

DOCKET NO. 453-03-0988.M2
[MDR TRACKING NO. M2-02-0717-01]

<p>_____ <i>Petitioner</i></p> <p>VS.</p> <p>HARTFORD INSURANCE GROUP, <i>Respondents</i></p>	§ § § § § § §	<p style="text-align:center">BEFORE THE STATE OFFICE</p> <p style="text-align:center">OF</p> <p style="text-align:center">ADMINISTRATIVE HEARINGS</p>
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DECISION AND ORDER

The issue in this case is whether EMG guided Botox injections should be preauthorized to treat the compensable work injury of _____ (Claimant). The Administrative Law Judge (ALJ) disagrees with the decision of the Independent Review Organization (IRO) and issues this decision and order preauthorizing the injections.

I. Discussion

On _____, the Claimant’s back was injured in a workplace accident. An MRI taken shortly after the accident revealed a disc herniation at the L5-S1 level of the spine and mild bulging at the L3-L4 level. Prior to his injury, the Claimant was symptom free. In August of 2001, Claimant’s treating physician, Dr. A. T. Carrasco, a pain management specialist, prescribed additional injections for treatment of Claimant’s chronic pain in his lumbar spine. Upon denial of preauthorization for EMG guided Botox injections, the Claimant filed a request for medical dispute resolution with the Texas Workers’ Compensation Commission (the Commission). The IRO found in favor of the Carrier. Claimant appealed that decision and has the burden of proof in this proceeding. 28 TEX. ADMIN. CODE (TAC) §148.21(h).

In the Claimant’s medical records, Dr. Carrasco writes that the Botox injections “provided him with significant and long term relief that made a difference in his pain over the past few years [and]. . . the injections allowed him to continue to work without him having to take increased doses of medication.” Petitioner Ex. 1 at 16. The Claimant’s medical records demonstrate that he has received Botox injections several times since his injury, most recently in 1998. The Botox injections have not been effective immediately upon injection, but for each time he received Botox injections, the Claimant later reported to Dr. Carrasco an improvement in his pain levels. The Claimant has taken prescription medication, primarily Norflex, but he testified that he attempts to avoid it to the extent possible because he is afraid he could become addicted. Further, he cannot take prescription pain relievers at work because it makes him drowsy. He has additionally pursued physical therapy, stretching and home exercises. He did not want to pursue surgery.

The Claimant testified that he is currently in a lot of pain, although he continues to go to work. He stated that the Botox injections helped to keep his pain within tolerable levels and gave him relief for approximately 4-6 months. He believed the injections will help him to continue with his work without significant interruption.

The IRO found that it was unreasonable to believe Dr. Carrasco's assertions that Botox injections have provided pain relief for a period of time exceeding three years, and questioned whether the Claimant's current symptoms relate to the work injury. The reviewer also found no documentation establishing the validity of Botox denervation in five-year post injury cases.

The Carrier argues that the Claimant has failed to establish that the Botox injections are medically necessary treatment. The Carrier relies upon the IRO decision, as well as a report prepared by Terrence Wilson, M.D., completed on January 29, 2003. Dr. Wilson apparently reviewed the Carrier's file and concurred with the opinion of the Carrier and the IRO. The report cites several articles questioning the efficacy of treating myofascial pain with Botox injections.

II. ALJ's Analysis

The ALJ finds that the Claimant has met his burden of proof and preauthorizes the Botox injections. The ALJ finds the Claimant's own medical history contained in Dr. Carrasco's treatment notes compelling in establishing the need and efficacy of the Botox treatments. The Claimant also established through his testimony that the Botox injections are helpful in relieving his pain and in allowing him to continue to work. While the IRO questioned the relationship between the Claimant's injury and the Claimant's pain, compensability has never been challenged. Nor did the Carrier present any evidence that the Claimant's pain is not related to the underlying injury.

Based upon the record in this matter, the ALJ finds that the EMG-guided Botox injections should be preauthorized.

III. Findings of Fact

1. The Claimant sustained a compensable back injury on _____.
2. Hartford Insurance Company (Carrier) provided workers' compensation insurance to the Claimant's employer on the date of the injury.
3. The Carrier declined to preauthorize EMG-guided Botox injections, and the Claimant filed a request with the Texas Workers' Compensation Commission (Commission) for medical dispute resolution.
4. On October 1, 2002, the Commission's Medical Review Division (MRD), through an independent review organization (IRO), found that the injections were not medically necessary.
5. The Claimant appealed the findings of the IRO.
6. Notice of the hearing was sent November 6, 2002. 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.

7. The hearing was held January 30, 2003, with Administrative Law Judge Janet R. Dewey presiding and a representative for the Carrier participating. An Ombudsman from the Commission assisted the Claimant in presenting his case. The Claimant appeared by telephone. The hearing adjourned and the record closed the same day.
8. An MRI taken shortly after the accident revealed a disc herniation at the L5-S1 level of the spine and mild bulging at the L3-L4 level. Prior to his injury, the Claimant was symptom free.
9. Claimant's treating physician, Dr. A. T. Carrasco, a pain management specialist, prescribed the EMG guided Botox injections for treatment of Claimant's chronic pain in his lumbar spine.
10. The Claimant has received Botox injections several times since his injury, and the injections have been helpful in relieving his pain and have enabled him to continue his work.
11. The Claimant seeks to avoid prescription medications to the extent possible, and he has had difficulty performing his work when he has taken prescription medication to control his pain during the day.
12. EMG guided Botox injections will help to relieve the Claimant's pain and enable him to continue his work.

IV. Conclusions of Law

1. The Commission has jurisdiction over this matter pursuant to TEX. LAB. CODE ANN § 413.031 (Vernon 1996 and Supp. 2002).
2. 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 (Vernon 2000).
3. Adequate and timely notice of the hearing was provided in accordance with TEX. GOV'T CODE ANN. §2001.052.
4. The Claimant has the burden of proof in this matter. 28 TEX. ADMIN. CODE §148.21(h).
5. EMG guided Botox injections are reasonably required health care under TEX. LAB. CODE ANN § 408.021.

ORDER

IT IS, THEREFORE, ORDERED that preauthorization for EMG-guided Botox injections is granted.

Signed February 13th, 2003.

STATE OFFICE OF ADMINISTRATIVE HEARINGS

JANET R. DEWEY
ADMINISTRATIVE LAW JUDGE