

RS MEDICAL,	§	BEFORE THE STATE OFFICE
Petitioner	§	
	§	
V.	§	OF
	§	
TASB RISK MANAGEMENT FUND,	§	
Respondent	§	ADMINISTRATIVE HEARINGS

DECISION AND ORDER

I. DISCUSSION

RS Medical (Petitioner) appealed the Findings and Decision of the Texas Workers' Compensation Commission (Commission) acting through MAXIMUS, an Independent Review Organization (IRO), denying the preauthorization request of Petitioner for the purchase an interferential and muscle stimulator for indefinite use by ___ (Claimant).¹

This decision grants the relief sought by Petitioner.

A hearing convened on December 8, 2003, before Administrative Law Judge (ALJ) Howard S. Seitzman. Patrick K. Cougill represented Petitioner. Jane Lipscomb Stone represented TASB Risk Management Fund (Respondent). Susan Keesee, Petitioner's Insurance Relations Manager, and Claimant² testified for Petitioner. Samuel M. Bierner, M.D., testified for Respondent. There were no contested issues of notice or jurisdiction. The record closed following adjournment of the hearing.

Claimant sustained a work-related injury on or about ___. X-rays of the spine were taken on ___, and Claimant underwent an MRI of the lumbar spine on January 31, 2003. Claimant was diagnosed with lumbago, back pain. Claimant received physical therapy for four to six weeks following the accident. Norma Cavasos-Salas, D.O., prescribed an RS Medical RS-4i interferential and muscle stimulator on February 13, 2003, for a two-month period for treatment of lumbago and muscle spasms.³ On April 12, 2003, Dr. Cavasos-Salas prescribed an RS Medical RS-4i interferential and muscle stimulator for indefinite use to relieve pain, improve function and condition and relax muscle spasms.

The RS Medical RS-4i interferential and muscle stimulator is a class II medical device approved by the United States Food and Drug Administration (FDA) for specified indications. Some medical professionals question whether, or the mechanism by which, the device works. The ALJ

1 The decision by the IRO is deemed to be a Commission Decision and Order.

2 Claimant testified by telephone, and a translator, also participating by telephone, translated between English and Spanish.

3 The RS Medical RS-4i is not a TENS unit.

finds that the general efficacy of the device is not an issue so long as the device is prescribed and used for the indications approved by the FDA. Dr. Cavazos-Salas prescribed the RS Medical RS-4i for FDA approved indications. Therefore, the only issue in this proceeding is whether the device is reasonable and medically necessary for Claimant as of the date of the hearing.⁴

RS Medical polled Claimant on February 13, 2003, February 20, 2003 and April 1, 2003. On the initial polling date, Claimant stated she relied on pain medications “most of the time” during the past week. During the two latter polling dates, Claimant stated she relied on pain medications “all of the time” during the past week. During the latter two polling dates, Claimant stated she was using the RS-4i once a day and that it was relieving the pain. The data retrieved from the RS-4i’s onboard data collection system shows Claimant used the RS-4i on 15 days between February 14, 2003, and March 30, 2003. Claimant’s RS-4i treatments increased in March 2003 and total treatment minutes also increased in March 2003.

Claimant testified she has returned to work as a _____. Claimant continues to experience muscle spasms and pain. She currently uses the RS-4i once per day to relieve pain and recently ceased taking pain medication.⁵ During the period Claimant underwent physical therapy, she found it very helpful but the physical therapy has ceased.

The letters of medical necessity written by Dr. Cavazos-Salas are essentially compilations of suggested language provided by Petitioner. The information in the few progress notes available is sparse. Dr. Cavazos-Salas did not testify.

Dr. Samuel Bierner, a physician who specializes in physical medicine and electrodiagnostic medicine, acknowledged that he is familiar with the device and has, in fact, prescribed the RS Medical RS-4i interferential and muscle stimulator for certain of his patients with chronic pain.⁶ As to the Claimant, he testified there are no findings from physical examinations available in the record and that there are no objective findings or test results which support a diagnosis. Dr. Bierner concluded that Claimant’s complaints are consistent with lower back strain which should improve over the course of six to twelve weeks, with or without treatment. With respect to pain, Dr. Bierner’s opinion is that one cannot rely upon self-reported pain. Rather, one must rely upon objective tests which measure range of motion and strength. Dr. Bierner believes Claimant’s pain is positional, rather than pathological or physiological, and results from her sitting for prolonged periods of time. Regular exercise, rather than a muscle stimulator or passive stimulation, is the best treatment for lower back pain of the type experienced by Claimant.

Petitioner had the burden of proof in this proceeding. The evidence shows Claimant experienced pain and muscle spasms as a result of her work-related injury and continues to

4 The ALJ adopts the reasoning of ALJ Norman that the issue of medical necessity is present need, as of the date of the hearing, and not past need, as of the date of the prescription. SOAH Docket No. 453-03-4229.M2, MDR No. M2-03-1308-01; *RS Medical v. City of El Paso* (January 6, 2004).

5 Petitioner allowed Claimant to retain and use the RS-4i pending resolution of the dispute.

6 Dr. Bierner defines chronic pain as pain that persists for three to six months or more.

experience pain and muscle spasms.⁷ Claimant uses the RS Medical RS-4i interferential and muscle stimulator on a daily basis and it relieves Claimant's pain. Claimant has ceased taking medication for the pain.

Petitioner proved that the purchase of an RS Medical RS-4i interferential and muscle stimulator for indefinite use by Claimant is reasonable and medically necessary as of the date of the hearing.

II. FINDINGS OF FACT

1. ____ (Claimant), sustained a work related injury on or about ____.
2. Claimant experienced pain and muscle spasms as a result of her work-related injury.
3. Claimant was diagnosed with lumbago, back pain.
4. Claimant received physical therapy for four to six weeks following the accident.
5. Norma Cavazos-Salas, D.O., prescribed an RS Medical RS-4i interferential and muscle stimulator on February 13, 2003, for a two-month period for treatment of lumbago and muscle spasms.
6. On April 12, 2003, Dr. Cavazos-Salas prescribed an RS Medical RS-4i interferential and muscle stimulator for indefinite use to relieve pain, improve function and condition and relax muscle spasms.
7. The RS Medical RS-4i interferential and muscle stimulator is a class II medical device approved by the United States Food and Drug Administration (FDA) for specified indications.
8. Dr. Cavazos-Salas prescribed the RS Medical RS-4i for FDA approved indications.
9. The data retrieved from the RS-4i shows Claimant used the RS-4i on 15 days between February 14, 2003, and March 30, 2003.
10. Claimant's RS-4i treatments increased in March 2003 and total treatment minutes also increased in March 2003.
11. Claimant returned to work.
12. Although physical therapy was very helpful, it was discontinued.
13. Claimant continues to experience muscle spasms and pain.
14. Claimant currently uses the RS-4i once per day.

⁷ Whether the pain or muscle spasms emanate from the compensable injury or from some other condition is a question for the Commission.

15. The RS Medical RS-4i interferential and muscle stimulator relieves Claimant's pain.
16. Claimant recently ceased taking pain medication.
17. On or about April 3, 2003, TASB Risk Management Fund (Respondent) denied Claimant's April 2, 2003 preauthorization request for purchase of an RS Medical RS-4i as not medically necessary.
18. On or about April 15, 2003, Respondent denied Claimant's request for reconsideration.
19. RS Medical (Petitioner) seeks preauthorization for Claimant's purchase of an RS Medical RS-4i interferential and muscle stimulator for indefinite use by Claimant.
20. By letter dated June 27, 2003, MAXIMUS, an Independent Review Organization (IRO), denied the preauthorization request of Petitioner for the purchase of an RS Medical RS-4i interferential and muscle stimulator for indefinite use by Claimant.
21. The IRO decision is deemed a Decision and Order of the Texas Workers' Compensation Commission (Commission).
22. Petitioner timely requested a hearing to contest the Commission's decision.
23. By letter dated August 8, 2003, the Commission issued a notice of hearing.
24. Administrative Law Judge Howard S. Seitzman convened a hearing on December 8, 2003, in the hearing rooms of the State Office of Administrative Hearing. The record closed following adjournment of the hearing.
25. Patrick K. Cougill represented Petitioner. Jane Lipscomb Stone represented Respondent.

III. CONCLUSIONS OF LAW

1. The Texas Workers' Compensation Commission has jurisdiction to decide the issue presented pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 413.031.
2. The State Office of Administrative Hearings has jurisdiction over matters related to the hearing in 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. Petitioner timely requested a hearing in this matter pursuant to 28 TEX. ADMIN. CODE (TAC) §§ 102.7 and 148.3.
4. Notice of the hearing was proper and complied with the requirements of TEX. GOV'T. CODE ANN. ch. 2001.
5. An employee who has sustained a compensable injury is entitled to all health care reasonably required by the nature of the injury as and when needed. The employee is specifically

entitled to health care that cures or relieves the effects naturally resulting from the compensable injury, promotes recovery, or enhances the ability of the employee to return to or retain employment. TEX. LAB. CODE ANN. § 408.021(a).

6. Petitioner had the burden of proof in this matter, which was the preponderance of evidence standard. 28 TAC §§ 148.21(h) and (i); 1 TAC § 155.41(b).
7. Petitioner proved by a preponderance of the evidence that the purchase of an RS Medical RS-4i interferential and muscle stimulator for indefinite use by Claimant is medically necessary.

ORDER

THEREFORE IT IS ORDERED that Petitioner RS Medical's request for relief is **GRANTED** and the preauthorization of the purchase of an RS Medical RS-4i interferential and muscle stimulator for indefinite use by ___ is **GRANTED**.

SIGNED February 6, 2004.

HOWARD S. SEITZMAN
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS