Administrative Law Judge (ALJ) finds that Carrier met its burden of proof regarding the therapeutic exercises, but failed to meet its burden of proving that the work hardening services were not medically necessary.

**I. BACKGROUND, PROCEDURAL HISTORY,
NOTICE, AND JURISDICTION**

On ___, Claimant, a truck driver, injured his upper back and right ankle when he fell from a truck, landing on a concrete surface. Claimant was 47 years old at the time of the accident. Claimant participated in physical therapy at Rehab 2112 from June 4 through July 11, 2003. After undergoing physical therapy, he participated in work hardening at Rehab 2112 from August 4 through September 12, 2003. Carrier denied reimbursement for the therapeutic exercises and work hardening due to lack of medical necessity.

The IRO agreed with Carrier that therapeutic exercises after June 30, 2003, and work hardening after September 5, 2003, were not medically necessary.¹ However, the IRO found that the services in dispute were medically necessary because: 1) Claimant's MRI of May 15, 2003, revealed sufficient pathology that would warrant a longer course of rehabilitation services that could include active rehabilitation through June 30, 2003; and 2) transition to a work hardening program was appropriate based on the MRI but the work hardening program should have ceased after September 5, 2003, the date approval was given for surgery. Carrier filed a notice of appeal; Rehab 2112 did not appeal.

The hearing convened on May 3, 2005, at the facilities of the State Office of Administrative Hearings, 300 W. 15th St., Austin, Texas. ALJ Suzanne Formby Marshall presided. Texas Mutual Insurance Company was represented by Tim Riley, attorney. Rehab 2112 was represented by Robert Kubicki, attorney. Neither party challenged the adequacy of notice or jurisdiction. The record closed the day of the hearing.

II. PARTIES' POSITIONS

Carrier offered the testimony of David Alvarado, D.C., who reviewed the records in this case. Dr. Alvarado testified that Rehab 2112 provided and billed for therapeutic exercises using CPT Code 97110, which is active-based care designed to increase the flexibility, strength, and endurance of a patient, provided in a one-to-one setting. According to Dr. Alvarado, it is appropriate to use one- to-one care for instructional purpose or if there are issues of safety or lack of understanding by the patient about the exercises. Dr. Alvarado noted that one-to-one care is much more expensive than group care and that he was unable to find documentation that supported the consistent use of the more expensive one-to-one code or to show why the same services could not be provided in a group

¹ The IRO reviewer also concluded that the hot/cold pack therapy from June 4 through September 12, 2003, was not medically necessary.

setting.² Noting that Claimant had already received eight sessions of one-to-one therapy prior to the disputed dates of service, Dr. Alvarado opined that Claimant should not have required further one-to-one care. Additionally, Claimant only showed minimal improvement in his range of motion during the therapy. Dr. Alvarado contends that Claimant should not have received the CPT 97110 services beginning on June 4, 2003.

Dr. Alvarado agreed with the IRO decision that work hardening services were not necessary after surgery was authorized on September 5, 2003. However, he contends that the services should have ceased on August 1, 2003, the date on which Dr. Laughlin recommended the surgery. Dr. Alvarado bases his conclusion on the following rationale: 1) Claimant had already received six weeks of work hardening services by August 1st and showed minimal changes; 2) there was significant injury to the ankle which required surgical intervention; and 3) Claimant's pain reports did not change. When asked what should have been done for the Claimant during the interim period between Dr. Laughlin's recommendation for surgery and the Carrier's approval, Dr. Alvarado stated that the Claimant could have performed home exercises and used medications.

Dr. Michelle Ivey is the executive director of Rehab 2112. She testified that work hardening was appropriate because Claimant met the CARF³ guideline entrance criteria for work hardening because he was likely to benefit from the services and did not have a condition that prohibited him from functioning in the program. According to Dr. Ivey, there were three functional capacity evaluations (FCE) of Claimant. The initial FCE was conducted on April 17, 2003. After three weeks into the work hardening program, another FCE was conducted that showed significant improvement. The third FCE, after six weeks into the program, showed that Claimant was able to stand and walk for 30 minutes and his endurance increased from 4 minutes to 5 minutes. Dr. Ivey testified that Claimant made gains as a result of the program, indicating that the program was medically necessary.

² If the patient had been seen in a group setting, the appropriate CPT Code would be 97150.

³ Commission of Accreditation of Rehabilitation Facilities.

According to Dr. Ivey, therapeutic exercises requiring one-to-one supervision are billed appropriately as CPT Code 97110. Dr. Ivey testified that she was not Claimant's treating physician, but that it appeared he was given strengthening and stretching exercises for his ankle and cervical injury. The one-to-one supervision was appropriate in order to correct Claimant's performance during the exercises, for safety, and to monitor him so that the challenge could be increased as necessary. Dr. Ivey said that because Claimant had a significant injury, he needed one-to-one care. She agreed that the need for one-to-one care would cease when the injury was stable, but stated that Claimant had not reached that point during these dates of service. She agreed that most patients in active rehabilitation should also perform exercises at home. Although Claimant did not return to work, Dr. Ivey stated that he had the potential to return to work and, therefore, work hardening was an appropriate treatment choice.

III. ANALYSIS

When a healthcare provider bills for physical medicine treatment, the Commission's rules require the provider to submit the following: progress or SOAP⁴ notes substantiating the care given and the need for further treatment and services and indicating progress, improvement, the date of the next treatment and services, complications, and expected release date.⁵ Furthermore, work hardening is an individualized, highly structured, goal-oriented treatment program designed to maximize the ability of the person receiving the treatment to return to work. Daily treatment and patient response to treatment are to be documented and reviewed to ensure continued progress.⁶

With those directives in mind, the ALJ finds that Dr. Alvarado's testimony related to the lack of justification for one-on-one treatment from June 4 through June 30, 2003, to be persuasive. While the IRO agreed that active rehabilitation was appropriate, it did not address whether there was a need

⁴ Subjective/Objective/Assessment/Plan.

⁵ 28 TEX. ADMIN. CODE § 133.1(a)(3)(E)(i).

⁶ Medical Fee Guideline (MFG) Medicine Ground Rule II.E. at 28 TEX. ADMIN. CODE (TAC) § 134.201.

for one-on-one supervision of Claimant during the therapy. After reviewing the daily treatment notes from therapy, the ALJ does not find support for one-on-one treatment. Dr. Alvarado's testimony that the therapy could be performed in a group setting is reasonable. Dr. Ivey's testimony that Claimant needed one-on-one care because of his significant injury is not supported in the written notes.

However, the ALJ finds that Carrier failed to meet its burden of proof with regard to work hardening. Dr. Alvarado argued that work hardening should have ceased the day that Dr. Laughlin made the recommendation for surgery. However, he cites no authority for this proposition. Because Dr. Laughlin's recommendation had not been approved by the Carrier until September 5, 2003, the ALJ finds that the work hardening services were medically necessary. Indeed, Claimant showed improvement in his condition during the course of the work hardening treatment. The FCEs showed consistent, though modest, improvement. So long as Claimant was continuing to benefit from the work hardening program, the ALJ agrees with the IRO decision that it was medically necessary until September 5, 2003.

Based on the above, the ALJ concludes that Carrier met its burden of proving that the one-to-one therapy services were not medically necessary as of June 4, 2003. However, the ALJ concludes that Carrier did not meet its burden of proof on the medical necessity of work hardening services until September 5, 2003.

IV. FINDINGS OF FACT

1. On ___, Claimant ___ sustained a work-related injury to his ankle in a fall stemming from his work activities as a truck driver.
2. On the date of injury, the Claimant's employer was insured by Texas Mutual Insurance Company (Carrier).
3. Rehab 2112 provided work hardening services to the Claimant from August 4 through September 12, 2003, for which it sought reimbursement.
4. Rehab 2112 provided therapeutic services to the Claimant from June 4 through July 11, 2003, for which it sought reimbursement.

5. Texas Medical Insurance Company denied reimbursement for the work hardening and therapeutic services referenced in Findings of Fact No. 3 and 4.
6. Rehab 2112 filed a request for medical dispute resolution with the Texas Workers' Compensation Commission (Commission).
7. An independent review organization (IRO) reviewed the medical dispute and found that the work hardening was medically necessary prior to September 5, 2003, but not medically necessary after that date.
8. The IRO also concluded that the therapeutic services were medically necessary from June 4 through June 30, 2003, but were not medically necessary after June 30, 2003.
9. The Commission's Medical Review Division (MRD) adopted the IRO decision.
10. Carrier appealed the MRD decision and requested a contested case hearing by a State Office of Administrative Hearings (SOAH) Administrative Law Judge (ALJ).
11. Rehab 2112 did not appeal the MRD decision.
12. On October 27, 2004, the Commission issued the notice of the hearing, which stated the date, time, and location of the hearing and cited to the statutes and rules involved, and which provided a short, plain statement of the factual matters asserted.
13. The hearing was held on May 3, 2005, at the State Office of Administrative Hearings.
14. The work hardening program properly addressed Claimant's needs and Claimant's condition improved during the work hardening program.
15. On August 1, 2003, Claimant's treating physician made a recommendation for surgery.
16. On September 5, 2003, Carrier gave approval for the requested surgery.
17. After September 5, 2003, a work hardening program was no longer medically necessary because Claimant's treatment changed focus to a surgical intervention.
18. The therapeutic services Claimant received from Rehab 2112 were provided on a one-to-one basis.
19. There was insufficient documentation from Rehab 2112 that one-to-one supervision was required by Claimant.

V. CONCLUSIONS OF LAW

1. SOAH has jurisdiction over matters related to the hearing in this proceeding, including the authority to issue a decision and order, pursuant to TEX. LABOR CODE ANN. §§ 402.073(b) and 413.031(k) and TEX. GOV'T CODE ANN. ch. 2003.
2. Carrier timely filed a notice of appeal of the MRD decision pursuant to 28 TEX. ADMIN. CODE (TAC) §§ 133.308(u) and 148.3(a).
3. Adequate and timely notice of the hearing was provided in accordance with TEX. GOV'T CODE ANN. §§ 2001.051 and 2001.052 and 28 TAC 148.4(b).
4. Carrier had the burden of proving the case by a preponderance of the evidence, pursuant to 28 TAC § 148.21(h) and (i).
5. An employee who sustains a compensable injury is entitled to all health care reasonably required by the nature of the injury as and when needed that cures or relieves the effects naturally resulting from the compensable injury, promotes recovery, or enhances the ability of the employee to return to or retain employment. TEX. LABOR CODE ANN. § 408.021.
6. Carrier failed to prove that the work hardening program provided to Claimant from August 4 through September 5, 2003, was not medically necessary.
7. Based on the foregoing Findings of Fact and Conclusions of Law, Carrier proved that one-on-one therapeutic exercises provided to Claimant by Rehab 2112 from June 4 through June 30, 2003, were not medically necessary.

ORDER

IT IS ORDERED THAT Texas Medical Insurance Company shall reimburse Rehab 2112 for work hardening sessions that it provided to Claimant from June 6 to September 5, 2003. Texas Medical Insurance Company is not liable to reimburse Rehab 2112 for therapeutic exercises provided to Claimant from June 4 through June 30, 2003.

Signed July 21, 2005.

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