

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

**SOAH DOCKET NO. 453-04-4754.M5**

MDR Tracking Number: M5-03-3024-01

Under the provisions of Section 413.031 of the Texas Workers' Compensation Act, Title 5, Subtitle A of the Texas Labor Code, effective June 17, 2001 and Commission Rule 133.305 titled Medical Dispute Resolution- General 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. This dispute was received on 07-22-03.

The IRO reviewed work hardening, functional capacity evaluation, and supplies rendered from 10-03-02 through 12-02-02 that were denied based upon "U".

The Medical Review Division has reviewed the IRO decision and determined that the **requestor prevailed** on the issues of medical necessity for work hardening, functional capacity evaluation, and supplies. Therefore, upon receipt of this Order and in accordance with §133.308(r)(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 not the only issue** to be resolved.

This dispute also contained services that were not addressed by the IRO and will be reviewed by the Medical Review Division.

On October 6, 2003, the Medical Review Division submitted a Notice to requestor to submit additional documentation necessary to support the charges and to challenge the reasons the respondent had denied reimbursement within 14 days of the requestor's receipt of the Notice. The Medical Review Division is unable to review this dispute for fee issues. Documentation was not submitted in accordance with Rule 133.307(g)(3) to confirm services were rendered for dates of service 11-14-02. Therefore reimbursement is not recommended.

This Decision is hereby issued this 3<sup>rd</sup> day of March 2004.

Georgina Rodriguez  
Medical Dispute Resolution Officer  
Medical Review Division

**ORDER.**

Pursuant to §§402.042, 413.016, 413.031, and 413.019 of the Act, the Medical Review Division hereby ORDERS the respondent to pay for 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 Decision is applicable for dates of service 10-03-02 through 12-02-02 in this dispute.

This Order is hereby issued this 3<sup>rd</sup> day of March 2004.

David R. Martinez, Manager  
Medical Dispute Resolution  
Medical Review Division

September 10, 2003  
**Amended February 13, 2004**

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

MDR Tracking #: M5-03-3024-01  
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.

The independent review was performed by a matched peer with the treating doctor. This case was reviewed by a licensed Medical Doctor board certified and specialized in Occupational Medicine. 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

\_\_\_ sustained a work injury on \_\_\_. He was working on a drilling rig when his left foot slipped into a hole and sustained a crush injury with a pipe. He was initially seen in \_\_\_ and was then taken to another hospital. He was apparently taken to surgery and the left great toe was amputated. The left second toe was sutured. He had been seen at the \_\_\_, although he felt that they were not doing anything for him. He was then seen by another physician, \_\_\_, who started him on medications, sent him to physical therapy, and obtained a consultation with \_\_\_, an orthopedic surgeon.

\_\_\_ was seen by \_\_\_ on 8/20/02 at which time he stated that \_\_\_ had reached MMI on 8/20/02 and gave him 4% whole person impairment from his injury.

\_\_\_ then moved from \_\_\_ and was seen by \_\_\_ who placed him on medications and referred him to \_\_\_, pain management, \_\_\_. He was also seen by \_\_\_, a podiatrist.

On 11/11/02 \_\_\_ signed that he disagreed with the certification of MMI and the impairment rating by \_\_\_.

On 10/3/02 \_\_\_ had a Functional Capacity Examination. The study showed that his job required a heavy PDL and the testing showed that he qualified for the medium-heavy PDL. A follow-up FCE on 12/2/02 showed that he was able to work at the very heavy physical demand level for activity above the waist and very heavy physical demand level for activity below the waist. The report from \_\_\_ dated 12/13/02 showed that they recommended to discharge him from the work hardening program and consider possible transition to the chronic pain program.

### DISPUTED SERVICES

Under dispute is the medical necessity of FCE, supplies, work hardening provided from 10/3/02 through 12/2/02.

### DECISION

The reviewer disagrees with the prior adverse determination.

### BASIS FOR THE DECISION

\_\_\_ sustained an injury to the left foot which required amputation of the left great toe and appears to have sustained injuries to the left second and third toes. He was determined to

have reached MMI status by \_\_\_ on 8/20/02. However, on 11/11/02 \_\_\_ noted that he disagreed with the Certifying Doctor's certification of MMI and the impairment rating assigned by the Certifying Doctor. He then wrote a letter on 1/8/03 explaining his reasoning. Since he was being seen for a designated doctor evaluation by \_\_\_ on 2/11/03 and he stated that \_\_\_ reached MMI on 2/11/03 and assigned him eight percent (8%) whole person impairment from the injury, it appears that \_\_\_ report was accepted because a Designated Doctor evaluation and report has presumptive weight with TWCC. Therefore, it appears that \_\_\_ reached clinical MMI on 2/11/03, which was after the service in question.

Letters from \_\_\_ dated 8/25/03 and 8/7/03 were reviewed.

The following issues were apparently the reasons for denying the service in question:

1. Have a targeted job or job plan for return to work at the time of discharge.

Answer: Although it is best to have a targeted job or job plan for return to work at the time of discharge, the goals to have an injured employee return to his previous status. The initial FCE done on 10/3/02 showed that \_\_\_ job required a heavy PDL. Based on the testing, he was able to work at the medium-heavy PDL, Therefore, the goal of treatment, including work hardening, was to get him to the heavy PDL level.

2. Have a stated or demonstrated willingness to participate.

Answer: Although it is best to have an injured employee agree and demonstrate and sign his willingness to participate, it appears that \_\_\_ was compliant with the work hardening program. This in itself implies that he was willing to participate in the work hardening program.

3. Have identified physical (systemic neuromusculoskeletal), function, behavioral and vocational deficits that interfere with work.

Answer: The initial FCE showed some functional deficits. Furthermore, \_\_\_ had had behavioral medical assessment, psychophysiological profile assessment done. The summary of that report shows that \_\_\_ was experiencing psychological distress in the form of symptoms of depression and anxiety that revolved around a strong dissatisfaction and concern over his current level of physical functioning and fear of the future. His current distress was directly related to his persistent pain and the functional limitation she was experiencing. His emotional stress and pain symptomatology was consistent with a chronic pain syndrome secondary to his injury. The report also notes that \_\_\_ chronic pain symptoms were likely to significantly hinder his rehabilitation unless adequately addressed. Despite receiving extensive treatment for his injury, he was not responding fully to the treatments and had

not yet returned to his previous level of functioning. Therefore, deficits that interfered with work had been identified.

4. Be at the point of resolution of the initial or principal injury at which time participation in the work hardening program would not be prohibited.

Answer: The initial FCE was done on 10/3/02. The work hardening was started on \_\_\_\_\_. This was slightly over 15 months after his injury occurred. By then there should have been no reason why work hardening would have been prohibited.

The letter by \_\_\_\_ from \_\_\_\_ shows that he states that none of his requirements were documented. Moreover, there is no indication of any psychological component to the injury that would necessitate work hardening. Finally, no documentation is provided to show that an actual work hardening program was accomplished (individualized, work-specific, multidisciplinary, etc.)

While the \_\_\_\_ reviewer agrees with the last statements made by \_\_\_\_, the question addressed was the medical necessity of \_\_\_\_ work hardening program, FCE, and supplies from 10/3/02 through 12/2/02. The reviewer was not asked to determine whether the work hardening program was actually accomplished in an individualized, work-specific, and multidisciplinary setting. The reviewer was not asked to determine whether the work hardening program was done correctly, that is not the issue. The issue is the medical necessity of the program. The reviewer was asked to determine the medical necessity of the services in question.

Based on the information submitted for review, the reviewer finds that there was a medical necessity for the work hardening program, FCE and supplies from 10/3/02 through 12/2/02.

\_\_\_\_ 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,