

2. Petitioner's Testimony

According to Petitioner, she has not had pain relief for more than a few days at a time since the surgeries. Her pain radiates from her lower back to both of her legs. Sometimes, her legs "give way," and she falls. Petitioner also testified that the fusion has not held, and the L4-S2 area is also damaged. However, her doctors cannot do more surgery because of her other medical problems.

When Petitioner needs to go somewhere, her husband drives her. She can get from the car to the doctor's office with a walker that has three wheels and a seat. Inside her home, she can use a cane if she simultaneously braces herself against the wall. For pain, she uses a 100-milligram Fentanyl patch and takes two Percocet tablets four times a day.

Petitioner said she cannot cook or do any work around her house. She does not visit friends because it is "too big of an ordeal," and she very seldom goes to a store. When she does go to the grocery store, she must brace herself on the grocery cart, but that causes shoulder pain.

3. Medical Records

In a March 17, 2003, report, Petitioner's treating doctor, orthopaedic surgeon Stephen E. Earle, M.D., summarized the reasons he prescribed a power wheelchair for her:

. . . [Petitioner] remains symptomatic with severe lower back pain and leg pain and has gained over 150 pounds since her injury. This is in relationship to her inability to perform [an] exercise program and being more sedentary secondary to back and leg pain. I have written this prescription, as it is medically reasonable and necessary and related to her on-the-job injury. . . . She cannot walk for any significant amount of distance or time and she is basically an invalid without this assistance, being home bound . . .³

In an August 16, 2002, report, Dr. Earle described Petitioner as someone who:

is not a community ambulator and barely qualifies for household ambulation with assistance and bracing. The patient would be better chair-confined. . . . She is unable to self-propel a manual wheelchair . . . and is unable to ambulate at this time. She has significant weakness of her lower extremities. She needs the power wheelchair for the long duration and I would think this prescription would be of a permanent nature.⁴

On January 28, 2002, Petitioner reported to Dr. Earle that she could not ambulate with a cane

³Ex. 1, p. 1.

⁴Ex. 1, p. 3.

or walker. At that time, he prescribed a custom fit lumbar support and instructed her to lose weight and exercise. He also prescribed Celebrex. In a report regarding a September 24, 2001, service date, Dr. Earle suggested a consultation regarding Petitioner's depression, and he prescribed weight loss and patient education.

The record also contains reports from Donald D. Bacon, M.D., a pain specialist, for two service dates, June 27, 2001, and February 27, 2002. In the 2001 report, Dr. Bacon noted that Petitioner stood during his interview of her and supported her weight with a crutch. She was able to sit for a short period of time. She experienced severe pain in her left hip that radiated down her left leg. She had been unable to stand, sit, or get in and out of the bathtub. Dr. Bacon's diagnostic impression was low back pain with radiculopathy exacerbation, old L5 nerve root pain, and increasing symptoms of left S1 nerve root pain. Dr. Bacon noted that he previously had not seen Petitioner in such intense pain and concluded his report with a plan to repeat a transforaminal block of L5 and S1 with hypertonic saline neurolysis.⁵

In the 2002 report, Dr. Bacon recorded Petitioner's complaints of increased leg pain. Petitioner told him that she should could not walk without her walker and complained of pain from pressure to the foot. She said the horrible pain to her back was clearly improved, and she was able to lie down without having severe pain. Overall, her pain had improved but was "beginning to creep back some." She also told him her pain had not become severe enough to warrant another block; the improvement with the last procedure had been prolonged. As diagnoses, Dr. Bacon listed multiple lumbar nerve root injuries, low back pain, lumbar spondylosis with facet arthropathy, bilateral iliopsoas contracture,⁶ diabetes mellitus, peripheral edema, and morbid obesity.⁷

4. IRO

In denying the preauthorization request, the IRO reviewer noted that there were suggestions of radiculopathy or nerve root involvement, but any such involvement was not well-documented. Similarly, there was no documented evidence of paraplegia or other severe neurological loss. In the reviewer's opinion, Petitioner's difficulty with walking and use of a walker appeared to be predominately related to pain.

⁵Ex. 2, pp. 23-24. Saline neurolysis is the breaking down of nerve substance or the operation of freeing a nerve from adhesions. Merriam Webster's Medical Dictionary at 456. (1995).

⁶Iliopsoas is a muscle consisting of the iliacus and psoas major muscle. *Id.* at 317.

⁷Ex. 2, pp. 19-20.

5. Carrier

Citing Petitioner's ability to ambulate and lack of documentation regarding her inability to operate a manual wheelchair, the Carrier denied preauthorization. Further, the Carrier highlighted the IRO decision and Dr. Bacon's 2002 report documenting pain improvement.

F. Legal Standards

The parties stipulated that a power wheelchair would cost more than \$500. All durable medical equipment that costs more than \$500 per item, either through purchase or expected cumulative rental, must be preauthorized.⁸ As the appealing party, Petitioner had the burden of proof.⁹

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.¹⁰

Health care includes medical services, such as a wheelchair.¹¹

III. Analysis

With Petitioner's testimony and Dr. Earle's records, Petitioner has met her burden of proof. The evidence established that, as a result of her injury, Petitioner:

- C became sedentary and gained weight;
- C has significant weakness in her legs which sometimes give way;
- C cannot walk for any significant distance;

⁸28 TEX. ADMIN. CODE § 134.600(h)(11).

⁹28 TEX. ADMIN. CODE § 148.21(h).

¹⁰TEX. LAB. CODE ANN. § 408.021.

¹¹TEX. LAB. CODE ANN. §401.011(19).

- C cannot self-propel a manual chair; and
- C will gain mobility with a power wheelchair.

Granted, paraplegia was not documented, and there were no objective tests showing nerve root injuries. Nevertheless, Petitioner's pain improved after the transforaminal block with neurolysis, a procedure that addressed nerve pain, and even when her pain improved, her mobility did not.

In the (administrative law judge's (ALJ's) opinion, these facts support a decision that the power wheelchair will relieve the effects that have naturally resulted from Petitioner's compensable injury, and the ALJ grants the preauthorization request.

IV. Findings Of Fact

1. Petitioner sustained a work-related back injury on _____.
2. At the time of Petitioner's injury, her employer had workers' compensation insurance with the Carrier, Argonaut Southwest Insurance Company.
3. As a result of Petitioner's injury, she underwent spinal fusion at L5-S1 in March 1995.
4. For a while after the surgery, Petitioner's pain diminished, but it later returned.
5. Petitioner's surgery had to be redone in June of 1996 because one of the screws had backed out and damaged the bone graft.
6. Petitioner's fusion has not held, and the L4-S2 area is also damaged.
7. Petitioner's doctors cannot do more surgery because of her other medical problems.
8. Diagnoses for Petitioner have included: failed lumbar spine syndrome, low back pain with radiculopathy exacerbation, old L5 nerve root pain, increasing symptoms of left S1 nerve root pain, multiple lumbar nerve root injuries, lumbar spondylosis with facet arthropathy, bilateral iliopsoas contracture, diabetes mellitus, peripheral edema, and morbid obesity.
9. Petitioner remains symptomatic with severe lower back pain and leg pain and has gained over 150 pounds since her injury.
10. Petitioner's weight gain is in relationship to her inability to perform an exercise program and being more sedentary secondary to back and leg pain.
11. Petitioner has not had pain relief for more than a few days at a time since the surgeries.
12. Petitioner's pain radiates from her lower back to both of her legs.
13. Petitioner has significant weakness of her lower extremities; sometimes, Petitioner's legs

“give way,” and she falls.

14. Petitioner cannot walk for any significant amount of distance or time, and she is essentially home-bound.
15. Petitioner cannot cook or do any work around her house and does not visit friends because it is too difficult.
16. Petitioner is not a community ambulator and barely qualifies for household ambulation with assistance and bracing.
17. Petitioner is unable to self-propel a manual wheelchair.
18. Petitioner will gain mobility with a power wheelchair.
26. A matched peer health care provider with an independent review organization reviewed Petitioner’s request for power wheelchair and determined that it was not medically necessary, and Petitioner timely appealed.
27. Notice of the hearing on the appeal was served on all parties on January 22, 2003.
28. Together, the hearing notice and IRO decision included a statement of the time, place, and nature of the hearing; 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.
29. At the April 14, 2003, hearing, Petitioner represented herself, assisted by Ombudsman Juan Mireles, and Dan C. Kelley represented the Carrier.

V. Conclusions Of Law

1. The Texas Workers’ Compensation Commission has jurisdiction to decide this case, pursuant to the Texas Workers’ Compensation Act, TEX. LABOR CODE ANN. § 401.001, *et seq.*
2. SOAH has jurisdiction over matters related to the hearing in this proceeding, including the authority to issue a decision and order. TEX. GOV’T CODE ANN. ch. 2003 and § 413.031(d) of the Act.
3. Adequate and timely notice of the hearing was provided in accordance with TEX. GOV’T CODE ANN. §§ 2001.051 and 2001.052.
4. The hearing was conducted pursuant to the Administrative Procedure Act, TEX. GOV’T CODE ANN. ch. 2001.
5. As the party seeking relief, Petitioner bore the burden of proof in this case, as specified in 28

TEXAS ADMIN. CODE §148.21(h).

6. Based on the Findings of Fact, a power wheelchair will relieve the effects naturally resulting from Petitioner's injury.
7. A power wheelchair is medically necessary health care, as contemplated in TEX. LAB. CODE ANN. §§ 401.011 and 408.021.
8. Petitioner's preauthorization request for a power wheelchair should be granted.

ORDER

IT IS THEREFORE, ORDERED that Petitioner's preauthorization request for a power wheelchair is granted.

SIGNED May 9, 2003.

SARAH G. RAMOS
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS