

**DOCKET NO. 453-05-0621.M5
MDR TRACKING NO. M5-04-3926-01**

LIBERTY MUTUAL INSURANCE CO.,	§	BEFORE THE STATE OFFICE
Petitioner	§	
	§	
VS.	§	
	§	OF
WORK PERFECT HOUSTON,	§	
Respondent	§	ADMINISTRATIVE HEARINGS
	§	

DECISION AND ORDER

This is a dispute over reimbursement for 17 sessions of work hardening services. The Administrative Law Judge (ALJ) concludes the work hardening program was not medically necessary for the Claimant and therefore denies reimbursement.

I. DISCUSSION

The Claimant is a 31-year-old male who allegedly twisted his lower back and contused his left thigh when he fell, on ____, going up stairs on his job as an apartment maintenance man. He reported the incident to his supervisors and tried to continue working with modification. The left thigh contusion eventually resolved but his low back pain became progressively worse, prompting him to seek medical attention. He was evaluated at Memorial Herman Northwest emergency room on September 19, 2003. His lumbar spine X-rays reported disclosed narrowed L5-S1 disc space but no fracture. Claimant subsequently placed himself under the care of a chiropractor, David Ben Isaac Rabbani, D.C., an employee and half owner of Work Perfect Houston, Inc. (Provider), on September 26, 2003. Dr. Rabbani diagnosed an acute traumatic lumbar sprain/strain and lumbar myospasms, then proceeded to provide regular physical and chiropractic modalities to the Claimant.

A lumbar MRI was performed at Diagnostic Radiology of Houston on November 4, 2003, which was interpreted by a radiologist, Edward C. Fritch, Jr. He noted ‘discal derangement of the

L3-L4 demonstrating recent onset characteristics as evidenced by annular tearing of the posterior inferior annulus at the discal vertebral junction with associated broad-based dorsal protrusion' and 'no neural compression associated.' He also reported Adorsal annular fissuring suspected at L4-L5" but without identifiable herniation. The remainder of the lumbar spine was unremarkable.

A series of three lumbar steroid injections were given by Uday Doctor, M.D, between December 4, 2003, and March 4, 2004. In his medical report on April 1, 2004, Dr. Doctor described '70-80% improvement' in the Claimant's symptoms and stated he was definitely improved. Although he noted there was still some locking up of his lower back on forward flexion at the waist, there was no more pain to the legs.

A functional capacity evaluation (FCE) was performed by a Provider staff person and found Claimant to qualify for the light physical demand level only. Claimant was also certified to have reached Maximum Medical Improvement (MMI) by designated doctor Rosa A. Fuentes, M.D., on April 8, 2004, with a 5% whole person impairment. This rating was disputed by Provider.

This case involves the medical necessity of 17 work hardening dates of service between April 5, 2004, and May 5, 2004, rendered to Claimant by Provider in its CARF¹-accredited work hardening program.

Liberty Mutual Fire Insurance Company (Carrier) denied Provider's request for reimbursement for the work hardening program. Provider then filed a request for medical dispute resolution. The Independent Review Organization (IRO) ruled against Carrier, and the Medical Review Division (MRD) of the Texas Workers' Compensation Commission (TWCC) therefore granted reimbursement on September 1, 2004. Carrier then filed a request for hearing before the State Office of Administrative Hearings (SOAH).

¹ Commission on Accreditation of Rehabilitation Facilities.

The SOAH hearing was held April 14, 2005, with ALJ Bill Zukauckas presiding. Representatives of both Provider and the Carrier participated in the hearing, which was adjourned the same day.

TWCC's Medicine Ground Rules set out the purposes of and criteria for work hardening:

'Work hardening' is

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.

TWCC 1996 Medical Fee Guideline, pp. 37-38.

The Claimant underwent a Provider-performed FCE on April 2, 2004, which Provider argues indicated he was a candidate for work hardening. The Carrier nevertheless cited several reasons why claimant was not an appropriate candidate.

The ALJ agrees with Carrier that the evidence did not show that the Claimant met the vocational component for admission to such a program. The record did not show that the Claimant's specific vocational goals were considered in the decision to begin the program or in the design of the program. The Claimant had been a maintenance worker at an apartment complex. There is no evidence that the work hardening program focused on the job skills associated with that type of employment. Although Provider had a goal of raising Claimant's physical demand level from light to medium, by the end of the work hardening program that goal was not achieved. In a second FCE in August of 2004, Claimant functioned at a medium physical capacity level, but there was no credible evidence attributing any part of that improvement to the work hardening services ending some three months before.

Provider also seemed to completely discount Dr. Fuentes' assessment that all conservative treatment had been adequately tried before the work hardening began. Even if Dr. Fuentes was incorrect in her determination that Claimant had reached MMI, Provider did not articulate good reasons for dismissing other parts of her assessment that said further conservative care would not be helpful. Dr. Fuentes' assessment was also consistent with the peer review opinion of Thomas B. Sato, D.C. from March 9, 2004, who opined that a continuation of a failed regimen of conservative treatment would not be beneficial to Claimant. The ALJ believes the Provider ignored this opinion at its own risk.

The ALJ finds the evidence did not show that the work hardening was focused on Claimant's prospective re-employment as a maintenance man. And, the work hardening sessions did not increase Claimant's physical demand level of "light" to "moderate," as was the stated goal.

Although in general terms, the ALJ believes any Provider should be given a fair trial period where no results need be shown, there was simply too much history (approximately 54 sessions) of minimally effective chiropractic care before the work hardening started. Even if the previous care

was mostly addressing pain reduction, as opposed to job functionality, Provider gave no explanation why the work hardening might be more successful at accomplishing this than the other previously-tried conservative chiropractic care.

The ALJ finds the Provider should have known that based on prior failed conservative treatment results, and the opinions of outside reviewers, that additional conservative treatment would likely fail, even if now intended for functional strengthening as opposed to pain reduction. It does not help Provider's case to show Claimant is not a candidate for surgical intervention; Provider must also show that its work hardening treatments would likely be helpful. In this case, Provider did not.

Ironically, the record reflects that Claimant made the most gains after he stopped work hardening, either because of something he did on his own or because he simply got stronger through the healing process and time.

For the reasons stated above, the ALJ denies reimbursement for the work hardening services at issue.

II. FINDINGS OF FACT

1. Claimant was a 31-year-old male who suffered a compensable injury to his back when he fell on ___ while going up stairs on his job as an apartment maintenance man.
2. On September 26, 2003, Claimant placed himself under the care of a chiropractor, David Ben Isaac Rabbani, D.C., half owner of Work Perfect Houston, Inc. (Provider), who diagnosed him with an acute traumatic lumbar sprain/strain and lumbar myospasms, then provided regular physical and chiropractic modalities (approximately 54) to the Claimant through March 9, 2004.
3. On April 2, 2004, Claimant underwent a functional capacity evaluation (FCE) through Provider that revealed performance at a "light" physical demand level (PDL).
4. Claimant underwent work hardening from Provider between April 5, 2004, and May 5, 2004, through Provider's CARF-accredited work hardening program.

5. Carrier denied Provider's request for reimbursement for the work hardening program.
6. Provider filed a request for medical dispute resolution.
7. The IRO ruled against Carrier, and the MRD therefore ordered reimbursement on September 1, 2004.
8. Carrier filed a request for hearing before the State Office of Administrative Hearings (SOAH).
9. The original Notice of Hearing was sent to the parties October 14, 2004.
10. 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.
11. The SOAH hearing was held April 14, 2005, with ALJ Bill Zukauckas presiding. Representatives of both Provider and Carrier participated in the hearing, which was adjourned the same day.
12. The work hardening program was not shown to focus on the specific job skills associated with Claimant's employment as a maintenance man.
13. Claimant's specific vocational goals were not considered in the decision to begin the work hardening program nor in the design of the program.
14. Claimant did not meet the vocational criteria for admission into the work hardening program.
15. Claimant did not show significant functional improvement from the beginning of the work hardening program to the end, in that he remained at the light physical demand level. A property maintenance job requires at least a medium physical demand level.
16. Provider should have known Claimant's probability of success in a work hardening program would be low because of the limited success from the 54 Provider-rendered chiropractic treatments between September 26, 2003, and March 9, 2004.
17. On April 8, 2004, Claimant was examined by designated doctor Rosa Fuentes, M.D., who found that Claimant was at maximum medical improvement (MMI) and that further

conservative chiropractic care would likely be unhelpful. Provider should have more heavily weighed this opinion in making its decision to begin work hardening.

18. Carrier was able to show that the 17 work hardening sessions at issue were 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(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. §2001.052.
3. Carrier has the burden of proof in this matter. 28 TEX. ADMIN. CODE §148.21(h).
4. Carrier proved the work hardening program was not medically necessary for the Claimant.
5. Carrier should not be required to reimburse Provider for the work hardening program.

ORDER

IT IS, THEREFORE, ORDERED that Work Perfect Houston, Inc.'s request for reimbursement for work hardening services provided the Claimant from April 5, 2004, through May 5, 2004, is **DENIED**.

SIGNED on June 6, 2005.

**BILL ZUKAUCKAS
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS**