

**DOCKET NO. 453-02-3616.M2
TWCC DOCKET NO. M2-02-0554-01**

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| _____, Petitioner | § § § § § § § § § | BEFORE THE STATE OFFICE OF ADMINISTRATIVE HEARINGS |
| V. TEXAS WORKERS' COMPENSATION COMMISSION and EAST TEXAS EDUCATIONAL INSURANCE ASSOCIATION, Respondents | | |

DECISION AND ORDER

_____ (Petitioner) has appealed the findings of Independent Review, Inc. (IRI) affirming the denial by East Texas Educational Insurance Association (Carrier) of pre-authorization for three lumbar sympathetic blocks to be administered to Petitioner over three consecutive weeks. The Administrative Law Judge (ALJ) holds that pre-authorization should be ordered for the requested treatment, because the treatment is medically necessary to relieve Petitioner's pain.

I. JURISDICTION, NOTICE, AND VENUE

The Texas Workers' Compensation Commission (the Commission) has jurisdiction over this matter pursuant to Section 413.031 of the Texas Workers' Compensation Act (the Act), TEX. LAB. CODE ANN. ch. 401 *et seq.* The State Office of Administrative Hearings (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. Chapter 2003. The hearing was conducted pursuant to the Administrative Procedure Act, TEX. GOV'T CODE ANN., Chapter 2001 and SOAH's rules, 1 TEX. ADMIN. CODE (TAC) Chapter 155.

Notice of the hearing was sent to the parties on July 19, 2002. By agreement of the parties, the hearing was continued from August 19, 2002, to September 18, 2002. Notice and jurisdiction are not contested, and are addressed in the Findings of Fact and Conclusions of Law set out below.

ALJ Sharon Cloninger convened the hearing September 18, 2002, at SOAH's hearing site in the William Clements Building, Fourth Floor, 300 West 15th Street, Austin, Texas. Petitioner appeared by telephone, with the assistance of Commission Ombudsman Luz Loza, who appeared in person. Carrier appeared through Mahon B. Garry, Jr., attorney. The Commission did not participate in the hearing.

II. BACKGROUND

On _____, while on-the-job for the _____, Petitioner suffered an injury compensable under the Texas Workers' Compensation Act. On that date, she slipped on a wet kitchen floor and

fell, injuring her left arm and wrist. The injury eventually caused Petitioner to suffer reflex sympathetic dystrophy (RSD)¹, first in her left arm and eventually in both arms and both legs. Carrier was the workers' compensation insurer for CISD at the time Petitioner's injury occurred.

Neil J. Atlin, D.O., began treating Petitioner on September 22, 1998. To treat Petitioner's RSD-related pain, Dr. Atlin implanted a spinal stimulator, which at first had some beneficial effect. On July 16, 2002, Petitioner had her non-functioning, spinal-cord stimulating electrodes and pulse generator with extension wire removed.

In the meantime, on April 11, 2000, Dr. Atlin implanted a morphine spinal infusion pump, with an initial rate of one milligram of morphine per day to ease Petitioner's RSD-related pain. The amount of morphine necessary to relieve her pain steadily increased to a rate of 14 milligrams per day as of September 17, 2002.

Dr. Atlin also used lumbar sympathetic blocks to ease Petitioner's pain. The blocks were effective for no more than one or two weeks each. A brief history of Petitioner's lumbar sympathetic blocks follows:

- (1) On February 6, 2001, Dr. Atlin performed a lumbar sympathetic blockade to treat Petitioner's lower extremity pain. A week later, Dr. Atlin noted Petitioner had increased function and a 70 percent improvement in pain.
- (2) On March 2, 2001, Dr. Atlin performed a second lumbar sympathetic block. The record contains no information assessing the effect of this block.
- (3) On April 24, 2001, a third block was performed. Dr. Atlin's notes of April 30, 2001, indicate Petitioner had a 70 percent improvement in right leg pain.
- (4) A bilateral lumbar sympathetic block was performed on May 24, 2001. Dr. Atlin's note of June 13, 2001, reports a 50 percent improvement in Petitioner's leg pain.
- (5) A final lumbar sympathetic block was performed on October 16, 2001, to treat an apparent exacerbation of Petitioner's pain. No effect of this block is available in the notes.

When Dr. Atlin saw Petitioner on December 13, 2001, she was suffering an acute exacerbation of pain in her right leg, due to her RSD. The level of pain required that her morphine

¹ Reflex sympathetic dystrophy is diffuse persistent pain usually in an extremity often associated with vasomotor disturbances, trophic changes, and limitation or immobility of joints; it frequently follows some local injury. Stedman's Medical Dictionary, 27th Edition, p. 558.

dosage be raised from 11.8 milligrams per day to 12.4 milligrams per day. Dr. Atlin decided at that office visit that a series of lumbar sympathetic blocks performed at less than one-week intervals was necessary to treat her acute exacerbations. In his notes, he states that “a rapid sequence of blocks, in my estimation three, will go a long way in abating this acute exacerbation.”

On December 19, 2001, Dr. Atlin requested approval for the series of lumbar sympathetic blocks, which would be performed in a hospital on a non-emergency basis, and thus, require pre-authorization from Carrier. On December 24, 2001, Fortè Managed Care² recommended non-authorization because Petitioner had already received at least four sympathetic blocks without long lasting effect, and there was no need for more lumbar sympathetic blocks after implantation of the morphine pump. Subsequently, Dr. Atlin re-submitted the request on January 7, 2002, and February 26, 2002. Carrier denied those requests on January 10, 2002, January 30, 2002, March 1, 2002, and March 4, 2002, mainly because there was no evidence that the lumbar sympathetic blocks would have long-term effectiveness.

In Dr. Atlin's note dated February 12, 2002, he states the peer review doctor is wrong regarding the necessity of the lumbar sympathetic blocks. He says intermittent sympathetic blockade would be effective in providing long-term benefit for Petitioner. He said RSD is a dynamic disease state and for acute exacerbations³, intermittent sympathetic blockade is indicated. It is the standard of care in the local and national communities. He goes on to state he is not looking for long-term sustained relief. Instead, he is looking to relieve Petitioner's acute exacerbation. On the date of this doctor's note, Petitioner was grading her pain at a level of eight or nine on a scale of ten. Dr. Atlin would like to see Petitioner's pain put back in more dormant and treatable stages whereby Petitioner was receiving good pain control with her intraspinal infusion with pain scores of two or three on a scale of ten with less gross hyperesthesia and allodynia. He said he is asking for two or three blocks at most, which should go a long way in helping Petitioner get back to her long-term level of pain control.

² The record contains no explanation as to who Fortè Managed Care is, or what the relationship between Carrier and Fortè Managed Care is.

³ Dr. Atlin describes Petitioner's exacerbations to include swelling, proprioception deficits of coldness, redness, hyperesthesia (abnormal acuteness of sensitivity to touch, pain, or other sensory stimuli), and allodynia (a condition in which ordinarily nonpainful stimuli evoke pain).

Further, on April 9, 2002, Dr. Atlin noted that in the past, the lumbar sympathetic blocks have helped temper Petitioner's acute flare-ups.

Petitioner requested an appeal of Carrier's denial before the Commission's Medical Review Division. The Commission referred the appeal request to an independent review organization (IRO). The IRO agreed with Carrier's position that the requested blocks should not be pre-authorized, because Dr. Atlin had not presented enough information to demonstrate medical necessity.

On July 12, 2002, Petitioner appealed the IRO decision, which culminated in this hearing before SOAH.

III. DISCUSSION

A. Applicable Law

The only issue in this case is whether, by a preponderance of the evidence, there is medical necessity for the requested treatment. Medical necessity is defined in TEX. LABOR CODE ANN. §408.021(a), which states:

- (a) An employee who sustains 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:
 - (1) cures or relieves the effects naturally resulting from the compensable injury;
 - (2) promotes recovery; or
 - (3) enhances the ability of the employee to return to or retain employment.

Certain categories of health care identified by the Commission require pre-authorization, which is dependent upon a prospective showing of medical necessity. TEX. LABOR CODE ANN. § 413.014; 28 TAC § 134.600. Pursuant to 28 TAC § 134.600(h)(1), all non-emergency hospitalization requires pre-authorization. Petitioner's requested blocks would be performed in a hospital on a non-emergency basis, so require pre-authorization.

Pursuant to 28 TAC § 134.600(g), Petitioner may proceed to medical dispute resolution (MDR) before the Commission upon denial of pre-authorization by the Carrier. Effective January 1, 2002, MDR may be conducted by an independent review organization. 28 TAC § 133.308. In accordance with the requirement for the Commission to randomly assign cases to IROs, the Commission assigned Petitioner's MRD request to IRI for independent review.

Under 28 TAC §148.21(h), the appealing party—in this case, Petitioner—has the burden of proof in hearings, such as this one, conducted pursuant to TEX. LABOR CODE ANN. § 413.031. Thus, Petitioner must prove the requested lumbar sympathetic blocks are reasonably required within the meaning of TEX. LABOR CODE ANN. § 408.021(a).

B. Evidence and Argument

The evidence consisted of two documents and Petitioner's testimony.

1. Petitioner's testimony

Petitioner, age 41, testified that Dr. Atlin requested three consecutive blocks to give her long-term relief from the pain caused by her RSD. She agreed with Carrier's position that it would be a waste of money to continue doing blocks a month or more apart. She said those blocks only gave her temporary relief, and when they wore off, she ended up right back where she started, as far as the level of pain.

She said that without the requested blocks, she will likely have to keep increasing the amount of morphine she takes to relieve her pain, resulting in more side effects. She explained that the morphine pump in her spine sends morphine to her nerves only, and not to her bloodstream or her head. She must take drugs to fight side effects of the morphine, including nausea, constipation, and water retention. Oral pain medications are not an option, because they do not target the pain source like morphine does, and like the blocks do.

Petitioner testified that the pain from RSD never goes away. Sometimes her leg falls out from under her because of the pain. Sometimes, she cannot even have bed covers touching her leg, because of the pain. She has had to go to the emergency room for morphine when the pain became too great to tolerate, but the relief is only temporary. Usually, she has to lie in bed with tears running down her face until the pain subsides.

She is homebound because of the RSD, which prevents her from working and driving. The RSD prevents her from exercising. As a result, her left arm has become very small. She would like to keep the rest of her body from ending up like her left arm.

An alternative to the three consecutive blocks would be the performance of a sympathectomy, a surgery in which the sympathetic nerve would be cut. But Dr. Atlin does not recommend a sympathectomy for Petitioner.

2. Argument

a. Petitioner's argument

While the requested blocks would not cure Petitioner's RSD, the blocks would reduce her level of pain over the long-term. Under the law, she is entitled to health care that relieves the effects naturally resulting from her compensable injury. It is uncontroverted that Petitioner's RSD results from her compensable injury and that the blocks would relieve her RSD-related pain.

b. Carrier's argument

The blocks administered to Petitioner in the past have not been effective and should not continue to be administered. Although Petitioner had four blocks in the past to treat her pain, her morphine dosage was increased after each block. If the blocks had been effective in past, the blocks currently being requested would have been approved.

IV. ANALYSIS

Petitioner has met her burden of establishing that the lumbar sympathetic blocks, administered weekly for three consecutive weeks, are medically necessary, and that the treatment should be pre-authorized. It is uncontroverted that her debilitating pain is caused by RSD, which resulted from her compensable injury.

Both Petitioner and Carrier agree that there is no point in Petitioner receiving any more lumbar sympathetic blocks administered a month or more apart, as has been done in the past. Both parties agree that the relief obtained from those blocks is too temporary to be cost-effective.

What Dr. Atlin is requesting is not lumbar sympathetic blocks administered a month or more apart. He is requesting a series of three blocks at most, performed over a three-week period, which he states will have a different effect on Petitioner than the isolated blocks did. He states the series of blocks will provide long-term benefits for Petitioner. He said the blocks will relieve Petitioner's acute exacerbations, reducing her pain from a level of eight or nine on a scale of ten, to a more dormant and treatable level of two or three on a scale of ten, giving Petitioner good pain control with her morphine infusion pump. He said it is the standard of care in the local and national communities to administer intermittent sympathetic blockade for acute exacerbations. The ALJ finds Dr. Atlin's conclusion credible that the requested blocks should go a long way in helping Petitioner to get back to her long-term level of pain control.

On the other hand, the IRO and Fortè Management presented no evidence that the series of requested blocks would be as ineffective as the isolated blocks were.

While the requested blocks will not totally alleviate Petitioner's pain, there is credible evidence that the blocks will reduce her level of pain from "acute" to "manageable," affording her relief. Thus, Petitioner is entitled to the requested treatment under TEX. LABOR CODE ANN. § 408.021(a).

V. FINDINGS OF FACT

1. _____ (Petitioner) injured her left arm and wrist on _____, when she slipped and fell on a wet kitchen floor while performing her duties as an employee of the _____ (CISD).
2. East Texas Educational Insurance Company (Carrier) was CISD's insurance provider at the time of Petitioner's injury.
3. Petitioner has been treated by Neil J. Atlin, D.O., since September 22, 1998.
4. Since Petitioner's compensable injury occurred, she has developed reflex sympathetic dystrophy (RSD), which is a direct result of her compensable injury. The RSD started in her left arm and has spread to both arms and both legs and causes her constant pain.
5. Dr. Atlin treated Petitioner's RSD-related pain by implanting a spinal stimulator. The stimulator was removed as non-functioning on July 16, 2002.
6. On April 11, 2000, Dr. Atlin treated Petitioner's RSD-related pain by implanting a morphine pump in her spine. The morphine reaches Petitioner's nerves and does not enter her bloodstream.

7. Dr. Atlin has increased Petitioner's morphine level from one milligram per day in April 2000 to 14 milligrams per day as of September 17, 2002, to treat her RSD-related pain.
8. On occasion, Petitioner has visited the hospital emergency room for morphine when her RSD-related pain has become too much to tolerate.
9. Dr. Atlin has treated Petitioner's RSD-related pain with five lumbar sympathetic blocks administered about a month apart. The blocks afforded her one-to-two weeks of pain relief.
10. On December 19, 2001, January 7, 2002, and February 26, 2002, Dr. Atlin requested pre-authorization from Carrier for Petitioner to undergo a series of three lumbar sympathetic blocks over a period of three consecutive weeks.
11. On December 24, 2001, January 10, 2002, January 30, 2002, March 1, 2002, and March 4, 2002, Carrier denied Dr. Atlin's request for pre-authorization, on the grounds that the clinical documentation was inadequate to demonstrate medical necessity.
12. Petitioner filed a timely request with the Commission for medical dispute resolution.
13. Petitioner's request was randomly assigned to Independent Review, Inc., an independent review organization, by the Commission's Medical Review Division on April 9, 2002.
14. The independent review organization issued a decision May 15, 2002, recommending denial of Petitioner's request for pre-authorization.
15. Petitioner filed a timely request for hearing June 27, 2002.
16. Notice of the hearing was sent to the parties on July 19, 2002.
17. 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.
18. Administrative Law Judge Sharon Cloninger convened the hearing September 18, 2002, in the William Clements Building, 300 West 15th Street, Fourth Floor, Austin, Texas. Petitioner appeared by telephone and was assisted by Commission Ombudsman Luz Loza, who appeared in person. Carrier was represented by Mahon B. Garry, Jr., attorney. The Commission did not participate in the hearing.
19. The series of lumbar sympathetic blocks requested by Dr. Atlin would relieve Petitioner's pain, reducing it from a level of eight or nine on a scale of ten to a manageable level of two or three on a scale of ten.

VI. CONCLUSIONS OF LAW

1. The Texas Workers' Compensation Commission (the Commission) has jurisdiction over this matter pursuant to Section 413.031 of the Texas Workers' Compensation Act (the Act), TEX. LAB. CODE ANN. ch. 401 *et seq.* (Vernon 1996).

2. 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(d) and TEX. GOV'T CODE ANN. Chapter. 2003 (Vernon 2000).
3. The hearing was conducted pursuant to the Administrative Procedure Act, TEX. GOV'T CODE ANN., Chapter 2001 (Vernon 2000) and SOAH=s rules, 1 TEX. ADMIN. CODE (TAC) Chapter 155.
4. Adequate and timely notice of the hearing was provided in accordance with TEX. GOV=T CODE ANN.'2001.052.
5. Petitioner met her burden of proving that the three consecutive lumbar sympathetic blocks are medically necessary and are reasonably required within the meaning of TEX. LAB. CODE ANN. '408.021(a).
6. Based on the foregoing Findings of Fact and Conclusions of Law, the requested lumbar sympathetic blocks should be pre-authorized.

ORDER

IT IS, THEREFORE, ORDERED that the three lumbar sympathetic blocks recommended by Dr. Atlin to be administered over three consecutive weeks should be pre-authorized for Petitioner's treatment.

SIGNED this 14th day of October, 2002.

SHARON CLONINGER
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS