

**SOAH DOCKET NO. 453-05-3285.M2
TWCC NO. M2-05-0339-01**

AMERICAN HOME ASSURANCE CO.,	§	BEFORE THE STATE OFFICE
Petitioner	§	
	§	
V.	§	OF
	§	
ERIC VANDERWERFF, D.C.	§	
Respondent		ADMINISTRATIVE HEARINGS

DECISION AND ORDER

American Home Assurance Co., (Carrier) appealed the decision of an Independent Review Organization (IRO) authorizing a work hardening program for Claimant ____ The work hardening program was recommended by Provider, Eric Vanderwerff, D.C. The Administrative Law Judge (ALJ) finds that Carrier did not meet its burden of showing that the requested work hardening program is not medically necessary. Therefore, Carrier is ordered to preauthorize the requested treatment.

The hearing convened and closed on March 31, 2005, before the State Office of Administrative Hearings (SOAH) with ALJ Steven M. Rivas presiding. Carrier was represented by Michelle Lopez, attorney. Provider appeared and represented himself.

I. DISCUSSION

A. Background Facts

Claimant sustained a compensable back injury on ____, and was treated with physical therapy and diagnostic tests. Provider recommended Claimant undergo a work hardening program and sought preauthorization from Carrier. Carrier denied the work hardening program as being not medically necessary, and this dispute was referred to an IRO, which found the work hardening program was medically necessary. Carrier appealed the IRO decision to SOAH.

B. Applicable Law

Pursuant to TEX. LAB. CODE ANN § 408.021, of the Texas Workers' Compensation Act ("the Act" an employee who sustains a compensable injury is entitled to all 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.

Under the Act at § 401.011(19), health care includes all reasonable and necessary medical aid, medical examinations, medical treatment, medical diagnoses, medical evaluations, and medical services.

Certain categories of health care identified by the Commission require preauthorization, which is dependant upon a prospective showing of medical necessity under § 413.014 of the Act and 28 TEX. ADMIN. CODE (TAC) § 134.600. Under 28 TAC §' 134.600(h)(9), preauthorization is required for the work hardening program requested by Provider.

C. Evidence and Analysis

Carrier did not offer sufficient evidence to show that the work hardening program is not medically necessary. Based on the evidence presented, the ALJ believes Claimant would benefit from a work hardening program to perform his job duties as a grocery stocker.

Carrier relied on the testimony of Michael Hamby, D.C., who asserted Claimant was not entitled to work hardening based on the results of his diagnostic tests. Dr. Hamby performed a Required Medical Examination (RME) on Claimant and reviewed the results of other diagnostic tests. Dr. Hamby concluded that all previous tests were "normal" and the Provider misinterpreted a disc bulge or radiculopathy. Additionally, Dr. Hamby found that Claimant exhibited signs that he was "malingering." But, according to Dr. Hamby, the most convincing evidence that Claimant was not entitled to work

hardening was the absence of any psycho-social issues. Specifically, Dr. Hamby found Claimant

had no signs of depression, or family problems that would indicate the need for work hardening. Carrier emphasized this point through Dr. Hamby during his direct examination; however, Carrier did not clearly explain how the absence of psycho-social issues like these disqualified Claimant from work hardening.

Provider asserted the results of Claimant's diagnostic tests were interpreted correctly, and that Claimant never showed signs that he malingered during his treatment. Adrian Olivares, D.C., examined Claimant on May 20, 2004, and found Claimant exhibited "classic disc injury signs." Additionally, Dr. Olivares found Claimant was in "severe distress" and was "walking with a limp" The EMG performed by Sherine Reno, M.D., on June 17, 2004, indicated Claimant suffered from lumbar radiculopathy. Furthermore, the MRI performed by Ellis Robertson, M.D., on September 21, 2004, indicated Claimant suffered from "annular disc bulging" at the L4-L5 level.

Provider additionally asserted that Claimant's lack of psycho-social issues actually supported Claimant's entitlement to work hardening. According to Provider, under the Commission for Accreditation of Rehabilitation Facilities (CARF) guidelines, the entrance criteria for admitting patients to work hardening includes having "medical, behavioral, psychological, or other conditions that *do not* prohibit their participation in the program." (Emphasis added) Additionally, under the CARF guidelines, the criteria for admitting a patient into a work hardening program includes patients who are likely to benefit from the program and whose current level of functioning due to injury interferes with their ability to carry out required tasks in the workplace. Provider admitted Claimant's job description as a stocker, which indicated Claimant was required to lift stacked boxes of groceries weighing 50 lbs., unpack groceries from boxes and place them on a shelf, climb a stepladder, adjust metal shelves, and stack empty pallets weighing 30 lbs. each.

Based on the record, Carrier presented insufficient evidence that Claimant could not benefit from the work hardening program. Dr. Hamby's opinion of the diagnostic tests was clearly unsubstantiated by the evidence. Under § 408.021 of the Act, an employee who sustains a compensable injury is entitled to all health care that promotes recovery, or enhances the ability of the

employee to return to or retain employment. The record supports a finding that the Claimant will

benefit from the requested work hardening program. Therefore, the ALJ orders preauthorization.

II. FINDINGS OF FACT

1. Claimant sustained a compensable back injury on ____.
2. As a result of Claimant's injury, he came under the care of Provider, Eric Vanderwerff, D.C., who recommended Claimant undergo a work hardening program.
3. Provider sought preauthorization from American Home Assurance Company (Carrier), which was denied as being not medically necessary.
4. Provider sought medical dispute resolution with an Independent Review Organization (IRO), which held the requested treatment was medically necessary.
5. Carrier timely appealed the IRO decision to the State Office of Administrative Hearings.
6. Notice of the hearing in this case was mailed to the parties on January 19, 2005. The 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. In the notice, the Commission's staff indicated that it would not participate in the hearing.
7. The hearing convened and closed on March 31, 2005, before Steven M. Rivas, Administrative Law Judge. Carrier appeared and was represented by Michelle Lopez, attorney. Provider appeared and represented himself.
8. Claimant was employed as a grocery stocker with ____ before the injury.
9. Claimant's job duties include stacking boxes, climbing a stepladder, and stacking empty pallets.
10. Claimant's diagnostic tests indicated Claimant had a bulging disc at L5-S1, and lumbar radiculopathy.
11. Claimant has no medical, behavioral, or psychological issues that would preclude him participating in the requested work hardening program.
12. Claimant is unable to carry out his required job duties as a result of his compensable injury.
13. Claimant would likely benefit from the requested work hardening program.

III. CONCLUSIONS OF LAW

1. The Commission has jurisdiction over this matter pursuant to TEX. LAB. CODE ANN. §' 413.031.
2. 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.
3. Proper and timely notice of the hearing was effected upon the parties according to TEX. GOV'T CODE ANN. §§ 2001.051 and 2001.052 and 28 TEX. ADMIN. CODE § 148.4.
4. Carrier had the burden of proof by a preponderance of the evidence, pursuant to TEX. LAB. CODE ANN. §' 413.031 and 28 TEX. ADMIN. CODE§148.21(h).
5. Carrier offered insufficient evidence that the requested work hardening program would not benefit Claimant or treat Claimant's compensable injury in accordance with TEX. LAB. CODE ANN§ 408.021.
6. Based on the above Findings of Fact and Conclusions of Law, the request for preauthorization should be granted.

ORDER

IT IS ORDERED THAT American Home Assurance Company authorize the requested work hardening program.

SIGNED April 27, 2005.

**STEVEN M. RIVAS
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS**