

STATE OFFICE OF ADMINISTRATIVE HEARINGS  
300 W 15TH STREET, SUITE 502  
AUSTIN, TEXAS 78701

DOCKET NO. 453-03-2380.M2  
[MDR TRACKING NO. M2-03-0548-01]

STAT 2000	§	BEFORE THE STATE OFFICE
	§	
V.	§	OF
	§	
FIREMAN'S FUND INSURANCE COMPANY	§	ADMINISTRATIVE HEARINGS

**DECISION AND ORDER**

STAT 2000 challenges the decision of the Independent Review Organization (IRO) denying preauthorization for the purchase of a neuromuscular stimulator for injured worker \_\_\_\_ (Claimant).<sup>1</sup> After considering the evidence and arguments, the undersigned Administrative Law Judge (ALJ)<sup>2</sup> finds that STAT 2000 has shown, by a preponderance of the evidence, that the requested medical care is reasonable and necessary treatment for \_\_\_\_ compensable injury. Therefore, the ALJ authorizes the requested treatment.

**I. DISCUSSION**

Claimant suffered a compensable, work-related injury to his back on \_\_\_\_\_. On August 28, 2002, Claimant had back surgery to relieve ongoing symptoms of his compensable injury. As part of his follow-up treatment, Claimant began using a neuromuscular stimulator. Claimant's treating physician, Dr. Dennis Gutzman, then prescribed the purchase of the neuromuscular stimulator for Claimant. STAT 2000, as the supplier of the item, requested preauthorization from Fireman's Fund Insurance Company (Carrier), Claimant's workers' compensation insurance carrier.

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<sup>1</sup> The IRO is the designee of the Medical Review Division (MRD) of the Texas Workers' Compensation Commission (Commission) for purposes of resolving this preauthorization dispute.

<sup>2</sup> This case was initially heard by ALJ John Beeler. After the hearing, but prior to the deadline for issuance of a decision, this case was reassigned to ALJ Craig Bennett. The undersigned ALJ has listened to the tape of the hearing, and has reviewed and become familiar with the entire record, including all exhibits that were admitted into evidence.

On November 15, 2002, Carrier denied preauthorization, relying on the opinion of a physician advisor who concluded that the prescribed device “has not been proven effective for long-term use.” STAT 2000 requested reconsideration, and the Carrier again denied preauthorization for the neuromuscular stimulator, citing to another physician advisor’s determination that the item was not medically necessary because “long term, double blind, and peer-reviewed studies indicating efficacy and safety of the devices are not available.” STAT 2000 then appealed to the Commission, and the matter was referred to an IRO for determination. The IRO denied preauthorization, stating “the reviewer is unable to recommend the purchase of a neuromuscular stimulator based on the lack of peer reviewed literature or studies supporting the use of a neuromuscular stimulator alone for chronic back pain.” STAT 2000 then requested a hearing, resulting in this proceeding at the State Office of Administrative Hearings.

After reviewing the evidence, the ALJ finds that STAT 2000 has met its burden of proving by a preponderance of the evidence that a neuromuscular stimulator is medically necessary treatment for \_\_\_’s compensable injury. In reviewing the evidence, the ALJ is faced with opinions from four medical experts: the two physician advisors used by the Carrier, the IRO reviewer, and Dr. Gutzman. The record reveals little or nothing about the credentials or credibility of the physician advisors or IRO reviewer; however, Dr. Gutzman is board-certified in orthopaedic surgery and is the doctor who has actually examined and treated Claimant. In his letter of October 31, 2002, Dr. Gutzman sets out a detailed rationale as to why he believes the neuromuscular stimulator is necessary and has provided medical benefit to Claimant. In particular, Dr. Gutzman notes Claimant’s use of the item during a rental period and the benefits that were obtained from it during that time. He also provides a clear rationale why he believes it will continue to benefit Claimant, including a decrease in Claimant’s need for medication and other treatment.

In contrast to Dr. Gutzman’s opinion, the physician advisors and IRO reviewer simply assert in general terms that the value of a neuromuscular stimulator has not been shown. They do not affirmatively and unequivocally conclude that there is no value, nor do they provide any specific details explaining why they disagree with Dr. Gutzman’s determination that Claimant’s reduction in pain and improved health are due to his use of the neuromuscular stimulator during the rental period. In fact, the physician advisors and reviewer barely mention Claimant’s condition in presenting their conclusions. Ultimately, it appears that the reviewers simply discount any benefit from a neuromuscular stimulator like the NT2000, on the basis that there is inadequate scientific evidence establishing such. In considering all of the evidence, though, the ALJ finds Dr. Gutzman’s opinion to be more persuasive than the short summary opinions of the Carrier’s physician advisors and the IRO reviewer. Moreover, as reflected by the numerous IRO decisions admitted into the record in which neuromuscular stimulators were found to be medically necessary, many other physicians have concluded that there are some benefits from the item. While it is true that the facts of those cases may be different, that is of little consequence here, where the reason for denial is the general, global assertion that the item is lacking any documented medical benefit at all.

For the foregoing reasons, the ALJ concludes that the requested neuromuscular stimulator is reasonable and necessary medical treatment for Claimant’s compensable injury and should be authorized. In support of this determination, the ALJ makes the following findings of fact and conclusions of law.

## **II. FINDINGS OF FACT**

1. \_\_\_\_ (Claimant) sustained a compensable, work-related injury on\_\_\_\_\_.
2. Fireman's Fund Insurance Company (Carrier) is the insurance carrier providing workers' compensation insurance coverage for Claimant.
3. As a result of the compensable injury,\_\_\_\_\_ suffered pain in his back and legs.
4. On August 28, 2002, Claimant had back surgery to relieve ongoing symptoms of his compensable injury.
5. As part of his follow-up treatment after the surgery, Claimant began using a neuromuscular stimulator. Thereafter, Claimant's treating physician, Dr. Dennis Gutzman, prescribed the purchase of the neuromuscular stimulator for Claimant. STAT 2000, as the supplier of the item, requested preauthorization from Carrier.
6. Carrier denied preauthorization, maintaining that the requested treatment was not medically necessary and appropriate treatment for\_\_\_\_\_'s compensable injury.
7. STAT 2000 requested medical dispute resolution through the Texas Workers' Compensation Commission. The Commission referred the matter to an Independent Review Organization (IRO) for determination.
8. The IRO reviewed the dispute and issued a decision on February 4, 2003, finding that the requested treatment was not medically necessary and denying the requested preauthorization.
9. On February 11, 2003, STAT 2000 requested a hearing before the State Office of Administrative Hearings (SOAH).
10. Notice of the hearing in this case was mailed to the parties on March 7, 2003. 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. In the notice, the Commission's staff indicated that it would not participate in the hearing.
11. The hearing was held on April 2, 2003, with Administrative Law Judge John Beeler presiding. STAT 2000 appeared through its representative, Randy Burgett. Carrier appeared through its attorney, Steven Tipton. The hearing was adjourned and the record closed the same day.
12. On April 17, 2003, this matter was reassigned to ALJ Craig R. Bennett for review of the record and preparation of a decision.
13. The BMR NT2000 neuromuscular stimulator (NT2000) is medically reasonable and necessary treatment for Claimant's compensable injury, in that:

- a. On September 19, 2002, Claimant was fit with—and trained on the use of—the NT2000;
- b. At or near that time, Claimant had pain and spasm levels of 9 on a scale of 1 to 10, with 10 being “unbearable;”
- c. After 15 days of treatment with the NT2000, Claimant’s pain and spasms decreased to a level of 7; after 45 days of treatment with the NT2000, Claimant’s pain and spasms decreased to a level of 4;
- d. After using the NT2000, Claimant is able to sleep better, is taking fewer medications, and has improved range of motion;
- e. The NT2000 is likely to continue to provide Claimant with relief from pain and spasms and with increased range of motion and improved muscle strength.

### **III. CONCLUSIONS OF LAW**

1. The Commission has jurisdiction over this matter pursuant to TEX. LAB. CODE § 413.031.
2. SOAH has jurisdiction over this proceeding, including the authority to issue a decision and order, pursuant to TEX. LAB. CODE ANN. §413.031 and TEX. GOV’T CODE ANN. ch. 2003.
3. STAT 2000 timely filed its notice of appeal, as specified in 28 TEX. ADMIN. CODE § 148.3.
4. Proper and timely notice of the hearing was effected upon the parties according to TEX. GOV’T CODE §§ 2001.051 and 2001.052 and 28 TEX. ADMIN. CODE §148.4.
5. STAT 2000 had the burden of proof on its appeal by a preponderance of the evidence, pursuant to TEX. LAB. CODE ANN. § 413.031 and 28 TEX. ADMIN. CODE §148.21(h).
14. Under TEX. LABOR CODE § 408.021(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.

15. Under 28 TEX. ADMIN. CODE § 134.600(h), durable medical equipment costing more than \$500 must be preauthorized, dependent on a showing of medical necessity.
16. STAT 2000 established, by a preponderance of the evidence, that the prescribed neuromuscular stimulator is medically reasonable and necessary for treating \_\_\_\_ compensable injury.
17. Based on the above Findings of Fact and Conclusions of Law, STAT 2000's appeal should be sustained, and the request for preauthorization should be granted.

### **ORDER**

It is ORDERED that the request for preauthorization for the purchase of the BMR NT2000 neuromuscular stimulator for Claimant is granted, and Carrier is ordered to reimburse all reasonable and necessary covered expenses associated with the item.

**Signed the 22<sup>nd</sup> of April 2003.**

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**CRAIG R. BENNETT**  
**ADMINISTRATIVE LAW JUDGE**  
**STATE OFFICE OF ADMINISTRATIVE HEARINGS**