

STATE OFFICE OF ADMINISTRATIVE HEARINGS
300 West 15th Street, Suite 502
Austin, Texas 78701

DOCKET NO. 453-03-2916.M5
[MDR TRACKING NO. M5-03-0436-01]

**SCIENTIFIC THERAPY AND
ADVANCED TREATMENT, INC.**
Petitioner

§
§
§
§
§
§
§
§
§
§

BEFORE THE STATE OFFICE

VS.

**TEXAS WORKERS' COMPENSATION
COMMISSION AND FEDERATED
MUTUAL INSURANCE COMPANY,**
Respondents

OF

ADMINISTRATIVE HEARINGS

DECISION AND ORDER

This is a dispute over whether Scientific Therapy and Advanced Treatment, Inc. (STAT) should be reimbursed for the cost of the NT2000 neuromuscular stimulator and supplies it provided a workers' compensation claimant. The total amount in dispute is \$470.00.

The Administrative Law Judge (ALJ) concludes the Petitioner did not prove the neuromuscular stimulator and supplies were medically necessary. Therefore, he finds reimbursement should be denied due to lack of documentation of medical necessity.

I. Discussion

The Claimant sustained a compensable injury¹ in March of _____. On January 8, 2002, his treating physician, Harry Hernandez, D.O., prescribed for him the NT2000 neuromuscular stimulator and supplies. Facility Insurance Company (the Carrier) denied payment for rental of the stimulator and payment of supplies as medically unnecessary. This controversy concerns two monthly dates of rental service and supplies, from January 22, 2002, through February 22, 2002.

The Texas Workers' Compensation Commission's (the Commission's) Medical Review Division (MRD) requested review by an Independent Review Organization (IRO). The MRD subsequently issued a decision March 19, 2003, which recommended denial of reimbursement.

The evidence in this case consists of exhibits submitted by the parties, MRD and IRO findings, and the letter of medical necessity and documentation submitted by Dr. Hernandez. The most informative pieces of evidence are the treating physician's prognosis notes and IRO findings.

¹The Claimant suffered from a fractured ulna that had occurred in _____ and was under care for cervicalgia, lateral epicondylitis, and joint pain.

(Exhibits 1, 2, and 3).

Dr. Hernandez' patient file notes dated January 8, 2002, indicate the patient's pain level based on a scale of 1-10 at A6-7", "grip strength weak," and a request for prescription refill with the notation of "Orudis 75 mg." The January 8 notes include a recommendation for the NT 2000 for home use. The case note reflects receipt of the NT2000 by the Claimant on January 22, 2002. There do not appear to be any patient notes or office visits during the month of February 2002. (Exhibit 1, page 4).

Physician notes from the Claimant's March 12, 2002, visit indicate the daily use of the NT2000 and contain the notation "has decreased medication use...Pain level of 6 today." No additional numerical values are assigned to reflect pain reduction and the pain level is noted to be 6, which is the same level noted in the January 8 visit. Again, a refill for Orudis 75 mg is charted for this visit. (Exhibit 1, pages 4-5).

In a letter dated May 28, 2002, from Dr. Hernandez to Houston General Insurance, he described the Claimant's use and results from the use of the NT2000 stimulator. According to Dr. Hernandez, use of the unit reduced the Claimant's pain level and muscle spasms, improved range of motion and assisted in muscle re-education. The unit enabled the "patient to progress rather than digress." However, review of the prognosis notes submitted do not specify defined parameters reflecting reduction of pain or increase in range of motion, nor do they reflect a reduction in the need for prescription medication that would indicate progress. (Exhibit 1, page 1).

In a peer review issued by Forte Managed Care on October 27, 2000, it was noted that the Claimant:

...has a chronically painful cervical spine which has necessitated multiple years of conservative treatment...it appears that the current treatment including office visits and medications are reasonable and necessary."(Exhibit 3, page 002).

Additionally, potential future treatments were considered within the same peer review and discussed as follows:

Based on the available documentation, ongoing treatment appears reasonable and necessary. This would entail office visits three to four times per year. Medication in the form of Skelaxin and Vioxx continue to be reasonable and necessary. Diagnostic testing would only be reasonable and necessary if it were related to the claimant's medication usage. Surgery, DME, and physical therapy do not appear reasonable or necessary..." (Exhibit 3, page 003).

Further, in the Notice of Utilization Review Findings issued May 6 and May 23, 2003, the reviewing physician noted that:

Inadequate documentation to support services(s)...Electromuscular stimulators should be used in the acute phase of injury or post-op and then for only the first 4-6 weeks. The injured worker is 9 years post injury and 8 years post operative. Although the patient has been using the simulator, there is no documentation of decreased pain pill/refills by office notes, no increase in range of motion, or increase

in activities of daily living.” (Exhibit 3, page 004)

After considering the evidence, the ALJ concludes that STAT did not provide specific and convincing documentation for the medical necessity of the neuromuscular stimulator and the necessary supplies for this Claimant. There was no persuasive evidence that the neuromuscular stimulator reduced the Claimant’s pain levels, increased his range of motion, or assisted in the reduction of prescription medications. Additionally, there was evidence that the neuromuscular stimulator was appropriate for acute pain, but not chronic pain, as Claimant in this case experienced. STAT did not provide adequate documentation for the medical necessity of the neuromuscular stimulator and supplies. Therefore, the Carrier is not required to reimburse STAT for the rental of the NT2000 or associated supplies.

II. Findings of Fact

1. The Claimant sustained a compensable back injury on_____.
2. On January 8, 2002, the Claimant’s treating physician, Harry Hernandez, D.O., prescribed for him the NT 2000 neuromuscular stimulator (the stimulator) and supplies.
3. On January 22, 2002, the Claimant received the NT2000 neuromuscular stimulator and supplies.
4. This controversy concerns two monthly dates of rental service and supplies, from January 22, 2002, through February 22, 2002.
5. Facility Insurance Company (the Carrier) denied payment for the rental of the neuromuscular stimulator for January and February 2002.
6. The amount in dispute is \$470.00 for the stimulator and supplies.
7. Scientific Therapy and Advanced Treatment, Inc. (STAT), which provided the stimulator and supplies, filed a Request for Medical Dispute Resolution with the Texas Workers’ Compensation Commission (the Commission).
8. The Commission’s Medical Review Division (MRD) issued its decision, which denied reimbursement, on March 19, 2003.
9. STAT filed a timely request for a hearing regarding the MRD decision.
10. Notice of the hearing was sent April 29, 2003.
11. 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.
12. The hearing was conducted on June 23, 2003, with Administrative Law Judge (ALJ) Bill Zukauckas presiding and representatives of STAT and the Carrier participating. The hearing was adjourned the same day.

13. The Claimant suffers from a compensable chronic cervical spine condition that arose in March of 1992.
14. The NT2000 was prescribed nine years after date of injury.
15. Dr. Hernandez' prognosis notes do not reflect the use of the NT2000 has reduced the Claimant's muscle spasms.
16. Dr. Hernandez' prognosis notes do not reflect the use of the stimulator has increased the Claimant's range of motion.
17. Dr. Hernandez' prognosis notes do not reflect the use of the stimulator has decreased the Claimant's level of pain,
18. The stimulator has not been shown to have reduced or alleviated the Claimant's need for pain medications and other ongoing long-term supervised therapies.
19. The evidence does not show the NT2000 stimulator has improved the Claimant's health.

III. 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. STAT has the burden of proof in this matter. 28 TEX. ADMIN. CODE (TAC) §148.21(h).
5. The neuromuscular stimulator and supplies are medical supplies under TEX. LAB. CODE ANN §401.011(19)(F), which qualifies STAT as a health care provider for those items under §401.011(22).
6. STAT did not meet its burden of proving the neuromuscular stimulator and supplies were medically necessary under TEX. LAB. CODE ANN. §408.021(a).
7. The Carrier should not be required to reimburse STAT for the cost of the stimulator and supplies.

ORDER

IT IS, THEREFORE, ORDERED that Facility Insurance Company (the Carrier) shall not be required to reimburse Scientific Therapy and Advanced Treatment, Inc. (STAT) \$470.00 for the neuromuscular stimulator rental and supplies for two months of service from January 22, 2002, through February 22, 2002.

Signed this 19th day of August 2003.

STATE OFFICE OF ADMINISTRATIVE HEARINGS

Bill Zukauckas
Administrative Law Judge