

SOAH DOCKET NO. 453-05-3170.M2
MDR Tracking No. M2-05-0200-01

MILLENNIUM CHIROPRACTIC AND SCOLIOSIS CENTER,	§	BEFORE THE STATE OFFICE
Petitioner	§	
	§	
V.	§	OF
	§	
ST. PAUL TRAVELERS,	§	
Respondent	§	ADMINISTRATIVE HEARINGS

DECISION AND ORDER

Millennium Chiropractic and Scoliosis Center (Petitioner) requested a hearing before the State Office of Administrative Hearings following a decision of the Texas Workers' Compensation Commission (Commission) acting through Medical Review of Texas, an Independent Review Organization (IRO). The Commission's Order denied Petitioner's preauthorization request for an 8-week work hardening program based upon its determination that the requested treatment was not medically necessary within the meaning of Sections 408.021 and 401.011(19) of the Texas Workers' Compensation Act, TEXAS LABOR CODE ANN. §401 et. seq. (the Act).

This decision grants the requested preauthorization for an 8-week work hardening program.

A hearing convened on May 31, 2005, before Administrative Law Judge (ALJ) Ami L. Larson. Petitioner appeared by telephone through its representative, Eric A. Vanderwerff, D.C., and was not represented by counsel. Jeanne Schafer appeared in person as representative counsel for St. Paul Travelers (Respondent).

There were no contested issues of notice or jurisdiction. The record closed upon adjournment of the hearing that day.

On ____ (Claimant) was lifting 20-pound bags of flour while working as a ____ at a restaurant and injured her shoulders, neck, and upper back. Claimant's injury was determined to be compensable under the Texas Workers' Compensation Act (Act). Petitioner provided treatment to Claimant for her injuries and recommended that she participate in a work hardening program for which it now seeks preauthorization.

At the hearing, Petitioner's representative, Eric A. Vanderwerff, D.C., testified. The undersigned ALJ finds Dr. Vanderwerff's testimony persuasive. According to Dr. Vanderwerff, Claimant is an appropriate candidate and meets all of the entrance criteria for the requested work hardening program. Additionally, Claimant is very likely to benefit from a work hardening program since she showed improvement in her strength and biomechanics from the more limited active therapy in which she has already engaged. According to the latest functional capacity evaluation results, Claimant's current level of functioning continues to interfere with her ability to meet the requirements of her job. According to a psychological evaluation of Claimant completed by Sandra Whigham, no psychological barriers would prevent Claimant's participation in a work hardening program.

The work hardening program recommended by Dr. Vanderwerff would serve to determine what types of physical activities provoke pain in order to strengthen Claimant's weak areas, develop strategies to work around existing pain, and ultimately help prevent re-injury to Claimant once she returns to work. Moreover, the work hardening program for which Dr. Vanderwerff seeks preauthorization is different from and much more intensive than the treatment already provided to Claimant.

Respondent's preauthorization review and internal appeal process determined that the procedure was not medically necessary. By letter dated October 29, 2004, the Independent Review Organization (IRO) concluded that the requested eight-week work hardening program was not medically necessary treatment for Claimant.¹

¹ The IRO decision dated October 29, 2005, was admitted into evidence for the limited purpose of

Petitioner had the burden of proof in this proceeding. Pursuant to the Act, an employee who has sustained a compensable injury is entitled to all health care reasonably required by the nature of the injury as and when needed. Under the Act, the employee is specifically entitled to health care 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.

In this instance, Petitioner put forth evidence sufficient to meet its burden of proof as to why the requested eight-week work hardening program is medically necessary for Claimant. It is undisputed that Claimant suffered an injury and that her pain and weakness have not resolved to the extent that she is able to return to work. More conservative treatment and medications have been tried and have produced some improvement, but not enough to allow Claimant to return to work. The undersigned ALJ finds the record supports preauthorization for the requested work hardening program as medically necessary.

II. FINDINGS OF FACT

1. On ___(Claimant) sustained a work-related injury to her shoulders, neck, and upper back.
2. Claimant has received treatment by Eric A. Vanderwerff, D.C. (Petitioner), including one hour of rehabilitation exercises three days a week.
3. Claimant showed increased strength and improved biomechanics from treatment, but she continues to have pain that prevents her from performing the duties required by her job.
4. The latest functional capacity evaluation of Claimant indicates that her current level of functioning continues to interfere with her ability to meet the requirements of her job.
5. No psychological barriers would prevent Claimant's participation in a work hardening program.
6. A work hardening program would serve to determine what types of physical activities provoke Claimant's pain in order to strengthen her weak areas, develop strategies to work

demonstrating that Petitioner had the burden of proof in this proceeding.

around existing pain, and ultimately prevent re-injury to Claimant once she returns to work.

7. More conservative treatment and medications have been tried and produced some improvement, but not enough to allow Claimant to return to work.
8. Petitioner recommended Claimant as a good candidate for an eight-week work hardening program designed to help her return to work and prevent re-injury.
9. St. Paul Travelers (Respondent) preauthorization review and internal appeal process determined that the work hardening program requested by Petitioner was not medically necessary.
10. By letter dated October 29, 2004, Medical Review of Texas, an Independent Review Organization, (IRO) concluded the requested work hardening program was not medically necessary.
11. Petitioner timely requested a hearing before the State Office of Administrative Hearings (SOAH).
12. By letter dated January 14, 2005, the Texas Workers' Compensation Commission (Commission) issued a notice of hearing.
13. A hearing was convened by Administrative Law Judge Ami L. Larson on May 31, 2005, in the hearing rooms of SOAH.
14. Petitioner appeared by telephone and was not represented by counsel. Jeanne Schafer appeared in person as counsel for Respondent.
15. There were no contested issues of notice or jurisdiction.
16. The record closed upon adjournment of the hearing on May 31, 2005.

III. CONCLUSIONS OF LAW

1. The Commission has jurisdiction to decide the issue presented pursuant to the Texas Workers' Compensation Act, TEXAS LABOR CODE ANN. § 413.031.
2. The IRO decision is deemed a Decision and Order of the Commission.
3. SOAH 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 ANN. § 413.031(k) and TEX. GOV'T. CODE ANN. ch. 2003.

4. Petitioner timely requested a hearing in this matter pursuant to 28 TEX. ADMIN. CODE (TAC) §§ 102.7 and 148.3.
5. Notice of the hearing was proper and complied with the requirements of TEX. GOV'T. CODE ANN. ch. 2001.
6. Petitioner had the burden of proof in this matter, which was the preponderance of evidence standard. 28 TAC §§ 148.21(h) and (i).
7. An employee who has sustained a compensable injury is entitled to all health care reasonably required by the nature of the injury as and when needed. The employee is specifically entitled to health care 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. TEXAS LABOR CODE ANN. § 408.021(a).
8. Pursuant to TEXAS LABOR CODE ANN. § 413.014, for a carrier to be liable for certain services and supplies, the service must be preauthorized by the carrier or by order of the Commission.
9. The requested work hardening program is medically necessary.

ORDER

THEREFORE IT IS ORDERED that Petitioner's request for an eight-week work hardening program for Claimant is **GRANTED**.

SIGNED June 15, 2005.

**AMI L. LARSON
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS**