

DEBBIE CRAWFORD, D.O.	§	BEFORE THE STATE OFFICE
	§	
V.	§	OF
	§	
OLD REPUBLIC INSURANCE COMPANY	§	ADMINISTRATIVE HEARINGS
	§	

### **DECISION AND ORDER**

Debbie Crawford, D.O., (Provider) challenges the decision of the Independent Review Organization (IRO) denying her preauthorization request for 20 sessions of work hardening for injured worker \_\_\_(Claimant). After considering the evidence presented, the Administrative Law Judge (ALJ) concludes that Provider has not shown by a preponderance of the evidence that Claimant is an appropriate candidate for work hardening. Accordingly, the ALJ finds that the 20 sessions of work hardening should not be preauthorized.

#### **I. BACKGROUND FACTS AND PROCEDURAL HISTORY**

Claimant suffered a compensable, work-related injury to his back on \_\_\_\_. After his injury, Claimant received ongoing conservative care. On September 8, 2004, Claimant underwent a functional capacity evaluation (FCE) to determine his functioning capabilities. Because Claimant did not speak English very well, one of his family members translated for him. Based on his performance on a treadmill test, the FCE showed that Claimant had significant cardiovascular limitations. Thereafter, on September 16, 2004, Provider examined Claimant and determined that he was an appropriate candidate for work hardening. Provider then recommended and sought preauthorization from Old Republic Insurance Company (Carrier) for 20 sessions of work hardening for Claimant. Carrier denied the request for preauthorization, concluding that Claimant's poor cardiovascular condition prevented him from being a candidate for work hardening.

A second FCE was performed on Claimant on October 11, 2004, with a different person attending and translating for Claimant. At that time, however, Claimant did not repeat the treadmill test. Provider requested reconsideration by the Carrier and, when the Carrier denied the preauthorization request again, Provider requested medical dispute resolution by the Texas Workers' Compensation Commission (Commission). The matter was referred to an IRO designated by the Commission for the review process. The IRO determined that Claimant was not an appropriate candidate for work hardening based on his poor performance on the treadmill test and therefore denied the requested preauthorization. Provider then requested a hearing before the State Office of Administrative Hearings (SOAH), resulting in this proceeding.

## II. DISCUSSION AND ANALYSIS

The sole issue in this case is whether Claimant is an appropriate candidate for work hardening. Carrier denied preauthorization solely on this issue, and did not present other reasons or arguments why work hardening would not be medically necessary for treatment of Claimant's compensable injury. Carrier argues that Claimant's poor treadmill test results show low cardiovascular conditioning that would preclude Claimant from being a candidate for work hardening.

In response, Provider argues that Claimant's poor performance on the cardiovascular portion of the FCE is attributable to translation problems (in that Claimant did not give full effort because he did not fully understand what was expected of him), and is not reflective of his true condition or qualification for work hardening. Provider also testified that she has put Claimant on a home exercise program that has improved Claimant's cardiovascular conditioning. Provider offered into evidence test results from April 13, 2005, showing that Claimant performed the treadmill test at the 100<sup>th</sup> percentile, achieving an excellent rating. Based on this, Provider argues that Claimant has no cardiovascular limitations that would preclude him from being an appropriate candidate for work hardening.

After considering the evidence and arguments, the ALJ concludes that Provider has not shown that Claimant is an appropriate candidate for work hardening. First, it is clear from the record that Claimant performed poorly on the treadmill test during his first FCE on September 8, 2004. Given that poor performance, he would not have been an appropriate candidate for work hardening. Therefore, based on the information available to them, both Carrier and the IRO were correct in determining that work hardening would not be appropriate for Claimant.

More recent test results, however, show that Claimant's treadmill performance has improved. Given that improvement, Provider argues that Claimant is now an appropriate candidate for work hardening. The problem with this argument, though, is that the ALJ cannot determine Claimant's candidacy for work hardening based solely on a more recent treadmill test. Ultimately, in determining Claimant's qualification for work hardening, the ALJ must consider the Claimant's condition *in totol*.

It is entirely possible that Claimant's overall condition has improved such that work hardening is no longer necessary, as reflected in Claimant's remarkable improvement in the treadmill test. Provider acknowledged during the hearing that she had not examined Claimant and determined his overall condition more recently. Rather, Provider relies on Claimant's examination and FCEs from September and October 2004, coupled with the treadmill test from April 2005. To be able to properly consider and give effect to the April 2005 treadmill test, though, the ALJ would also need to know the totality of Claimant's condition in April 2005. However, this information is not available to the ALJ. Accordingly, the ALJ cannot find that Claimant is in fact an appropriate candidate for work hardening at this time.

Therefore, the ALJ finds that work hardening should not be preauthorized. In support of this conclusion, the ALJ makes the following findings of fact and conclusions of law.

### III. FINDINGS OF FACT

1. \_\_\_\_ (Claimant) suffered a compensable, work-related injury to his back on \_\_\_\_.
2. Old Republic Insurance Company (Carrier) is the provider of workers' compensation insurance covering Claimant for his compensable injury.
3. On September 8, 2004, Claimant underwent a functional capacity evaluation (FCE) to determine his functioning capabilities. Based on his poor performance on a treadmill test, the FCE showed that Claimant had significant cardiovascular limitations.
4. On September 16, 2004, Claimant was seen by Debbie Crawford, D.O. (Provider) who determined that Claimant was an appropriate candidate for work hardening.
5. Provider sought preauthorization for 20 sessions of work hardening for Claimant.
6. Carrier denied preauthorization and Provider requested reconsideration by the Carrier.
7. Carrier again denied the request for preauthorization for work hardening for Claimant.
8. Provider requested medical dispute resolution by the Texas Workers' Compensation Commission's Medical Review Division, which referred the matter to an Independent Review Organization (IRO).
9. On April 1, 2005, after conducting medical dispute resolution, the IRO physician reviewer determined that Claimant was not an appropriate candidate for work hardening and, therefore, found that requested treatment should not be authorized.
10. On April 13, 2005, Provider requested a hearing on the IRO decision, and the case was referred to the State Office of Administrative Hearings (SOAH).
11. The hearing convened on May 31, 2005, with ALJ Craig R. Bennett presiding. Provider appeared personally. Carrier appeared through its attorney, Jennifer Elmer. The record closed that same day.
12. No parties have raised challenges to notice or jurisdiction.
13. Given his initial FCE results, Claimant was not an appropriate candidate for work hardening.
14. Although Claimant's treadmill test of April 13, 2005, showed good cardiovascular conditioning of Claimant, Provider did not present adequate evidence of Claimant's overall physical condition on that date, so as to justify the present necessity of work hardening for Claimant.

#### IV. CONCLUSIONS OF LAW

1. SOAH has jurisdiction over this proceeding, including the authority to issue a decision and order, pursuant to the Texas Workers' Compensation Act (the Act), specifically TEX. LABOR CODE ANN. §413.031(k) and TEX. GOV'T CODE ANN. ch. 2003.
2. The hearing was conducted pursuant to the Administrative Procedure Act, TEX. GOV'T CODE ANN. ch. 2001 and 28 TEX. ADMIN. CODE ch. 148.
3. The request for a hearing was timely made pursuant to 28 TEX. ADMIN. CODE § 148.3.
4. Adequate and timely notice of the hearing was provided according to TEX. GOV'T CODE ANN. §§ 2001.051 and 2001.052.
5. Provider has the burden of proof in this matter. 28 TEX. ADMIN. CODE §§ 148.21(h) and 133.308(v).
6. Provider has failed to show, by a preponderance of the evidence, that Claimant is an appropriate candidate for work hardening.
7. Provider's request for preauthorization should be denied.

#### **ORDER**

IT IS, THEREFORE, ORDERED that the requested preauthorization for 20 sessions of work hardening is denied.

**Signed June 27, 2005.**

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**CRAIG R. BENNETT  
ADMINISTRATIVE LAW JUDGE  
STATE OFFICE OF ADMINISTRATIVE HEARINGS**