

SOAH DOCKET NO. 453-04-3585M2R

MAXIMUM THERAPEUTIC INITIATIVE, Petitioner	:	BEFORE THE STATE OFFICE
	:	
V.	:	OF
	:	
ACE USA/ESIS, Respondent	:	ADMINISTRATIVE HEARINGS

DECISION AND ORDER

Maximum Therapeutic Initiative (MTI or the Petitioner) seeks preauthorization to conduct a work hardening program for ____, a workers' compensation claimant (the Claimant). The Administrative Law Judge (ALJ) concludes a six-week program of work hardening should be preauthorized and so orders.

I. FACTUAL AND PROCEDURAL HISTORY

The Claimant injured her shoulder ____, in the course of her employment as a sewing machine operator at ____. She was treated unsuccessfully by a different health care provider and was first evaluated at MTI on November 23, 2003. The parties agreed that she suffers from right shoulder impingement. Although her condition improved considerably through physical therapy at MTI, it has not been cured.

In November of 2003, MTI requested preauthorization for the Claimant to participate in a work hardening program. Ace USA/ESIS (the Carrier) denied that request based on the opinion of its physician reviewer that the documentation did not show recent patient physical demand levels or preinjury demand levels and did not contain any psychological evaluation. Although it contended it had included that information originally, MTI resubmitted its request with additional documentation. The second physician reviewer, Richard Shirley, M.D., agreed that the Claimant had a "decrement in function that would preclude her returning to her former employer." However, ____ has closed the factory at which the Claimant worked. Dr. Shirley found preauthorization should be denied because the Claimant would have to get a different job, the requirements of which were unknown. Based on that review, the Carrier again denied the request for preauthorization.

MTI filed a timely request for medical dispute resolution with the Texas Workers' Compensation Commission (TWCC). The Independent Review Organization (IRO) denied that request on January 29, 2004; its decision served as the decision of TWCC's Medical Review Division. MTI filed a timely request for a hearing on February 3, 2004.

The hearing was held May 25, 2004, at the State Office of Administrative Hearings (SOAH) hearings facility in Austin, Texas. Representatives of MTI and the Carrier participated in the hearing, which was adjourned the same day.

II. DISCUSSION

Under 28 TAC ' 148.21(h), the Petitioner has the burden of proof in hearings, such as this one, conducted pursuant to ' 413.031 of the Act. Thus, MTI must prove the work hardening program should be preauthorized.

The parties agreed that the definitions and criteria set out in TWCC's 1996 Medical Fee guidelines were valid bases for determining whether work hardening should be preauthorized. The relevant portions of those Guidelines stated:

Work Hardening: A highly structured, goal-oriented, individualized 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:
 1. persons who are likely to benefit from the program;
 2. persons whose current levels of functioning due to illness or injury interfere with their ability to carry out specific tasks required in the workplace;
 3. persons whose medical, psychological, or other conditions do not prohibit participation in the program; and
 4. persons who are capable of attaining specific employment upon completion of the program.
2. Mental health evaluations and treatment:
 - a. An initial evaluation to determine the injured work=s readiness for the program may be performed prior to entrance into the program.

* * * *

It is not clear from the language of item 1.d. whether a claimant must have a job waiting for him or her in order to be eligible for work hardening. Charles Blevins, MTI's representative and witness, stated a claimant need not have a specific job. Work hardening, according to Mr. Blevins, is designed to return a claimant to his or her pre-injury job status, so the claimant will be capable of obtaining and retaining employment in that field. Mr. Blevins testified the proposed work hardening program would be designed toward that goal.

Dr. Shirley testified for the Carrier. Although he had recommended denial of the request, Dr. Shirley agreed with Mr. Blevins' assessment of the purposes of work hardening.

On March 3, 2004, the Claimant was approved for 10 sessions of work conditioning. Mr. Blevins testified that program should not preclude approval of the work hardening, because the programs are different in scope. Although Dr. Shirley believed that the basic goals of work conditioning and work hardening are basically the same, he agreed that the two programs are different in scope. He did not assert that the 10 sessions of work conditioning should preclude work hardening.

MTI conducted a psychological assessment of the Claimant in which she showed significant fear, anxiety and depression. The Carrier questioned the validity of that study because it was conducted by a physical therapist rather than a psychologist. Although a study by a psychologist would carry greater weight, the ALJ found no reason to doubt the manner in which the assessment was conducted or the validity of the Claimant's scores in the various categories. The ALJ was persuaded that the Claimant has psychological issues that could be addressed by work hardening.

It is unclear from the record how many weeks of work hardening were requested. The table of disputed services submitted with the request for medical dispute resolution stated eight weeks were being requested. However, all the physician reviews mentioned requests for four-to-six weeks of work hardening. That issue was not discussed at the hearing. The ALJ concludes that MTI proved only that a four-to-six week program was necessary, and therefore authorizes six weeks of work hardening.

Based on the documentary evidence and testimony specific to this case, the ALJ finds the Claimant meets the criteria for work hardening and concludes six weeks of work hardening should be preauthorized.¹

¹The ALJ would be remiss if he ended the discussion without commenting on the tone of the hearing. Generally, the hearing was quite civil and focused on the facts and legal arguments. However, MTI occasionally chose to insult the Carrier, which the ALJ found inappropriate and detrimental to the hearing process.

III. FINDINGS OF FACT

1. The Claimant injured her shoulder ____, in the course of her employment as a sewing machine operator at ____.
2. The Claimant was treated unsuccessfully by a different health care provider and was first evaluated at Maximum Therapeutic Initiative (MTI or the Petitioner) on November 23, 2003.
3. The Claimant suffers from right shoulder impingement.
4. Although the Claimant ' s condition improved considerably through physical therapy at MTI, it has not been cured.
5. In November of 2003, MTI requested preauthorization for the Claimant to participate in a work hardening program.
6. Ace USA/ESIS (the Carrier) denied the initial request.
7. MTI resubmitted its work hardening request with additional documentation.
8. The second physician reviewer, Richard Shirley, M.D., agreed that the Claimant had a Adecrement in function that would preclude her returning to her former employ.@"
9. Levi Strauss has closed the factory at which the Claimant worked.
10. Dr. Shirley found preauthorization should be denied because the Claimant would have to get a different job, the requirements of which were unknown. Based on that review, the Carrier again denied the request for preauthorization.
11. MTI filed a timely request for medical dispute resolution with the Texas Workers= Compensation Commission (TWCC).
12. The Independent Review Organization (IRO) denied that request on January 29, 2004; its decision served as the decision of TWCC=s Medical Review Division.
13. MTI filed a timely request for a hearing on February 3, 2004.
14. Notice of the hearing was sent to the parties March 3, 2004.

15. 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.
16. The hearing was held May 25, 2004, at the State Office of Administrative Hearings (SOAH) hearings facility in Austin, Texas.
17. Representatives of MTI and the Carrier participated in the hearing, which was adjourned the same day.
18. The parties agreed that the definitions and criteria set out in TWCC=s 1996 Medical Fee guidelines were valid bases for determining whether work hardening should be preauthorized.
19. The proposed work hardening program would be designed to return the Claimant to her pre-injury job status, even though her specific previous job no longer exists, so she would be capable of obtaining and retaining employment in that field.
20. The closure of the plant where she had worked does not preclude the Claimant from receiving work hardening.
21. On March 3, 2004, the Claimant was approved for 10 sessions of work conditioning.
22. The 10 sessions of work conditioning and the proposed work hardening program are different in scope.
23. Approval of the 10 sessions of work conditioning for the Claimant does not preclude preauthorization of work hardening.
24. The Claimant had psychological issues that could be addressed by work hardening.
25. As shown by the physician reviews, MTI requested four-to-six weeks of work hardening for the Claimant.

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(d) 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. §2001.052.

3. Under 28 TAC ' 148.21(h), the Petitioner has the burden of proof in hearings, such as this one, conducted pursuant to TEX. LAB. CODE ANN. ' 413.031.
4. A four-to-six week program of work hardening is medically necessary for the Claimant, pursuant to the criteria set out in TEX. LAB. CODE ANN. ' 408.021.
5. MTI should be preauthorized to provide a six-week program of work hardening for the Claimant.

ORDER

IT IS, THEREFORE, ORDERED, that Maximum Therapeutic Initiative is preauthorized to provide a six-week program of work hardening for ____, the Claimant.

SIGNED June 14, 2004.

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