

STATE OFFICE OF ADMINISTRATIVE HEARINGS
300 West 15th Street, Suite 502
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DOCKET NO. 453-03-2698.M5
MDR Tracking No. M5-03-0643-01

STAT 2000, <i>Petitioner</i>	§	BEFORE THE STATE OFFICE
	§	
	§	
VS.	§	
	§	OF
FIRE AND CASUALTY INSURANCE COMPANY, <i>Respondent</i>	§	
	§	
	§	ADMINISTRATIVE HEARINGS

DECISION AND ORDER

This case is a dispute over whether STAT 2000 (the Petitioner) should be reimbursed \$1,500 for the rental of a home traction device provided to workers' compensation claimant _____. The Commission referred the case to an Independent Review Organization (IRO), which found that reimbursement should be denied. The Petitioner appeals that decision.

The Administrative Law Judge (ALJ) concludes the Petitioner did not meet its burden of proving the home traction device was medically necessary. Accordingly, this decision denies reimbursement.

I. NOTICE AND HEARING

The hearing convened April 23, 2003, at the hearing facilities of the State Office of Administrative Hearings (SOAH) before SOAH ALJ Kerry D. Sullivan. The Petitioner was represented by Randy Burgett, who appeared by telephone; Fire and Casualty Insurance Company (the Carrier) was represented by Mark Sickles. After receipt of evidence, the record was closed the same day.

II. EVIDENCE AND BASIS FOR DECISION

The Claimant is a 49-year-old female who sustained a compensable injury to her neck and right shoulder on _____. The disputed rental of the home traction device was from November 21, 2001 through April 21, 2002. The documentary record consists of documentation provided to the Independent Review Organization. Additionally, Randy Burgett, the Petitioner's Chief Executive Officer, testified on behalf of the Petitioner.

The most pertinent documentation in the record consists of two letters. On April 24, 2002, John Lamoureux, D.C., wrote a letter of medical necessity in which he states:

(the Claimant) is being treated for sprain/strain of the neck, muscle spasms, and stiffness of the joint, not elsewhere classified, site unspecified. She was prescribed a

cervical home traction device to aide in reducing pain associated with the injury. With the continued use of the equipment the patient's prognosis is good.

The long-term objective is to reduce if not alleviate the need for pain medications, as well as any on going long-term supervised clinical therapies. Thus, accomplishing part of our long-term objective in a cost effective manner.

It is my strongest recommendation that the cervical home traction device be a covered item. . . .

The other letter summarizes a January 12, 2002, peer review performed by Benjamin Agana, M.D., a diplomate of the American Board of Physical Medicine and Rehabilitation. Dr. Agana wrote:

. . . the records indicate nothing more than a soft tissue strain and MRI changes consistent with pre-existing cervical degenerative disc disease and herniations. The patient has already received passive physical therapy services. In addition the patient was attempted with electrical stimulation. I see no evidence for cervical traction. There is no evidence of radiculopathy related to any cervical herniated disc that might serve as an indication for a traction trial. Therefore, home rental of a traction device may not be considered appropriate for a soft tissue cervical strain. It is also reasonable to attempt under the supervision of physical therapist first before even considering home use.

The IRO based its decision on the last part of this assessment, agreeing with the Carrier that, "Typically, standards of care within the chiropractic profession suggest that a successful clinical trial be administered before the issuance of this device for home use or other protracted use is considered." Because no such trial had occurred the IRO deemed the home use of the traction device medically unnecessary.

In response to the IRO decision, Mr. Burgett testified that chiropractors frequently prescribe home traction for pain, sometimes with a clinical trial and sometimes without one. Not being a chiropractor, Mr. Burgett could not elaborate on this subject. There is not evidence in the record from which to assess the cost of a clinical trial.

Based on this state of the record, the ALJ concurs with the Carrier and the IRO that the home traction device was not shown to be medically necessary. Dr. Lamoureux's after-the-fact letter of medical necessity focuses on the future, looking to the Claimant's "continued use of the equipment" and the "long-term objective" for the Claimant. It looks more to a perceived need for future use of the device than to a justification of the historical use in dispute in this proceeding. It provides no comparative data regarding the Claimant's condition or the medications required before and after the use of the equipment during the time period in dispute. The letter is also quite conclusory, providing no meaningful way to assess the potential merits of the prescribed traction program for this particular claimant with her particular symptoms.

The record also provides no basis to deviate from the IRO's conclusion that home traction should be authorized only after a clinical trial. The Petitioner bore the burden of proof, and the only

evidence it offered on this particular topic was the lay testimony of Mr. Burgett that home traction is sometimes prescribed after a clinical trial and sometimes without one. There is no way to assess the appropriate circumstances regarding when a clinical trial should be undertaken and when one is unnecessary. Additionally, there is no evidence to indicate that a clinical trial would be unduly expensive in comparison with the \$1,500 cost of the rental of the home traction device.

Based on the above, the ALJ finds that the requested reimbursement should be denied.

III. FINDINGS OF FACTS

1. The Claimant sustained a compensable injury on ____.
2. Fire and Casualty Insurance Company (the Carrier) was the worker's compensation provider for the Claimant's employer.
3. The Claimant's treating physician prescribed in-home traction for the Claimant.
4. STAT 2000 (the Petitioner) provided an in-home traction device to the Claimant for the period November 21, 2001 through April 21, 2002, at a cost of \$250 per month for a total of \$1,500.
5. The Carrier denied reimbursement for the rental of the in-home traction device as medically unnecessary.
6. The Petitioner filed a request for medical dispute resolution with the Texas Workers' Compensation Commission, which referred the matter to an Independent Review Organization (IRO).
7. The IRO found in favor of the Carrier.
8. The Petitioner filed a timely appeal of the IRO decision.
9. Notice of the hearing was sent April 4, 2003.
10. 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.
11. The hearing was held April 23, 2003, with representatives of Petitioner and the Carrier participating. The hearing was adjourned the same day.
12. The home traction device in dispute in this proceeding was not shown to be medically necessary. The record provides no way to assess the potential merits of the prescribed traction device for the particular claimant in this proceeding. Additionally, the preponderance of the credible evidence indicates that home traction should normally be authorized only after a clinical trial.

IV. CONCLUSIONS OF LAW

1. 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.*
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.
3. Adequate and timely notice of the hearing was provided in accordance with TEX. GOV'T CODE ANN. §2001.052.
4. The Petitioner has the burden of proof in this matter. 28 TEX. ADMIN. CODE §148.21(h).
5. The Petitioner did not establish that the in-home traction device is medically necessary.
6. The Petitioner's request for reimbursement should be denied.

ORDER

IT IS, THEREFORE, ORDERED that STAT 2000's request for reimbursement of \$1,500.00 from Fire and Casualty Insurance Company for rental of an in-home traction device is denied.

Signed June 16, 2003.

STATE OFFICE OF ADMINISTRATIVE HEARINGS

Kerry D. Sullivan
Administrative Law Judge