

**SOAH DOCKET NO. 453-05-3660.M5
MRD NO. M5-04-3709-01**

**REHAB 2112,
Petitioner,**

VS.

**HARTFORD UNDERWRITERS
INSURANCE,
Respondent.**

BEFORE THE STATE OFFICE

OF

ADMINISTRATIVE HEARINGS

DECISION AND ORDER

REHAB 2112 (Provider) appealed the decision of the Texas Workers' Compensation Commission's (Commission's)¹ Medical Review Division (MRD), which found, based on a review by an independent review organization (IRO), that some of the work hardening services provided by Rehab 2112 to Claimant, ____, were not medically necessary. The Administrative Law Judge (ALJ) finds that Provider failed to meet its burden of proving the work hardening services were medically necessary.

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

On ____, Claimant, a welder, injured the posterior aspect of his ankle and calf when a heavy metal object, weighing 200-300 pounds, fell about three feet and struck him. Claimant reported for chiropractic care about five days after the injury and received a customary amount of chiropractic care. Claimant then participated in the work hardening program at issue from July 22, 2003 through September 4, 2003 at Rehab 2112 (Provider). Carrier denied reimbursement for work hardening due

¹Effective September 1, 2005, the functions of the Commission have been transferred to the newly created Division of Worker's Compensation at the Texas Department of Insurance.

to lack of medical necessity.

The IRO agreed with Carrier that work hardening services were not medically necessary. Specifically, it found that the claimant was functioning at the medium/heavy-duty level before entering the program and that his welding job only required a medium duty. Additionally, the IRO found that there were no psychological issues, other than some non-specific anxiety, to justify the expensive multi-disciplinary program and minimal to no improvement over the course of the program.

The hearing convened on August 9, 2005, at the facilities of the State Office of Administrative Hearings, 300 W. 15th St., Austin, Texas. ALJ Bill Zukauckas presided. Provider was represented by Robert Kubicki, attorney. Hartford Underwriters Insurance did not appear. The record closed the day of the hearing.

II. PROVIDER'S POSITION

Dr. Michelle Ivey is the executive director of Provider. She testified that work hardening was appropriate because Claimant met the CARF² 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. Dr. Ivey testified the Claimant made range of motion gains as a result of the program, indicating that the program had been helpful. She also testified the program was medically necessary to address Claimant's overall endurance and his ability to stand and walk on the job even though Claimant entered the program at a physical demand category higher than that of his welding job. She testified that a psychological assessment was made, contrary to the assertions of the IRO, and that it indicated Claimant could benefit from the psychological components of Provider's work hardening program.

² Commission of Accreditation of Rehabilitation Facilities.

III. ANALYSIS

The ALJ concludes that Provider has not met its burden of showing the medical necessity of the work hardening program. In this case, Claimant was already functioning above the medium physical demand category of his welding job at the time he entered the work hardening program. Although Provider explains that Claimant needed the program to address the endurance, range of motion, and standing and walking needs of the Claimant, the ALJ agrees with the IRO that Claimant made no significant progress over the course of the eight weeks (other than some range-of-motion improvement). The physical demand level of medium/heavy did not increase.

Provider did not show Claimant needed the psychological component of this multi-disciplinary work hardening program. Provider cited the July 11, 2003, screening inventory by Kyle Babick, Ph.D., as showing the need for the multi-disciplinary program. That assessment notes only anxiety, sleep problems, and an overly protective family. Claimant did not show why a cheaper single disciplinary approach like work conditioning might not have been as effective, assuming strength and endurance conditioning was warranted at all.

The ALJ finds that the IRO gave consideration to Claimant's fracture of the calcaneus. That is, it recognized that this fracture might be symptomatic for sometime, but believed no amount of work hardening, or other physical therapy would resolve it any faster than the natural healing process. The IRO was persuasive in saying that besides the fracture, the only remaining medical issue was the ankle sprain/strain which should have resolved itself in six to eight weeks, well before the work hardening began.

Based on the above, the ALJ concludes that Provider failed to meet its burden of proving that the work hardening services at issue were medically necessary.

IV. FINDINGS OF FACT

1. On ____, Claimant ____ sustained a work-related injury to his left ankle, calf, and heel.
2. On the date of injury, the Claimant's employer was insured by Hartford Underwriters Insurance (Carrier).
3. Provider provided work hardening services to the Claimant from July 22, 2003 through September 4, 2003, for which it sought reimbursement.
4. Carrier denied reimbursement for the work hardening and therapeutic services referenced in Finding of Fact No. 3.
5. Provider filed a request for medical dispute resolution with the Texas Workers' Compensation Commission (Commission).
6. An independent review organization (IRO) reviewed the medical dispute and found that the work hardening at issue was not medically necessary.
7. The Commission's Medical Review Division (MRD) adopted the IRO decision.
8. Provider appealed the MRD decision and requested a contested case hearing by a State Office of Administrative Hearings (SOAH) Administrative Law Judge (ALJ).
9. On February 7, 2005, 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.
10. The hearing was held on August 9, 2005, at the State Office of Administrative Hearings.
11. The work hardening program did not address Claimant's medical needs.
 1. Claimant's sprain/strain would have likely resolved itself within six to eight weeks after the ankle injury. The work hardening began after that time period.
 2. Claimant's fracture of the calcaneus, and the pain symptoms arising from that, was not helped by work hardening.
 3. Provider was unable to show that Claimant received the most cost effective treatment. Specifically, Provider failed to show that Claimant's generalized anxiety

was enough to warrant his placement in an expensive multi-disciplinary, work-hardening program providing psychological counseling.

4. Claimant was already at the medium/heavy physical demand category when the work hardening began and the requirements of his job only demanded a medium physical demand category.
5. Claimant's physical demand category was not improved by the work hardening.

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. Provider 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. Provider had the burden of proving the case by a preponderance of the evidence, pursuant to 28 TAC § 148.21(h) and (I).
5. Provider failed to prove that the work hardening program at issue in this appeal, provided to Claimant from July 22, 2003 through September 4, 2003, was medically necessary.

ORDER

IT IS ORDERED THAT Hartford Underwriters Insurance owes no reimbursement to Rehab 2112 for work hardening services at issue in this appeal rendered from July 22, 2003 through September 4, 2003.

SIGNED September 29, 2005.

**BILL ZUKAUCKAS
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS**