

<b>MCALLEN WORK REHABILITATION CENTER,</b>	'	<b>BEFORE THE STATE OFFICE</b>
<b>Petitioner</b>	'	
<b>V.</b>	'	<b>OF</b>
<b>HARTFORD INSURANCE COMPANY</b>	'	
<b>Respondent</b>	'	<b>ADMINISTRATIVE HEARINGS</b>

**DECISION AND ORDER**

**I. INTRODUCTION**

McAllen Work Rehabilitation Center appealed a decision by the Texas Workers' Compensation Commission's Medical Review Division (MRD) that ordered reimbursement for four weeks of a work hardening program but denied reimbursement for the following four weeks of the program. As reflected in the Findings of Fact and Conclusions of Law, this decision upholds MRD's determination, finding the additional four weeks of the program were not medically necessary for the worker's compensation claimant.

The hearing convened as scheduled on September 8, 2005. After a portion of the evidence was presented, the hearing was recessed and reconvened on September 16, 2005. Presentation of the evidence was completed and the record closed on that day. The hearing was conducted at the State Office of Administrative Hearings, William P. Clements Building, 300 West 15<sup>th</sup> Street, Fourth Floor, Austin, Texas, before the undersigned Administrative Law Judge (ALJ). Robert B. Fraser, D.C., represented the Provider, and attorney Doug Pruitt represented the Carrier.

**II. FINDINGS OF FACT**

1. On January 26, 2005, based on an Independent Review Organization's (IRO's) determination, the Texas Workers' Compensation Commission's Medical Review Division (MRD) granted the request of McAllen Work Rehabilitation Clinic (Provider) for reimbursement for work hardening provided to a workers' compensation claimant from September 29, 2003, to October 28, 2003. However, also based on the IRO's decision, MRD denied Provider's request for reimbursement for work hardening services provided from October 29, 2003 to November 21, 2003.

2. In response to the MRD decision, the Provider timely requested a hearing before the State Office of Administrative Hearings (SOAH). The Carrier did not appeal.
3. Notice of the hearing, dated February 24, 2005, was sent to the Provider and to Hartford Insurance Company, the Carrier.
4. 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.
5. The hearing convened as scheduled on September 8, 2005. Both parties were represented. After a portion of the evidence was presented, the hearing was recessed and reconvened on September 16, 2005. Presentation of the evidence was completed and the record closed on that day.
6. The 43-year-old claimant was injured\_\_\_, while lifting a heavy object.
7. As reflected in MRI and nerve-conduction tests, the claimant had:  
  
a moderate, posterior disc herniation at L4-L5 with moderate right-lateral-spinal stenosis and moderate left-foraminal stenosis;  
moderate neural-foraminal stenosis and slight central spinal stenosis at L2-L3;  
slight foraminal stenosis bilaterally at L5-S1; and  
left S1 radiculopathy.
8. Although physicians recommended surgery and epidural steroid injections to treat the claimant's injuries, the claimant chose not to pursue those recommended treatment options.
9. The claimant's pain level was seven on a one-to-ten scale for most of the time after his injury.
10. When the claimant began work hardening with the Provider, he had experienced pain beyond the primary intervention period phase with continued, significant impairment and signs of mental stress.
11. Prior to beginning work hardening, the claimant had received several weeks of physical therapy without experiencing significant improvement.
12. The claimant began work hardening on September 29, 2003, when he had not reached the level of maximum medical improvement.
13. A short trial of work hardening should have reflected whether that health care would assist the claimant in reaching maximum medical improvement.
14. When the clamant began work hardening, he was at a light-to-medium physical demand level.
15. Although by October 24, 2003, the claimant's back was reported to be stronger and more

flexible, the level at which he did lifting and strengthening exercises had not changed significantly.

16. After four weeks of work hardening, the claimant would have been expected to have reached a medium physical capacity level, but he had not reached that level.
17. Between the fourth and eighth weeks of the work hardening program, the claimant improved only with an increased weight for abdominal flexion, a small increase in seated calf raises, and an increase in the weight of the leg press from 105 to 120. The claimant had no improvement in other lifting and flexion.
18. In the fourth and eight weeks of the work hardening program, the claimant reported moderate low back pain that radiated into his buttocks and left leg. In both weeks, he reported limitations due to low back pain and stiffness.
19. After four weeks of work hardening without significant improvement, the claimant should have transitioned to a home exercise program.

### **III. CONCLUSIONS OF LAW**

1. The Texas Workers' Compensation Commission (the Commission) has jurisdiction over this matter pursuant to Section 413.031 of the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. ch. 401 *et seq.*
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. Adequate and timely notice of the hearing was provided in accordance with TEX. GOV'T CODE ANN. ' 2001.052.
4. The Provider had the burden of proof in this matter, pursuant to 28 TEX. ADMIN. CODE ' 148.14.
5. The Provider failed to meet its burden of proving reimbursement for work hardening sessions between October 29, 2003, to November 21, 2003, promoted the claimant's recovery or enhanced his ability to return to work or obtain employment.
6. Based on the Findings of Fact and Conclusions of Law, the Provider's request for additional reimbursement should be denied.

### **ORDER**

**IT IS, THEREFORE, ORDERED** that McAllen Work Rehabilitation Center's request for additional reimbursement from Hartford Insurance Company is denied.

**SIGNED November 2, 2005.**

---

**SARAH G. RAMOS  
ADMINISTRATIVE LAW JUDGE  
STATE OFFICE OF ADMINISTRATIVE HEARINGS**