

SOAH DOCKET NO. 453-03-4133.M4
TWCC MRD NO. M4-03-1774-01

FINAL STAGE, Petitioner	§	BEFORE THE STATE OFFICE
	§	
V.	§	OF
	§	
TEXAS MUTUAL INSURANCE COMPANY, Respondent	§	ADMINISTRATIVE HEARINGS

DECISION AND ORDER ON REMAND

Final Stage (Provider), appealed the findings and decision of the Texas Workers' Compensation Commission's (Commission) Medical Review Division (MRD), which denied reimbursement for a work hardening program that was administered to Claimant from December 11, 2001, through January 25, 2002. In this decision, the Administrative Law Judge finds Provider is not entitled to further reimbursement from Texas Mutual Insurance Company (Carrier).

I. JURISDICTION, NOTICE, AND PROCEDURAL HISTORY

In a previous Decision and Order dated February 19, 2004, the undersigned ALJ found Provider was entitled to reimbursement from Carrier for the work hardening program it administered to Claimant. Carrier appealed that decision to the 353rd District Court of Travis County, Texas. On January 31, 2006, Judge Margaret A. Cooper reversed the ALJ's Decision and remanded this matter to the State Office of Administrative Hearings (SOAH) with instructions that the ALJ determine whether Provider met its burden of proving that it complied with section (II)(E) of the Commission's Medicine Ground Rules relating to work hardening.

There were no further contested issues of jurisdiction or notice. Those issues are addressed in the findings of fact and conclusions of law without further discussion here.

The hearing in this matter convened and closed on October 26, 2006, at the SOAH before Steven M. Rivas, ALJ. Provider appeared and was represented by John Randolph, D.C., Claimant's treating doctor. Carrier was represented by Scott Placek, attorney.

II. DISCUSSION

A. Background Facts

Claimant sustained a compensable injury on December 11, 2001, through January 25, 2002. Provider billed Carrier \$12,800 for the work hardening program, and Carrier denied reimbursement. Provider appealed Carrier's denial to the Commission's MRD, which agreed with Carrier that Provider was not entitled to reimbursement. Provider appealed the MRD ruling to SOAH, which found Provider was entitled to full reimbursement. This case was appealed to District Court, and remanded back to SOAH to determine whether the work hardening program complied with the applicable Commission Medicine Ground Rules.

B. Applicable Law

The Texas Labor Code contains the Texas Workers' Compensation Act (the "Act") and provides the relevant statutory requirements regarding compensable treatment for workers' compensation claims. In particular, TEX. LAB. CODE ANN. § 408.021 provides in pertinent part: an employee who sustains a compensable injury is entitled to all health care reasonably required by the nature of the injury as and when needed. The employee is specifically entitled to health care that: (1) cures or relieves the effects naturally resulting from the compensable injury; (2) promotes recovery; or (3) enhances the ability of the employee to return to or retain employment.

Additionally, pursuant to Judge Cooper's order, the ALJ must consider the Commission's Medicine Ground Rules, which were part of the 1996 Medical Fee Guideline in effect at the time of Claimant's treatment. The applicable rule is as follows:

Work Hardening: A highly structured, goal-oriented, individualized treatment program designed to maximize the ability of the persons served to return to work. Work Hardening programs are interdisciplinary in nature with a capability of addressing the functional, physical, behavioral, and vocational needs of the injured worker. Work Hardening provides a transition between management of the initial injury and return to work while addressing the issues of productivity, safety, physical tolerances, and work behaviors. Work Hardening programs use real or simulated work activities in a relevant work environment in conjunction with physical conditioning tasks. These activities are used to progressively improve the biomechanical, neuromuscular, cardiovascular/metabolic, behavioral, attitudinal, and vocational functioning of the persons served.

1. Entrance/admission criteria shall enable the program to admit:
 - a. persons who are likely to benefit from the program;
 - b. persons whose current levels of functioning due to illness or injury interfere with their ability to carry out specific tasks required in the workplace;
 - c. persons whose medical, psychological, or other conditions do not prohibit participation in the program; and
 - d. persons who are capable of attaining specific employment upon completion of the program. 28 TEXAS ADMINISTRATIVE CODE (TAC) § 134.201 (abolished January 1, 2002).

C. Evidence and Analysis

Provider noted during the fourth week of the six-week work hardening program that Claimant did not plan to return to work. Claimant's admission that she would be seeking social security disability benefits rather than returning to work was the first indication that the work

hardening may not be medically necessary. Under the Medicine Ground Rules, a work hardening program is designed to maximize an injured worker's ability to return to work. Claimant's desire not to return to work did not comply with the objectives of work hardening under the ground rules.

Carrier also asserted Claimant's lack of progress in the program was another basis for denying reimbursement of the program. Claimant's former job duties entailed working as a _____ which required significant strength and repetitive motions based on her initial interview with Provider. At the time she entered the work hardening program, Provider admitted that Claimant was in a sedentary condition and was unable to achieve a higher work level after her participation in the program. The records indicate Claimant's attitude and range of motion did not improve despite her consistent effort in the exercises. The records additionally indicated Claimant's pain level remained high during the program. Toward the conclusion of the program, Provider suggested a pain program might be more beneficial to Claimant, having failed to show any significant improvement from the work hardening program.

Carrier's final point in denying reimbursement was Provider's failure to produce an exit/discharge summary as referenced by (II)(E)(10) of the ground rules. The summary should present functional status and potential related to the targeted job, alternative occupations, or current job availability. Provider admitted he did not produce a report based on Claimant's failure to complete the work hardening program. Provider was unable to obtain any of the necessary information without Claimant's input. Furthermore, Provider stated Claimant withdrew from treatment all together based on her frustration with the system. Provider characterized Claimant's experience as an uphill battle with Carrier due to being constantly denied preauthorization for services that were prescribed.

The work hardening program administered to Claimant by Provider did not comply with the applicable Medicine Ground Rules and, as such, should not be reimbursed by Carrier.

III. FINDINGS OF FACT

1. Claimant, _____, sustained a compensable injury on _____.
2. Claimant was referred to Final Stage (Provider) to undergo a work hardening program, which occurred from December 11, 2001, through January 25, 2002.
3. Provider billed Texas Mutual Insurance Company (Carrier) for the work hardening program.
4. Carrier denied reimbursement, and Provider appealed this matter to the Commission's Medical Review Division, which agreed with Carrier that reimbursement was not proper.
5. Provider filed a request for hearing before the State Office of Administrative Hearings (SOAH), which initially heard this matter on December 18, 2003.
6. A Decision and Order was issued on February 19, 2004, by presiding Administrative Law Judge (ALJ) Steven M. Rivas, which awarded reimbursement to Provider.
7. Carrier appealed the Decision and Order to the 353rd District Court of Travis County, Texas.
8. On January 31, 2006, Judge Margaret A. Cooper reversed the ALJ's Decision and remanded this matter to the SOAH with instructions that the ALJ determine whether Provider met its burden of proving that it complied with section (II)(E) of the Commission's Medicine Ground Rules relating to work hardening.
9. Notice of the hearing was sent September 9, 2006.
10. The hearing convened on October 26, 2006, with Steven M. Rivas, ALJ presiding. Provider appeared and was represented by John Randolph. D.C. Carrier appeared and was represented by Scott Placek, attorney. The record closed the same day.
11. Claimant admitted she does not plan to return to work.
12. Claimant remained at the same sedentary work level throughout the work hardening program and did not progress to a higher work level.
13. Provider did not submit an exit/discharge summary following the work hardening program.
14. Provider's work hardening program did not comply with the Commission's Medicine Ground Rules in effect at the time treatment was rendered.

IV. CONCLUSIONS OF LAW

1. The Commission has jurisdiction over this matter pursuant to Section 413.031 of the Texas Workers' Compensation Act (the 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(d) 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. §§ 2001.051 and 2001.052.
4. An employee who sustains a compensable injury is entitled to all health care reasonably required by the nature of the injury as and when needed in accordance with TEX. LAB. CODE ANN. § 408.021.
5. Provider did not comply with the Commission's Medicine Ground Rules (II)(E) relating to work hardening.
6. Pursuant to foregoing Findings of Facts and Conclusions of Law, Provider is not entitled to reimbursement for the work hardening program rendered to Claimant.

ORDER

IT IS, THEREFORE, ORDERED that Provider, Final Stage, is not entitled to reimbursement from the Carrier, Texas Mutual Insurance Company, for the work hardening program rendered to Claimant from December 11, 2001, through January 25, 2002.

SIGNED January 5, 2007.



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