

**DALLAS NATIONAL INSURANCE
COMPANY,
Petitioner**

V.

**DFW WORKERS REHAB,
Respondent**

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BEFORE THE STATE OFFICE

OF

ADMINISTRATIVE HEARINGS

DECISION AND ORDER

I. INTRODUCTION

Dallas National Insurance Company (Carrier) challenges the decision of an Independent Review Organization (IRO) on behalf of the Texas Department of Insurance, Division of Worker’s Compensation, which found that work hardening was appropriate for a Claimant treated by DFW Workers Rehab (the Provider). This decision finds that the Carrier has not shown that the services in dispute were not medically necessary.

I. PROCEDURAL HISTORY

The hearing was conducted on March 24, 2008, before Kerry D. Sullivan, an Administrative Law Judge with the State Office of Administrative Hearings. The Carrier was represented by attorney Jason A. Schmidt. The Provider was represented by Michael Smith, D.C. The hearing concluded and the record closed on March 24, 2008.

II. LEGAL FRAMEWORK, DISCUSSION, AND ANALYSIS

A. Legal Framework.

Employees have a right to necessary health care under TEX. LABOR CODE ANN. (Labor Code) §§ 408.021 and 401.011. Section 408.021(a) provides: “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.” Section 401.011(19) of the Labor Code provides that health care includes “all reasonable and necessary medical . . . services.”

The Carrier, as the party challenging the decision of the IRO, has the burden of proof in this proceeding.¹

B. Evidence and Arguments.

This case involves a compensable injury that occurred on _____. While working as a ____, the Claimant was struck by a vehicle as he performed his duties on foot. He sustained injuries to his neck and back. The Claimant has undergone extensive conservative care in the form of oral narcotics, chiropractic treatment, and physical therapy. He has been diagnosed with a herniated nucleus pulposus (slipped disk) at L4/L5. He was identified as a candidate for surgery, but the Carrier denied this request. That decision is not at issue here except as a component of the Claimant's medical history. The work hardening program in dispute occurred between March 13, 2006 and April 21, 2006.

The Carrier challenged the medical need for the work hardening program through the expert testimony of Dr. R. A. Buczek, who is both a medical doctor and doctor of chiropractic. Dr. Buczek sees work hardening as an extension of chiropractic care, of which he believes the Claimant had received too many sessions already. He testified that the Claimant will have pain for the rest of his life and that he simply needs to work through it. Dr. Buczek was generally skeptical of the medical necessity of behavioral and psychotherapeutic aspects of medical care, including that associated with work hardening programs.

The Provider responded with the expert testimony of Michael Smith, D.C., who manages the Provider. Dr. Smith agreed with Dr. Buczek that the claimant had plateaued with respect to chiropractic care and physical therapy and that no more of those treatments were medically necessary. But he disagreed with Dr. Buczek's view that work hardening is an extension of chiropractic care. He testified that work hardening is a multi-disciplinary program with physical and behavioral components that is intended to prepare an injured worker to meet the physical demands of a specific job for which the claimant is eligible to return. In his view, work hardening is appropriate where other conservative care has failed; it can be administered safely; there is a behavioral component to the ongoing disability; and there is a realistic goal of returning the claimant to a job

¹ 28 TEX. ADMIN. CODE §148.14(a).

available to him. He testified that the functional capacity evaluation (FCE) and psychological evaluation of the Claimant showed that he met all of these criteria. Dr. Smith further testified that the treatment met the criteria of the Official Disability Guideline.

C. Analysis.

The Carrier failed to establish that the work hardening program was unnecessary. According to Dr. Smith and the IRO decision, the Claimant's FCE and psychological evaluation indicated he met all the criteria for a work hardening program.² Dr. Buczek's critique was aimed primarily at the lack of need for additional chiropractic care and physical therapy. Dr. Smith, however, successfully distinguished the components of a work hardening program from the mere continuation of those unsuccessful treatments. Dr. Buczek's skepticism of the value of the psychological or behavioral aspects of work hardening programs does not overcome the fact that such programs are generally accepted where the entry criteria are met, as they were in this case. Accordingly, the decision of the IRO is upheld.

III. FINDINGS OF FACT

1. Claimant, an injured worker, suffered a compensable injury to his neck and back on_____.
2. At the time of Claimant's injury, his employer held workers' compensation insurance coverage through Dallas National Insurance Company (Carrier).
3. The Claimant has undergone extensive conservative care in the form of oral narcotics, chiropractic treatment, and physical therapy and has been diagnosed with a herniated nucleus pulposus (slipped disk) at L4/L5.
4. Following the treatment summarized in Finding of Fact 3, the Claimant's treating physician referred the Claimant to DFW Workers Rehab (the Provider) for evaluation of the Claimant's need for a work hardening program.
5. Work hardening is a multi-disciplinary program with physical and behavioral components that is intended to prepare a Claimant to meet the physical demands of a specific job for which the Claimant is eligible to return.
6. Based on the results of a functional capacity evaluation and a psychological assessment of the Claimant, the Provider determined that the Claimant met the criteria for a work hardening program.

2 The actual FCE and the report related to the psychological examination are not in the record.

7. The Claimant participated in a work hardening program at the Provider's facility from March 13, 2006 to April 21, 2006.
8. The Provider subsequently billed the Carrier for the work hardening program.
9. The Carrier denied reimbursement for the work hardening program based on its conclusion that the services were not medically necessary for the treatment of the Claimant's compensable injury.
10. In response to the Carrier's denial of reimbursement, the Provider requested medical dispute resolution before the Texas Department of Insurance, Division of Workers' Compensation.
11. Following review of Provider's claim on January 2, 2008, the IRO concluded that the disputed work hardening services were medically necessary.
12. The Carrier challenged the IRO decision by requesting a hearing before the State Office of Administrative Hearings.
13. Notice of the hearing was sent to the parties on February 15, 2008. The notice informed the parties of the date, time, and location of the hearing, the matters to be considered, the legal authority under which the hearing would be held, and the statutory provisions applicable to the matters to be considered.
14. The hearing before the State Office of Administrative Hearings convened and closed on March 24, 2008.
15. When the work hardening program was administered, the Claimant had failed to respond to other conservative care. Additionally, the Claimant had a behavioral component to his on-going disability, the program could be administered safely, and there was a realistic goal of returning the Claimant to a job available to him.
16. The Carrier failed to establish that the work hardening program in dispute was not medically necessary.

III. CONCLUSIONS OF LAW

1. SOAH has jurisdiction over this proceeding, including the authority to issue a decision and order, pursuant to TEX. LAB. CODE ANN. § 413.031 and TEX. GOV'T CODE ANN. ch. 2003.
2. Adequate and timely notice of the hearing was provided in accordance with TEX. GOV'T CODE ANN. §§2001.051 and 2001.052.
3. The Carrier had the burden of proof in this proceeding. 28 TEX. ADMIN. CODE § 148.14(a).
4. The disputed services were not shown to be medically unnecessary.

ORDER

IT IS ORDERED that the decision of the IRO is upheld.

Signed May 12, 2008.

**KERRY D. SULLIVAN
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS**