

**SOAH DOCKET NO. 454-10-3201.M5  
MDR NO. M5-05-1158-02**

<b>INJURY 1 TREATMENT CENTER,</b>	§	<b>BEFORE THE STATE OFFICE</b>
<b>Petitioner</b>	§	
	§	
<b>V.</b>	§	<b>OF</b>
	§	
<b>____, SELF-INSURANCE FUND,</b>	§	
<b>Respondent</b>	§	
	§	<b>ADMINISTRATIVE HEARINGS</b>

**DECISION AND ORDER**

Petitioner Injury 1 Treatment Center (ITC) seeks reimbursement of \$12,352.00 for work hardening services it provided the Claimant, \_\_\_\_\_. The Administrative Law Judge (ALJ) finds the Carrier, \_\_\_\_\_, Self Insurance Fund (\_\_\_\_SIF), should reimburse ITC the full amount, and so orders.

**I. HISTORY, NOTICE, AND JURISDICTION**

The Claimant sustained a compensable work-related injury on \_\_\_\_\_. ITC provided her a work hardening program from December 29, 2003, through February 20, 2004. \_\_\_\_SIF denied reimbursement for those services, whereupon ITC filed a request for medical dispute resolution.

On February 25, 2010, the Medical Review Division (MRD) of the Texas Department of Insurance's (TDI's) Division of Workers' Compensation issued its Findings and Decision.<sup>1</sup> The MRD denied reimbursement on the basis that the work hardening program was not preauthorized and the Division's archived records did not indicate that ITC was exempt from the preauthorization requirement.

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<sup>1</sup> It is not clear why such a long time elapsed between the original filing and the Findings and Decision.

ITC filed a timely request for a hearing before the State Office of Administrative Hearings (SOAH). Adequate and timely notice of the hearing originally was sent to both parties on March 15, 2010. The hearing was continued and ultimately reset for June 28, 2010. It was convened on that date before ALJ Henry D. Card. Both parties appeared and participated in the hearing. The record closed that same day.

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. Under 28 TEX. ADMIN. CODE § 148.14(a), the Petitioner has the burden of proof in this proceeding.

## II. DISCUSSION

The parties addressed three issues. First, they agreed that the MRD's rationale for its decision was mistaken. ITC presented evidence, with which \_\_\_SIF concurred, that ITC was CARF-accredited at the time the services were performed and, therefore, preauthorization was not required. The MRD had reviewed a brief period, which began January 1, 2004, during which the Commission exemption from preauthorization was not in place and, therefore, facilities were not listed in the Division's records. A TDI Advisory stated, however, that services that began before December 31, 2003, would not require preauthorization. The services in dispute in this case began December 29, 2003. ITC was not required to receive preauthorization for the work hardening program in question.

Second, \_\_\_SIF contended that the work hardening program was outside the scope of the Claimant's compensable injury. As determined by a Hearings Officer on \_\_\_\_, and confirmed by the Appeals Panel on \_\_\_\_, the Claimant's compensable injury consisted of a left shoulder and cervical sprain/strain. The compensable injury did not include an injury "to the low back, thoracic area, cervical disc herniation, and the right shoulder."<sup>2</sup> The work hardening program was not

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<sup>2</sup> Petitioner's Ex. 1, page 18.

confined to the left shoulder and cervical areas, but addressed other areas outside the area of the compensable injury.

ITC responded that \_\_\_\_SIF did not allege in its Explanations of Benefits (EOBs) that the work hardening program was outside the scope of the compensable injury. On those EOBs, \_\_\_\_SIF rejected the work hardening services as “U-Unnecessary treatment.” It did not list “R-Extent of Injury,” which is a separate code, as a reason for denying reimbursement. ITC argues that \_\_\_\_SIF is limited to the codes it used on its EOBs.

ITC is correct. In Docket No. 453-96-1446.M4, *Liberty Mutual Fire Insurance Company v. Texas Workers' Compensation Commission and \_\_\_\_* (Nov. 12, 1996), the ALJ cited what is now TEX. LAB. CODE ANN. §408.027(e) of the Act, which states:

(e) If an insurance carrier disputes the amount of payment or the health care provider's entitlement to payment, the insurance carrier shall send to the division, the health care provider, and the injured employee a report that sufficiently explains the reasons for the reduction or denial of payment for health care services provided to the employee. The insurance carrier is entitled to a hearing as provided by Section 413.031(d).<sup>3</sup>

The ALJ concluded that, in the hearing at SOAH, the carrier was limited to the reasons for denial it cited in its EOBs. That reasoning has been followed in other SOAH decisions.<sup>4</sup>

\_\_\_\_SIF argued that the concept of unnecessary medical treatment encompasses treatment beyond the scope of the injury. The ALJ disagrees. The Division recognized “Extent of Injury” as a separate denial code. If that was the reason for denying reimbursement, \_\_\_\_SIF was obligated to say so.

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<sup>3</sup> At the time of that decision, that section was 408.027(d), which referred to the “commission” rather than the “division.”

<sup>4</sup> See, e.g. Docket No. 453-97-0973.M4, \_\_ v. Texas Workers' Compensation Commission and Texas Workers' Compensation Insurance Fund (May 14, 1998).

Finally, the parties disagreed about whether the work hardening program was medically necessary. The documentation submitted by ITC shows the Claimant met the criteria for a multi-disciplinary work hardening program.<sup>5</sup> There was no evidence to the contrary. The ALJ finds the program was medically necessary and concludes \_\_\_SIF should reimburse ITC the full amount of \$12,352.00, plus interest to the extent required by law.

### III. FINDINGS OF FACT

1. The Claimant, \_\_\_\_, sustained a compensable work-related injury on \_\_\_\_\_.
2. Injury 1 Treatment Center (ITC) provided the Claimant a work hardening program from December 29, 2003, through February 20, 2004.
3. ITC requested reimbursement of \$12,352.00 for the work hardening program from \_\_\_\_, Self Insurance Fund (\_\_\_SIF), the Claimant's workers' compensation carrier.
4. \_\_\_SIF denied reimbursement for those services, whereupon ITC filed a request for medical dispute resolution.
5. On February 25, 2010, the Medical Review Division (MRD) of the Texas Department of Insurance's (TDI's) Division of Workers' Compensation issued its Findings and Decision. The MRD denied reimbursement on the basis that the work hardening program was not preauthorized and the Division's archived records did not indicate that ITC was exempt from the preauthorization requirement.
6. ITC filed a timely request for a hearing before the State Office of Administrative Hearings (SOAH).
7. 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.
8. The hearing was continued and ultimately reset for June 28, 2010. It was convened on that date before ALJ Henry D. Card. Both parties appeared and participated in the hearing. The record closed that same day.
9. ITC was CARF-accredited at the time the services were performed.

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<sup>5</sup> Petitioner's Ex. 1, pages 37-46.

10. On its Explanations of Benefits (EOBs) denying reimbursement, \_\_\_\_SIF rejected the work hardening services as “U-Unnecessary treatment.”
11. \_\_\_\_SIF did not list “R-Extent of Injury,” which is a separate code, as a reason for denying reimbursement.
12. The Claimant met the criteria for a multi-disciplinary work hardening program.
13. The work hardening program was medically necessary.

#### **IV. 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(k) 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. Under 28 TEX. ADMIN. CODE § 148.14(a), the Petitioner has the burden of proof in this proceeding.
4. ITC was not required to receive preauthorization for the work hardening program.
5. Pursuant to TEX. LAB. CODE ANN. §408.027(e), \_\_\_\_SIF was required to identify “Extent of Injury” as a reason for denying reimbursement in order to raise that issue in subsequent proceedings. Docket No. 453-96-1446.M4, *Liberty Mutual Fire Insurance Company v. Texas Workers’ Compensation Commission and \_\_\_\_* (Nov. 12, 1996); Docket No. 453-97-0973.M4, \_\_\_\_ v. *Texas Workers’ Compensation Commission and Texas Workers’ Compensation Insurance Fund* (May 14, 1998).
6. \_\_\_\_SIF should reimburse ITC the full amount of \$12,352.00, plus interest to the extent required by law.

**ORDER**

It is, therefore, ordered that \_\_\_\_\_, Self Insurance Fund, shall reimburse Injury 1 Treatment Center \$12,352.00, plus interest to the extent required by law, for the services in dispute in this matter.

**SIGNED August 13, 2010.**

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**HENRY D. CARD  
ADMINISTRATIVE LAW JUDGE  
STATE OFFICE OF ADMINISTRATIVE HEARINGS**