

**SOAH DOCKET NO. 453-05-6751.M2
TWCC MR NO. M2-05-1211-01**

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| TEXAS MUTUAL INSURANCE COMPANY, | ‘ | BEFORE THE STATE OFFICE |
| | : | |
| Petitioner | : | |
| | : | |
| V. | : | OF |
| | : | |
| PAIN & RECOVERY CLINIC NORTH AND NESTOR MARTINEZ, D.C., | : | |
| Respondent | ‘ | ADMINISTRATIVE HEARINGS |

DECISION AND ORDER

Texas Mutual Insurance Company (the Carrier) challenges the decision of an Independent Review Organization (IRO) granting preauthorization for a twenty-session work hardening program for a workers’ compensation claimant.¹

I. PROCEDURAL HISTORY, NOTICE, AND JURISDICTION

There are no contested issues of notice or jurisdiction in this proceeding, and these matters are addressed in the findings of fact and conclusions of law. The hearing convened and closed August 23, 2005, before Administrative Law Judge (ALJ) Kerry D. Sullivan. Ryan Willet represented the Carrier. William Maxwell represented Pain & Recovery Clinic North, and Nestor Martinez, D.C., (Provider).

¹ Effective September 1, 2005, the functions of the Commission have been transferred to the newly created Division of Workers' Compensation at the Texas Department of Insurance.

II. BASIS FOR DECISION

1. Background

The Claimant is a 37 year-old male who sustained a compensable injury to his lower back on ____, while lifting a heavy object. An MRI and EMG/NCV study revealed bulging intervertebral discs at L3-L4 and foraminal stenosis - a pain-generating narrowing of the nerve canals in the area of the disc bulge. The Claimant has undergone conservative treatment with pain medication, at least two epidural lumbar injections, and about 110 sessions of physical therapy B about fifty of which had already been provided when the Carrier denied preauthorization for the requested work hardening program in February 2005. The Claimant continues to experience low back pain, limited range of motion, and inability to meet the heavy lifting demands of his former job.

The documentary record in this proceeding consists of 421 pages of the Claimant's medical records presented to the IRO. In addition, the Carrier presented the expert testimony of Robert Joyner, M.D., an anesthesiologist and pain management specialist. The Provider, in turn, presented the expert testimony of John Taylor, D.C., a chiropractor and assistant clinical director of the Provider.

2. Applicable Law

Pursuant to the Act, an employee who has sustained 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 cures or relieves the effects naturally resulting from the compensable injury, promotes recovery, or enhances the ability of the employee to return to or retain employment. TEX. LAB. CODE ANN. § 408.021(a).

Work hardening is an individualized, highly structured, goal-oriented treatment program designed to maximize the ability of the person receiving the treatment to return to work. Work hardening programs are interdisciplinary, intended to address the functional, physical, behavioral, and vocational needs of the Claimant. The Commission has adopted rules governing work hardening programs. The rules, found in the Medical Fee Guideline (MFG) Medicine Ground Rules relate to,

among other things, when work hardening is appropriate, how such programs are to be administered and billed, and what documentation is required of work hardening providers. MFG Medicine Ground Rule II. E.(1) provides that work hardening would be suitable if the :

- X person was likely to benefit from the program;
- X person whose current levels of functioning due to illness or injury interferes with the person's ability to carry out specific tasks required in the workplace;
- X person whose medical, psychological, or other conditions do not prohibit participation in the program; and
- X person is capable of attaining specific employment upon completion of the program.

The Commission's Spine Treatment Guideline provides that treatment must be provided in the least intensive setting and must be cost effective.

Finally, the Carrier bears the burden of proof in this proceeding pursuant to 28 TEX. ADMIN. CODE §§ 148.21(h).

C. Discussion

1. Parties' Evidence and Positions

Relying on the testimony of Dr. Joyner, the Carrier asserts that the requested work hardening program is not medically necessary. Dr. Joyner testified that the Claimant had plateaued, and that the program would be 95% duplicative of the physical therapy he has already received. Somewhat inconsistently, Dr. Joyner also asserted that the Claimant did not require the extensive psychological services that are an important component of a work hardening program. In this regard, he relied on the Provider's assessment that the Claimant is experiencing only "minimal" depression and "mild" anxiety based on his scores of ten and eleven (on a scale of one to 63) on the Beck Depression Inventory and Beck Anxiety Inventory, respectively. In Dr. Joyner's view, the Claimant needs to accept the fact that he would never return to heavy duty capability and should retrain for lighter work.

The Provider responded that the Claimant has continued to progress in his recovery - from

initially qualifying for sedentary work following the accident, then light, to his current ability to meet the demands of a medium level work classification. Focusing on the criteria in the Ground Rule, the Provider noted that the Claimant has always worked at a heavy level classification laborer-type job and has such a position waiting for him upon successful completion of a program. Dr. Taylor testified that the mild depression and anxiety the Claimant is experiencing could be addressed in the program. Had the Claimant been suffering severe depression or anxiety, that condition could have precluded effective participation in the program. Dr. Taylor also testified emphatically that he has treated numerous patients with conditions similar to the Claimant and successfully returned them to heavy duty jobs following completion of work hardening programs.

2. ALJ's Analysis

The ALJ finds that the Carrier has failed to prove that the prescribed work hardening program is not medically necessary. While the Claimant has undeniably been provided a lot of physical therapy, work hardening is, by definition, more specifically geared to the Claimant's return to work. The Claimant has always worked as a laborer and wishes to return to this occupation. He has made steady, if slow, progress since his injury in returning to a physical condition that would allow him to continue his prior heavy demand job. An integrated work hardening program to address the Claimant's functional, physical, behavioral, and vocational needs appears to be the logical final step in the Claimant's attempt to return to his former job classification.² The Claimant may or may not overcome the final hurdle of moving from medium to heavy demand work through such a program, but he should be given the opportunity to try.

Based on the foregoing, the ALJ finds that the requested work hardening program should be preauthorized.

III. Findings of Fact

² As a specific example, the designated doctor examination conducted on April 12, 2005, indicated the Claimant was a "good candidate for postural correction therapy" in that the compromised nerve root was temporarily decompressed with "right side bending and left rotation." Dr. Taylor testified that the work-related mechanics of this situation could be addressed in the Claimant's individualized work hardening program.

1. The Claimant is a 37 year-old male who sustained a compensable injury to his lower back on ____, while lifting a heavy object.
2. At the time of the accident, Texas Mutual Insurance Company (the Carrier) was the worker's compensation carrier for the Claimant's employer.
3. The Claimant has undergone conservative care consisting of pain medications, epidural steroid injections, and approximately 110 sessions of physical therapy.
4. The Claimant continues to experience low back pain, limited range of motion, and inability to meet the heavy lifting demands of his former job.
5. The Claimant's treating doctor has now requested preauthorization for a 20-session work hardening program.
6. The Carrier timely denied the preauthorization request, and the Pain & Recovery Clinic (Provider) requested medical dispute resolution.
7. In a decision issued April 27, 2005, the Independent Review Organization reviewer (IRO) determined that the requested work hardening program is medically necessary and should be preauthorized.
8. The Carrier timely appealed the IRO decision, which the Commission had adopted.
9. The Commission sent notice of the hearing on the appeal to all parties on June 6, 2005.
10. The notice of hearing 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 hearing convened and closed on August 23, 2005.
12. The Claimant is experiencing minimal depression and mild anxiety, which do not preclude his successful participation in a work hardening program and are amenable to treatment in such a plan.
13. The Claimant has always worked as a laborer with heavy duty lifting requirements and wishes to return to work in that field.
14. The Claimant has made steady, slow, progress since his injury in returning to a physical condition that would allow him to continue his prior heavy demand job.
15. The Claimant is currently able to meet the requirements of a medium demand job.

16. The Claimant is a good candidate for postural correction instruction in that the compromised nerve root can be temporarily decompressed when the Claimant bends and rotates his body in a particular manner. This process could be effectively taught as part of an integrated work hardening program.
17. The Carrier failed to establish that the requested work hardening program is not medically necessary.

IV. Conclusions of Law

1. The State Office of Administrative Hearings 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. The Carrier timely requested a hearing, as specified in 28 TEX. ADMIN. CODE (TAC) § 148.3.
3. Proper and timely notice of the hearing was provided in accordance with TEX. GOV'T CODE ANN. §§ 2001.051, 2001.052, and 28 TAC § 148.4.
4. The Carrier had the burden of proof in this matter pursuant to 28 TAC § 148.14(a).
5. TEX. LAB. CODE ANN. § 413.014 and 28 TAC § 134.600 require that work hardening programs be preauthorized, dependent on a showing of medical necessity.
6. The Carrier failed to establish that the work hardening program would not cure or relieve the effects naturally resulting from the Claimant's injury, promote his recovery, or enhance his ability to return to or retain employment.
7. The Carrier did not establish that the requested work hardening program is not medically necessary to treat the Claimant's injury.
8. Based on the foregoing Findings of Fact and Conclusions of Law, preauthorization for the requested 20 session work hardening program should be approved, pursuant to TEX. LAB. CODE ANN. § 413.014 and 28 TAC § 134.600.

ORDER

It is ORDERED that a **twenty session work hardening program** with Pain & Recovery Clinic North and Nestor Martinez, D.C., are preauthorized for the Claimant.

Signed September 22, 2005.

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