

**THIS DECISION HAS BEEN APPEALED. THE
FOLLOWING IS THE RELATED SOAH DECISION NUMBER:**

SOAH DOCKET NO. 453-03-2267.M5

MDR Tracking Number: M5-03-0394-01

Under the provisions of Section 413.031 of the Texas Workers' Compensation Act, Title 5, Subtitle A of the Texas Labor Code, effective January 1, 2002 and Commission Rule 133.305 and 133.308 titled Medical Dispute Resolution by Independent Review Organizations, the Medical Review Division assigned an IRO to conduct a review of the disputed medical necessity issues between the requestor and the respondent.

The Medical Review Division has reviewed the IRO decision and determined that **the requestor prevailed** on the issues of medical necessity. Therefore, upon receipt of this Order and in accordance with §133.308(q)(9), the Commission hereby orders the respondent and non-prevailing party to **refund the requestor \$650.00** for the paid IRO fee. For the purposes of determining compliance with the order, the Commission will add 20 days to the date the order was deemed received as outlined on page one of this order.

In accordance with §413.031(e), it is a defense for the carrier if the carrier timely complies with the IRO decision.

Based on review of the disputed issues within the request, the Medical Review Division has determined that **medical necessity was the only issue** to be resolved. The work hardening program was found to be medically necessary. The respondent raised no other reasons for denying reimbursement.

This Decision is hereby issued this 3rd day of January 2003.

Noel L. Beavers
Medical Dispute Resolution Officer
Medical Review Division

On this basis, and pursuant to §§402.042, 413.016, 413.031, and 413.019 of the Act, the Medical Review Division hereby ORDERS the respondent to pay the unpaid medical fees in accordance with the fair and reasonable rate as set forth in Commission Rule 133.1(a)(8) plus all accrued interest due at the time of payment to the requestor within 20 days of receipt of this order. This Order is applicable to dates of service 10/24/01 through 11/9/01.

The respondent is prohibited from asserting additional denial reasons relative to this Decision upon issuing payment to the requestor in accordance with this Order (Rule 133.307(j)(2)).

This Order is hereby issued this 3rd day of January 2003.

Roy Lewis, Supervisor
Medical Dispute Resolution
Medical Review Division

RL/nlb

December 26, 2002

David Martinez
TWCC Medical Dispute Resolution
4000 IH 35 South, MS 48
Austin, TX 78704

MDR Tracking #: M5 03 0394 01
IRO #: 5251

___ has been certified by the Texas Department of Insurance as an Independent Review Organization. The Texas Worker's Compensation Commission has assigned this case to ___ for independent review in accordance with TWCC Rule 133.308 which allows for medical dispute resolution by an IRO.

___ has performed an independent review of the care rendered to determine if the adverse determination was appropriate. In performing this review, all relevant medical records and documentation utilized to make the adverse determination, along with any documentation and written information submitted, was reviewed.

This case was reviewed by a licensed Medical Doctor who is board certified in Physical Medicine and Rehabilitation. The ___ health care professional has signed a certification statement stating that no known conflicts of interest exist between the reviewer and any of the treating doctors or providers or any of the doctors or providers who reviewed the case for a determination prior to the referral to ___ for independent review. In addition, the reviewer has certified that the review was performed without bias for or against any party to the dispute.

CLINICAL HISTORY

___ was seen by ___ for right wrist and elbow pain initially on ___. She started on therapies, splints, NSAIDs and exercises. She participated in therapies through the month of June. An EMG/NCS on August 6, 2001 did not show ulnar or nerve medial compression but clinically she appeared to have cubital tunnel syndrome. She was evaluated by ___. He performed a right cubital tunnel release on August 21, 2001. She

continued to have pain and on October 12, 2001 he recommended deep friction massage. She was noted to have right upper extremity hypersensitivity and pain. She was able to tolerate work conditioning. She progressed to work hardening. She participated in work hardening October 24th through November 9th 2001. She was determined to be at the light to medium performance level. She experienced increasing dysesthesias. ___ diagnosed RSD and recommended Bier blocks in December of 2001. When she completed her Bier blocks, ___ recommended injections. Injections were carried out in January of 2002. ___ made a referral to ___ on January 11, 2002. A medical review was done by ___ on January 11, 2002 regarding therapies. Maximum medical improvement was determined by ___ on February 22, 2002 and an impairment of 9% was assessed. In February of 2002, ___ asked for reconsideration for coverage of work hardening. A peer review was done on March 4, 2002 by ___ from ___. She stated that she did not feel the work hardening program was indicated. ___ had another Electrodiagnostic study on March 19, 2002. ___ noted that she had a recurrent right ulnar neuropathy at the elbow, but not evidence of carpal tunnel syndrome on the right. She had another medical evaluation by ___ on September 23, 2002 who did not think her treatments were excessive.

DISPUTED SERVICES

The carrier has denied work hardening services as medically unnecessary from October 24, 2001 through November 9, 2001

DECISION

The reviewer disagrees with the prior adverse determination.

BASIS FOR THE DECISION

The primary opponent to the medical necessity for the work hardening program was ___ peer review for ___. Her comments that the claimant was capable of light work prior to participating in the program do not address the real issue. The work hardening program was to improve her function in her job on a daily basis without pain. Part of a work hardening program is to learn to work through the pain instead of giving up as soon as you have a bit of pain. She had made reasonable progress through her therapies prior to the work hardening program, even though she did not achieve the goal that was sought in the work hardening program. The work hardening program was terminated on the 9th of November and not continued beyond that point. There was no reason for her physicians to think that she would not make progress. As determined later on, she had some residual ulnar nerve entrapment at the elbow which required another surgery. In my opinion, there was not way for her treating doctors to know that she would continue to have problems prior to putting her into the program.

___ has performed an independent review solely to determine the medical necessity of the health services that are the subject of the review. ___ has made no determinations regarding benefits available under the injured employee's policy.

As an officer of ___, I certify that there is no known conflict between the reviewer, ___ and/or any officer/employee of the IRO with any person or entity that is a party to the dispute.

___ is forwarding this finding by US Postal Service to the TWCC.

Sincerely,