

**ALBERTSON'S, INC.,
Petitioner**

V.

**REHAB 2112,
Respondent**

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BEFORE THE STATE OFFICE

OF

ADMINISTRATIVE HEARINGS

DECISION AND ORDER

I. INTRODUCTION

Albertson's, Inc. (Petitioner/Carrier) disputes the decision of an independent review organization (IRO) on behalf of the Texas Workers' Compensation Commission.¹ The IRO found that work hardening services provided by Rehab 2112 (Respondent/Provider) to ___ (Claimant) from June 27 through August 9, 2003, were not medically necessary. However, although Carrier denied reimbursement for the majority of the work hardening services under code V-Unnecessary treatment with peer review, for some work hardening service dates Carrier denied reimbursement to Provider using the code-E-Entitlement to benefits. The IRO decision did not address Carrier's use of code E. The Medical Review Division found that Carrier prevailed on issues of medical necessity but ordered Carrier to reimburse Provider for those dates of service denied using code E.

As set out below, the Administrative Law Judge (ALJ) finds that reimbursement to Provider for the disputed services is not required.

II. DISCUSSION

The code E is used when the carrier is disputing liability for the claim or compensability of the injury and the issue has not been finally adjudicated. For three dates of service, Carrier used code E and under the explanation, indicated "reimbursement has been denied based upon the recommendation of a peer review." Carrier argues that it complied with the Commission's rule at 28 TEX. ADMIN. CODE (TAC) 124.2(f) because the notification used "plain language" to provide a full and complete statement describing the carrier's action and its reason for such action. Although the code itself was in error, the explanation of the code at the bottom was correct. A peer review was completed on June 24, 2003.

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

Carrier contends that the correct explanation and the previous denials for the same services on previous dates of service put Provider on notice that medical necessity-not entitlement was at issue.

Provider disagrees and responds that the use of an E code was not adequate notice to Provider. Consequently, Provider argues it could not respond to Carrier's denial.

The ALJ finds that Provider had adequate notice that the work hardening services were denied based on medical necessity and not because there was a dispute concerning compensability. First, the work hardening services were part of a program of work hardening. Second, Carrier had denied work hardening services for the following dates of service using the V code: June 27 and 30 and July 2, 3, 14, and 15, 2003, before it sent out a denial for the July 16, 2003 date using the wrong code. Third, and most importantly, on the EOB where Carrier used code E, the explanation code at the bottom of the page stated that reimbursement had been denied based upon the recommendation of a peer review. A peer review had been performed before the work hardening program indicating that further chiropractic care was unnecessary because Claimant's condition should have been resolved four weeks after the injury. The ALJ concludes that Provider had adequate notice that medical necessity was at issue and had opportunity to respond to that claim.

III. FINDINGS OF FACT

1. On____, Claimant____, injured her lumbar spine while lifting boxes at work resulting in lumbar spine strain.
2. On the date of Claimant's compensable injury she was employed by Albertson's Inc., (Carrier), which is self-insured.
3. An MRI of Claimant's lumbar spine, dated May 14, 2003, revealed an unremarkable study and ruled out disc injury.
4. On May 16, 2003, Claimant presented to the offices of Rehab 2112 (Provider) and was diagnosed with lumbar disc displacement, joint stiffness, low back pain, muscle spasm, nerve irritation, and segmental dysfunction.
5. A Functional Capacity Evaluation dated June 16, 2003, indicated Claimant was able to function within a light physical demand level.
6. A peer review by Mike O'Kelley, D.C., was completed on June 24, 2003. It indicated that Claimant's lumbar strain should have resolved in four weeks, with eight visits of care. It further stated that continuation of chiropractic care would not be efficacious.

7. Claimant did not have any psychological deficits that warranted a work hardening program with a behavioral component.
8. From June 27 through August 8, 2003, Claimant received a work hardening program from Provider. The services provided in the work hardening program were not appropriate treatments for Claimant's lumbar strain/sprain.
9. Carrier disputed medical services provided Claimant from June 27 through August 8, 2003.
10. Provider sought reimbursement from the Carrier for the provided medical services at issue in this proceeding.
11. For the majority of the work hardening services, Carrier timely sent explanations of benefits to Provider denying the requested reimbursement using code V. On those forms, Carrier indicated under the explanation code "V unnecessary treatment (with peer review)" and, on the next line, "reimbursement has been denied based upon the recommendation of a peer review."
12. For work hardening services provided on July 16, July 22, and August 4, 2003, Carrier timely sent explanations of benefits to Provider denying the requested reimbursement using code E. On those forms, Carrier indicated under the explanation code "E" and, on the next line "reimbursement has been denied based upon the recommendation of a peer review."
13. The total amount in dispute for work hardening services provided on July 16, July 22, and August 4, 2003, which were denied using Code E, is \$1,152.00.
14. Provider timely filed a request for medical dispute resolution with the Texas Workers' Compensation Commission (TWCC).
15. An independent review organization (IRO) reviewed the medical dispute and found that the work hardening services provided from June 27 through August 9, 2003, were not medically necessary to treat the compensable injury.
16. Based on the IRO's findings, TWCC's Medical Review Division (MRD) denied Provider's request to be reimbursed for the work hardening services, but limited its finding to those services that were properly coded V when denied by Carrier.
17. The MRD granted Provider's request to be reimbursed for the work hardening services provided on July 16, July 22, and August 4, 2003 that were coded E when denied by Carrier.
18. After the IRO decision and MRD order were issued, Carrier asked for a contested-case hearing by a State Office of Administrative Hearings (SOAH) Administrative Law Judge (ALJ) concerning reimbursement for services provided on July 16, July 22, and August 4, 2003.
19. Provider did not request a hearing concerning the IRO decision and MRD order.
20. TWCC referred this case to SOAH for hearing before September 1, 2005.

21. Required notice of the contested-case hearing concerning the dispute was timely mailed to Carrier and Provider.
22. On June 20, 2006, ALJ Lilo D. Pomerleau held a contested-case hearing in this matter at the William P. Clements Office Building, Fourth Floor, 300 West 15th Street, Austin, Texas. Carrier appeared at the hearing through its attorney, Steven M. Tipton. Provider entered an appearance on that date but requested a continuance.
23. On August 1, 2006, ALJ Lilo D. Pomerleau reconvened the hearing at the William P. Clements Office Building, Fourth Floor, 300 West 15th Street, Austin, Texas. The record closed that same day.
24. On August 1, 2006, Provider appeared at the hearing represented by its attorney, Thomas R. Rhudy. Carrier appeared at the hearing through its attorney, Steven M. Tipton.

IV. 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) (West 2005); TEX. GOV'T CODE ANN. ch. 2003 (West 2005); and Acts 2005, 79th Leg., ch. 265 § 8.013, eff. Sept. 1, 2005.
2. Adequate and timely notice of the hearing was provided in accordance with TEX. GOV'T CODE ANN. §§ 2001.051 and 2001.052.
3. Based on the above Findings of Fact and TEX. GOV'T CODE ANN. § 2003.050 (a) and (b), 1 TEX. ADMIN. CODE § 155.41(b) (2004), and 28 TEX. ADMIN. CODE §§ 133.308(u) and 148.14 (2005), Carrier has the burden of proof in this case.
4. The injury described in Finding of Fact No. 1 was a compensable injury under the Texas Workers' Compensation Act (the Act), TEX. LAB. CODE ANN. § 401.001 *et seq.*
5. Based on the above Findings of Fact and Conclusions of Law, the work hardening services provided from June 27 through August 9, 2003, do not represent elements of health care medically necessary under § 408.021 of the Act.
6. When an insurance carrier makes or denies payment on a medical bill, the carrier must include on the proper form the correct payment exception code and a sufficient explanation to allow the sender (Provider) to understand the reason for the carrier's action. 28 TAC 133.304(c).
7. Provider had adequate notice that Carrier was disputing work hardening services given on July 16, July 22, and August 4, 2003.
8. Based on the above Findings of Fact and Conclusions of Law, work hardening services given on July 16, July 22, and August 4, 2003, should not be required to be reimbursed.

ORDER

IT IS ORDERED that Rehab 2112 is not entitled to reimbursement for the physical therapy given Claimant on dates of service July 16, July 22, and August 4, 2003.

SIGNED September 22, 2006.

**LILO D. POMERLEAU
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS**