

ATLANTIS HEALTHCARE CLINIC,	§	BEFORE THE STATE OFFICE
Petitioner	§	
	§	
	§	
VS.	§	OF
	§	
ARGONAUT SOUTHWEST INS. CO.,	§	
Respondent	§	ADMINISTRATIVE HEARINGS

DECISION AND ORDER

Claimant ___ injured his back on ___, as a result of a fall at his welding job. At issue are work hardening services, functional capacity exams (FCEs), equipment associated with a TENS unit, and physical therapy provided to ___ by Atlantic Healthcare Clinic (AHC) in the fall of 2001. The workers’ compensation carrier, Argonaut Southwest Insurance Company (Argonaut), denied reimbursement for these services. An Independent Review Organization (IRO) concluded that the work hardening and FCEs were not medically necessary. The Medical Review Division (MRD) of the Texas Workers’ Compensation Commission (Commission) determined that the documentation did not support reimbursement for the physical therapy or the TENS equipment. The amount in controversy is \$3,669.80. The Administrative Law Judge (ALJ) concludes that Argonaut must pay for the disputed services.

I. DISCUSSION

A. Basic Facts

___ was approximately ___ years old at the time of the events relevant to this case. Following his injury, ___ saw a chiropractor with AHC on ___, and began receiving therapy consisting generally of manipulation, joint mobilization, myofascial release, manual traction, therapeutic exercise, and use of a TENS unit.¹ He received some of these modalities on various dates throughout September and October 2001. His chief complaint was pain in his back, radiating into his legs. He had mild deficits in his lumbar range of motion.² He also had some depression during the period in question.³ An MRI of September 4, 2001, was negative.⁴ ___ was referred to a pain management specialist.⁵ On October 23, 2001, ___ began seeing John Townsend IV, M.D., an orthopedist.⁶ Dr. Townsend’s diagnoses were “lumbar spine strain, severe, persistent” and “bilateral sacroiliac joint strain/sacrococcygeal spine strain/sacroiliitis.” Dr. Townsend ordered lower extremity nerve conduction velocity and EMG studies, which were normal. Following a required

¹ Carrier Ex. 2 at 23-35.

² Carrier Ex. 2 at 302-303.

³ Carrier Ex. 2 at 132-136.

⁴ Carrier Ex. 2 at 320.

⁵ Carrier Ex. 2 at 315-316.

⁶ See Petitioner Ex. 1 at 14-25.

medical exam on November 19, 2001, Jennifer Pettibone, D.C., found that ___ had reached maximum medical improvement (MMI) with a 5% whole person impairment.⁷ ___ underwent work hardening from November 5 through December 14, 2001.⁸ Dr. Townsend saw ___ periodically, prescribing medications and indicating that ___ should continue with the ongoing physical therapy or work hardening. He returned to work in early 2002. Some troublesome pain began to recur with his work activities, and he continued to visit to Dr. Townsend and AHC.

Only some of the dates of service for the physical therapy and work hardening are at issue in this case.

B. Procedural History

The IRO issued its decision on November 20, 2002. The MRD issued its decision, which incorporated the IRO's decision, on July 1, 2003 (mailing it to the parties on July 7, 2003). On July 28, 2003, AHC requested a hearing. The hearing was convened on April 22, 2004, before State Office of Administrative Hearings (SOAH) Judge Shannon Kilgore. Ben Higbee, D.C., appearing by telephone, represented AHC. Attorney Dan Kelley represented Argonaut. The record closed on the day of the hearing.

C. Applicable Law

The Texas Labor Code contains the Texas Workers' Compensation Act (Act) and provides the relevant statutory requirements regarding compensable treatment for workers' compensation claims.⁹ In particular, the Act provides in pertinent part that:

(a) 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.

* * *

Health care includes all reasonable and necessary medical aid, medical examinations, medical

⁷ Petitioner Ex. 1 at 33-35. Mike Raper, D.C., also found a 5% impairment, concluding that ___ had reached MMI on December 27, 2001. *Id.* at 36-40.

⁸ Some ASOAP@notes from work hardening can be found at Carrier Ex. 1 at 35-50, 96-107, 111-125, 155-159. The medical records in Carrier Ex. 2 are duplicative and out of order, and the SOAP notes are scattered throughout the 396-page exhibit..

⁹ TEX. LAB. CODE ' 408.021.

treatment, medical diagnoses, medical evaluations, and medical services.¹⁰

D. Burden of Proof

Under the rules of the Texas Workers' Compensation Commission (Commission), an IRO decision is deemed a Commission decision and order.¹¹ The burden of proof in this case is on AHC to prove by a preponderance of the evidence that the disputed services were reasonable and necessary medical treatments and reimbursable under the Commission's rules.¹²

E. The Disputed Services

AHC billed under the following CPT codes:

E0730	equipment [TENS pads]
97122	manual traction
97110	therapeutic exercise
97750-FC	FCE
97545-WH	work hardening
97546-WH	work hardening.

The TENS unit was provided September 7, 2001. The manual traction and therapeutic exercises were provided October 29, 30, and 31, 2001. The FCEs occurred on November 23 and December 12, 2001. The work hardening dates at issue are November 26 through December 14, 2001.

Argonaut denied payment for the TENS unit and the physical therapy, asserting that they had not having been preauthorized (denial code "A").¹³ It appears from the record that Argonaut denied the work hardening and FCEs as unnecessary under denial code "V."¹⁴

F. IRO Decision

¹⁰ TEX. LAB. CODE ' 401.011(19).

¹¹ 28 TEX. ADMIN. CODE ' 133.308(p)(5).

¹² 28 TEX. ADMIN. CODE ' ' 133.308(p)(5), 148.21(h)-(i). The IRO decision is entitled to presumptive weight. 28 TEX. ADMIN. CODE ' 133.308(w).

¹³ The explanation of benefit (EOB) forms are not in the record. For the denial codes, the ALJ is relying on the MRD 's decision, which sets out the denial codes for each service at issue. Petitioner Ex. 1 at 8-9.

¹⁴ The MRD decision states that Argonaut denied the Awork hardening program/services from 11-23-01 to 12-01-01" with code AV.@ The ALJ assumes for the purpose of discussion that the December 12 FCE and the work hardening from December 3 through December 14, 2001, were likewise denied with the AV@ code. AHC complains that Argonaut 's use of the AV@ code was invalid because the carrier failed to supply a copy of a peer review attached to each EOB. Since the EOBs are not in the record, however, the ALJ has insufficient evidence on which to base a reversal of the IRO 's decision due to failure of the carrier to comply with the rules.

The IRO only reviewed the medical necessity of the FCEs, the work hardening from November 26 through December 14, and the physical therapy on October 31, 2001.¹⁵ The IRO noted that Dr. Pettibone had determined ___ was at MMI as of November 19, 2001. The IRO also cited to a medical review on November 23, 2001, stating that a total of 12 weeks of care would likely be all that was required. (It appears the IRO may have meant to reference a medical review done on *September 23*, 2001, by Marty Hall, D.C., which stated that treatment should last about eight to 12 weeks in the absence of unforeseen complications.¹⁶) The IRO determined that of the dates of service it considered, only the October 31, 2001, physical therapy was medically necessary.

G. The MRD Decision

The MRD determined that the physical therapy services billed under CPT codes 97110 (therapeutic exercise) and 97122 (manual traction) were indeed pre-authorized, but found that the documentation did not show the one-to-one supervision required by the Commission's Medical Fee Guideline for reimbursement for these services. Therefore, the MRD recommended denial of reimbursement for the therapy billed under those two codes. The dates of service for the therapeutic exercise and manual traction were October 29, 30, and 31, 2001. In addition, the MRD recommended no reimbursement for the TENS equipment (CPT Code E0730), since no preauthorization approval report was submitted.

H. General Description of the Evidence

The evidence in this case consists of medical and billing records and the testimony of the following witnesses:

- Robert Chouteau, D.O., an orthopedic surgeon and partner of Dr. Townsend, testifying on behalf of AHC; and
- Dr. Higbee, also testifying for AHC.

I. Analysis and Decision

TENS equipment. Rental of a TENS unit was pre-authorized,¹⁷ and Argonaut should pay the disputed bill associated with the TENS equipment.

Manual traction and therapeutic exercise. Argonaut denied payment for these services under denial code "A," yet the services were indeed pre-authorized.¹⁸ The MRD's recommendation

¹⁵ It is not clear why the IRO reviewed the October 31, 2001, physical therapy, since the record indicates that reimbursement for this therapy was denied for lack of pre-authorization.

¹⁶ Petitioner Ex. 1 at 95.

¹⁷ Petitioner Ex. 1 at 118. In deemed admissions, AHC admitted that it had not submitted the preauthorization approval report for the September 7, 2001, date of service, which was the date of the disputed TENS billing. This admission is not very clear, but the ALJ interprets it to mean that AHC did not submit to the MRD the preauthorization approval report. This fact, however, does not prevent AHC from offering and relying on the report in the SOAH hearing.

¹⁸ Petitioner Ex. 1 at 26.

of denial on a new basis B inadequate documentation B was improper. The Commission's rules provide that in medical dispute resolution of a medical fee dispute, new denial reasons or defenses raised shall not be considered in the review. 28 TEX. ADMIN. CODE § 133.307(j)(2). The carrier should pay for these services.

FCEs and work hardening. The IRO's determination that the FCEs and work hardening services were unnecessary is contrary to the most persuasive evidence in the record. The reasoning set forth in the IRO report is sparse; it appears that the IRO reviewer relied primarily on Dr. Hall's and Dr. Pettibone's reports. Dr. Hall's report was issued at five weeks post-injury, and simply stated that in general a strain/sprain in a young person should resolve in no more than 12 weeks. This nonspecific, prospective statement was made long before the further physical therapy and initial weeks of work hardening failed to satisfactorily resolve ___'s symptoms. Dr. Pettibone's report from November 19, 2001, determined ___ to be at MMI as of the date of the report, but a later required medical examination by Dr. Raper stated that ___ was at MMI as of December 27, 2001. Dr. Pettibone wrote her report when ___ had completed only three weeks of work hardening. She noted that the early weeks of work hardening had actually aggravated ___'s pain. The evidence shows, however, that ___'s pain level at the end of six weeks of work hardening was significantly improved.¹⁹

Argonaut points to a report by Kellie Timberlake-Lancaster, D.C., who issued a peer review report on April 18, 2002, citing to the reports of Drs. Pettibone and Hall and agreeing with the MMI date of November 19, 2001.²⁰ Dr. Timberlake-Lancaster spoke of mild to moderate sprain/strain injuries as requiring six to eight weeks of treatment, or at most 12 weeks with a complicating factor. However, Dr. Timberlake-Lancaster failed to note that Dr. Townsend had diagnosed ___ as having a "severe" and "persistent" injury, and also failed to address the reductions in pain achieved in the work hardening.²¹ It is puzzling that Dr. Timberlake-Lancaster agreed with Dr. Pettibone's determination of MMI, and yet stated that ___ "has minimal, if any, residual impairment or symptoms." This statement is contrary to Dr. Pettibone's (and Dr. Raper's) determination that ___ had a 5% impairment after having reached MMI. Dr. Timberlake-Lancaster seemed to acknowledge the benefit of the work hardening by further stating, "This individual has had work hardening, so there should be no functional deficit or any need for ongoing care."

The opinions in the record from medical doctors support the necessity of the work hardening. Dr. Townsend co-managed ___'s case along with the AHC chiropractor. While Dr. Townsend did not prescribe the work hardening, he seemed to agree with it, and raised no objection even when

___'s pain levels had risen during the early part of the program.²² Dr. Chouteau opined that the work hardening and associated FCEs were medically necessary.

¹⁹ Prior to the commencement of the work hardening program, ___ consistently reported pain levels of five on a scale of 10. *See, e.g.*, Carrier Ex. 2 at 231, 233. Immediately following the six weeks of work hardening, his pain level had dropped to three, and he returned to work shortly thereafter. Petitioner Ex. 1 at 18-21.

²⁰ Petitioner Ex. 1 at 97-100.

²¹ The ALJ notes that the FCEs apparently show some gains in functional capacity as well. That ___'s pain apparently worsened some months later with certain of his job activities does not negate the success, albeit incomplete, of the work hardening program.

²² Petitioner Ex. 1 at 16.

The evidence supports a conclusion that the work hardening program, including the FCEs, was reasonable and necessary.

II. FINDINGS OF FACT

1. The claimant ___ injured his back on ___, as a result of a fall at his welding job.
2. ___'s chief complaint was pain in his back, radiating into his legs. He also had some functional deficits and psychological symptoms.
3. Argonaut Southwest Insurance Company (Argonaut) is the workers' compensation insurer with respect to the claims at issue in this case.
4. Atlantic Healthcare Clinic (AHC) provided a TENS unit, physical therapy, work hardening services, and functional capacity exams (FCEs) to ___ in the fall of 2001.
5. AHC billed under the following CPT Codes in connection with the disputed dates of service:

E0730	equipment [TENS pads]
97122	manual traction
97110	therapeutic exercise
97750-FC	FCE
97545-WH	work hardening
97546-WH	work hardening.
6. The TENS unit was provided September 7, 2001.
7. The manual traction and therapeutic exercises were provided October 29, 30, and 31, 2001.
8. The FCEs occurred on November 23 and December 12, 2001.
9. The work hardening began November 5 and concluded December 14, 2001.
10. Argonaut declined to pay for the TENS equipment, the manual traction, and the therapeutic exercises, asserting that there was no pre-authorization.
11. Argonaut declined to pay for the FCEs and the work hardening from November 26 through December 14, 2001, asserting that those services were medically unnecessary.
12. The amount in dispute is \$3,669.80.
13. AHC requested medical dispute resolution.
14. On November 20, 2002, the Independent Review Organization (IRO) issued its decision, finding that the FCEs and the work hardening from November 26 through December 14, 2001, were unnecessary services.
15. The Medical Review Division (MRD) of the Texas Workers' Compensation Commission (Commission) issued its decision, which incorporated the IRO's decision, on July 1, 2003 (mailing it to the parties on July 7, 2003). The MRD determined that the physical therapy

services billed under CPT codes 97110 (therapeutic exercise) and 97122 (manual traction) were indeed preauthorized, but found that the documentation did not show the one-to-one supervision required by the Medical Fee Guideline for reimbursement for these services. In addition, the MRD recommended no reimbursement for the TENS (CPT Code E0730) unit, since no pre-authorization approval report was submitted.

16. On July 28, 2003, AHC requested a hearing.
17. Notice of hearing was issued August 22, 2003.
18. 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.
19. Following several continuances, the hearing was convened on April 22, 2004, before State Office of Administrative Hearings (SOAH) Judge Shannon Kilgore. Ben Higbee, D.C., appearing by telephone, represented AHC. Attorney Dan Kelley represented Argonaut. The record closed on the day of the hearing.
20. The TENS unit, the manual traction, and the therapeutic exercises were pre-authorized.
21. John Townsend IV, M.D., an orthopedist, diagnosed ___ with “lumbar spine strain, severe, persistent” and “bilateral sacroiliac joint strain/sacrococcygeal spine strain/sacroiliitis.”
22. Dr. Townsend co-managed ___’s case along with an AHC chiropractor throughout the period in question.
23. Following a required medical exam on November 19, 2001, Jennifer Pettibone, D.C., found that ___ had reached maximum medical improvement (MMI) with a 5% whole person impairment.
24. Following the exam and report by Dr. Pettibone, ___ continued with work hardening for three weeks and experienced significant improvement in his pain level.
25. The work hardening program improved ___’s functional capacity.
26. Mike Raper, D.C., found ___ to have a 5% impairment and concluded that ___ had reached MMI as of December 27, 2001.
27. ___ returned to work in January 2002.
28. The work hardening and FCEs were medically necessary.

III. 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 ch. 401 *et seq.*

2. SOAH has jurisdiction over this proceeding, including the authority to issue a decision and order. TEX. LAB. CODE § 413.031; TEX. GOV'T CODE ch. 2003.
3. 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. TEX. LAB. CODE § 408.021.
4. AHC timely filed a request for hearing as specified in 28 Texas Administrative Code ' 148.3.
5. Adequate and timely notice of the hearing was provided in accordance with the Administrative Procedure Act. TEX. GOV'T CODE § 2001.052.
6. AHC has the burden of proof in this matter. 28 TEX. ADMIN. CODE §§ 133.308(p)(5) and (w), 148.21(h)-(i).
7. The MRD's conclusion that the manual traction and therapeutic exercises not be reimbursed because of inadequate documentation was improper, since inadequate documentation was a new basis for denial not raised by the carrier. 28 TEX. ADMIN. CODE §133.307(j)(2).
8. Based on the foregoing Findings of Fact and Conclusions of Law, Argonaut must reimburse AHC for the disputed services.

ORDER

IT IS THEREFORE ORDERED that Argonaut Southwest Insurance Company pay a total of \$3,669.80, plus interest, for the medical equipment provided September 7, 2001; physical therapy (manual traction and therapeutic exercise) provided October 29, 30 and 31, 2001; work hardening provided November 26 through December 14, 2001; and functional capacity examinations provided November 23 and December 12, 2001, in connection with the treatment of claimant ____

ISSUED this June 10, 2004.

SHANNON KILGORE
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS