



According to Dr. Shalev, a spinal cord stimulator is a “well established” device that can block pain from passing through certain spinal cord nerves, thereby relieving Claimant’s back pain. The actual device would have to be implanted in Claimant’s back. Therefore, Dr. Shalev testified, he recommended Claimant be fitted with a trial spinal cord stimulator first in order to ascertain whether Claimant will find any pain relief from such a device. Dr. Shalev testified the trial spinal cord stimulator is a good option now because it may be fitted using non-invasive procedures.<sup>2</sup>

Furthermore, Dr. Shalev asserted he would only recommend Claimant as a suitable candidate for an implanted spinal cord stimulator if the trial spinal cord stimulator demonstrates successful results. Finally, Dr. Shalev stated that since Claimant has already undergone many other types of treatment, but this proposed procedure is the next logical step in treating Claimant for her back pain.

### **3. Conclusion**

Based on the evidence presented by Provider, and Carrier’s failure to appear, the ALJ concludes the requested procedure is medically necessary and should be preauthorized.

## **II. FINDINGS OF FACTS**

1. Daniel Shalev, M.D., of Southwestern Pain Institute, P.A. (Provider), prescribed a trial spinal cord stimulator to Claimant and sought preauthorization from Hartford Underwriters Insurance Company (Carrier), which Carrier denied.
2. Provider requested medical dispute resolution through an Independent Review Organization (IRO), which found that the requested procedure was not medically necessary.
3. Provider appealed the IRO decision to the State Office of Administrative Hearings (SOAH).
4. The notice of the hearing in this case was sent to the parties on July 16, 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 original notice, the Commission’s staff indicated that it would not participate in the hearing.
5. The hearing convened and closed on August 11, 2003, before Steven M. Rivas, Administrative Law Judge (ALJ). Dr. Shalev appeared on behalf of the Provider. Carrier failed to appear.
6. The trial spinal cord stimulator is a medically reasonable and necessary non-invasive procedure that will determine whether Claimant is a suitable candidate for an implanted spinal cord stimulator.

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<sup>2</sup> Dr. Shalev testified the trial spinal cord stimulator may be fitted in a physical therapy setting by using an instrument called a TENS unit.

### 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(k) and TEX. GOV'T CODE ANN. ch. 2003.
3. Provider 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 § 2001.052 and 28 TEX. ADMIN. CODE § 148.4.
5. Under TEX. LABOR CODE § 408.021(a)(1), 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 that cures or relieves the effects naturally resulting from the compensable injury.
6. The evidence shows that the requested procedure should be preauthorized.
7. Based on the foregoing Findings of Facts and Conclusions of Law, Provider's request for a trial spinal cord stimulator should be preauthorized.

### ORDER

IT IS ORDERED THAT the trial spinal cord stimulator requested by Provider be preauthorized.

**Signed September 10, 2003.**

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**STEVEN M. RIVAS**  
**STATE OFFICE OF ADMINISTRATIVE HEARINGS**  
**ADMINISTRATIVE LAW JUDGE**