

DOCKET NO. 453-03-3236.M2
MDR TRACKING NO. M2-03-0746-01

STAT 2000	§	BEFORE THE STATE OFFICE
	§	
V.	§	OF
	§	
LIBERTY INSURANCE CORPORATION	§	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 an injured worker. (Claimant).¹ After considering the evidence and arguments, the undersigned Administrative Law Judge (ALJ) finds that STAT 2000 has shown, by a preponderance of the evidence, that the requested medical care is reasonable and necessary treatment for Claimant’s compensable injury. Therefore, the ALJ authorizes the requested treatment.

I. DISCUSSION

Claimant suffered a compensable, work-related injury to her back on _____. In 2001, Claimant had back surgery to relieve ongoing symptoms of her compensable injury. As part of her follow-up treatment, Claimant began using a neuromuscular stimulator. Claimant’s treating physician, Dennis Gutzman, M.D., then prescribed the purchase of the neuromuscular stimulator for Claimant. STAT 2000, as the supplier of the item, requested preauthorization from Liberty Insurance Corporation (Carrier), Claimant’s workers’ compensation insurance carrier.

On November 15, 2002, Carrier denied preauthorization, relying on the opinion of a physician advisor who concluded that the prescribed device was not providing consistent long term relief. STAT 2000 then appealed to the Commission, and the matter was referred to an IRO for determination. The IRO denied preauthorization, stating, “The treating doctor’s notes of 12/12/02 describe the patient’s increased comfort and decreased need for analgesic medication. The notes of another physician on 12/11/02, however, indicate that the patient had severe pain (level 9 on a 0 to 10 scale), poor sleep, and a need for larger doses of opiates. Therefore, the neuromuscular stimulator is not providing consistent long term relief, and it is not reasonable to purchase the unit.” STAT 2000 then requested a hearing, resulting in this proceeding at the State Office of Administrative Hearings.

¹ 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.

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. Carrier's denial is based solely on the opinion of a doctor who saw Claimant once and determined that, because Claimant was still in pain, the neuromuscular stimulator was not helping. The prescribing doctor, Dr. Gutzman, is board-certified in orthopaedic surgery and is the doctor who has actually examined and treated Claimant. Dr. Gutzman notes Claimant's use of the stimulator 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.

Based on the foregoing, 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. A worker (Claimant) sustained a compensable, work-related injury on___.
2. Liberty Insurance Corporation (Carrier) is the insurance carrier providing workers' compensation insurance coverage for Claimant.
3. Claimant had back surgery to relieve ongoing symptoms of his compensable injury.
4. As part of his follow-up treatment after the surgery, Claimant began using a neuromuscular stimulator. Thereafter, Claimant's treating physician, Dennis Gutzman, M.D., prescribed the purchase of the neuromuscular stimulator for Claimant. STAT 2000, as the supplier of the item, requested preauthorization from Carrier.
5. Carrier denied preauthorization, maintaining that the requested treatment was not medically necessary and appropriate treatment for Claimant's compensable injury.
6. 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.
7. The IRO reviewed the dispute and issued a decision on April 15, 2003, finding that the requested treatment was not medically necessary and denying the requested preauthorization.
8. STAT 2000 requested a hearing before the State Office of Administrative Hearings (SOAH).

9. Notice of the hearing in this case was mailed to the parties on May 22, 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.
10. The hearing was held on July 21, 2003, with Administrative Law Judge John Beeler presiding. STAT 2000 appeared through its representative, Randy Burgett. Carrier appeared through its attorney, Charlotte Salter. The hearing was adjourned and the record closed the same day.
11. Claimant benefitted from the initial use of the BMR NT2000 neuromuscular stimulator.
12. The BMR NT2000 neuromuscular stimulator (NT2000) is medically reasonable and necessary treatment for Claimant's compensable injury.

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).
6. 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.
7. 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.
8. STAT 2000 established, by a preponderance of the evidence, that the prescribed neuromuscular stimulator is medically reasonable and necessary for treating ____ compensable injury.

9. Based on the above Findings of Fact and Conclusions of Law, 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 18th of August 2003.

JOHN H. BEELER
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS