

**RS MEDICAL,  
Petitioner**

**V.**

**HARTFORD FIRE INSURANCE  
COMPANY,  
Respondent**

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**BEFORE THE STATE OFFICE**

**OF**

**ADMINISTRATIVE HEARINGS**

**DECISION AND ORDER**

RS Medical (Petitioner) requested a hearing before the State Office of Administrative Hearings (SOAH) following a Decision of the Texas Workers' Compensation Commission (Commission) acting through Texas Medical Foundation, an Independent Review Organization (IRO), denying the preauthorization request of Petitioner for the purchase of an interferential and muscle stimulator for indefinite use by \_\_\_\_ (Claimant).<sup>1</sup>

This decision grants the relief sought by Petitioner.

A hearing convened on August 4, 2004, before Administrative Law Judge (ALJ) Stephen J. Pacey. Patrick K. Cougill represented Petitioner. W. Jon Grove represented Hartford Fire Insurance Company (Respondent). Susan Keesee, Petitioner's Insurance Relations Manager, and Claimant testified for Petitioner. Leonard Hershkowitz, M.D., testified for Respondent.<sup>2</sup> There were no contested issues of notice or jurisdiction.

On the day of the hearing, Respondent filed a Motion to Dismiss that was based on an exception to the jurisdiction. ALJ instructed the parties to brief the issue. The original of the last reply brief was received September 13, 2004, and an order denying the Motion to Dismiss issued September 15, 2004. The record closed September 15, 2004.

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

<sup>2</sup> Petitioner and Respondent adopted ALJ Norman's summary of Ms. Keesee's and Dr. Herschkowitz's testimony from the Decisions and Orders in Docket Nos. 453-04-1176.M2 and 453-04-1317.M2.

## I. DISCUSSION

Claimant sustained a work-related injury to his back on or about \_\_\_\_\_. No details were presented concerning the injury's cause or Claimant's medical history. Apparently, in 1994, Claimant had a lumbar laminectomy, and in 1977, another back surgery was performed on Claimant by his current physician, Javier Reyes, M.D. Claimant complained of a pinching burning sensation radiating from the midline lumbar area to both hips. Dr. Reyes reported that the symptoms increased with activity. Dr. Reyes diagnosed Claimant's symptoms as post-laminectomy syndrome and chronic pain syndrome.

On July 30, 2002, Dr. Reyes prescribed an RS Medical RS-4i interferential and muscle stimulator for a two-month period to treat back pain and the muscle spasms. On October 8, 2002, Dr. Reyes prescribed the RS Medical RS-4i interferential and muscle stimulator for indefinite use.

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 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. Reyes 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.<sup>3</sup>

The RS-4i contains an onboard data collection system. Petitioner retrieved utilization data from the RS-4i for the period from August 15, 2002, through July 4, 2004. Except for the period of December 2003 through March 2004 the data showed that Claimant consistently used the RS-4i two or three times a week, and almost always used it for multiple program sessions. Claimant explained that the periods of limited usage were caused by an RS-4i that would not hold a charge causing it to

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<sup>3</sup> 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).

shut off during treatments. He said he received a new machine in March or April 2004. The usage reports are consistent with the medical records which reflect that Claimant obtained relief from his pain and muscle spasms from the RS-4i. Dr. Reyes reported that Claimant's use of the stimulator has allowed Dr. Reyes to control Claimant's pain without the use of narcotics. The ALJ finds credible Claimant's testimony that the RS-4i provides relief of his pain. Claimant testified that use of the RS-4i has enabled him to keep from increasing his medications.

Petitioner had the burden of proof in this proceeding. The evidence shows Claimant experienced pain and muscle spasms as a result of his work-related injury and continues to experience pain and muscle spasms. Claimant uses the RS Medical RS-4i interferential and muscle stimulator two or three times a week, and it relieves Claimant's 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 his work-related injury.
3. Neither a 1994 surgery nor a 1997 surgery relieved Claimant's severe back pain or the pain radiating into his legs.
4. Javier Reyes, M.D., prescribed an RS Medical RS-4i interferential and muscle stimulator on July 30, 2002, for a two-month period for treatment of Claimant's back pain and muscle spasms.
5. On October 8, 2002, Dr. Reyes prescribed an RS Medical RS-4i interferential and muscle stimulator for indefinite use for treatment of Claimant's back and leg pain.
6. 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.
7. Dr. Reyes prescribed the RS Medical RS-4i for FDA approved indications.

8. Data was retrieved from the RS-4i's data collection system for the period August 15, 2002, through July 4, 2004.
9. Except for the period of December 2003 through March 2004, when the RS-4i was malfunctioning, Claimant used the RS-4i two or three times a week and almost always used it for multiple program sessions.
10. Claimant continues to experience muscle spasms and pain as a result of his work-related injury.
11. The RS Medical RS-4i interferential and muscle stimulator relieves Claimant's pain and helps reduce muscle spasm.
12. RS Medical RS-4i interferential and muscle stimulator allows Claimant to be treated with non-narcotic medications.
13. On or about March 17, 2003, Hartford Fire Insurance Company (Respondent) denied Claimant's preauthorization request for purchase of an RS Medical RS-4i as not medically necessary.
14. On or about April 15, 2003, Respondent denied Claimant's request for reconsideration.
15. RS Medical (Petitioner) seeks preauthorization for Claimant's purchase of an RS Medical RS-4i interferential and muscle stimulator for indefinite use by Claimant.
16. By letter dated July 3, 2003, Texas Medical Foundation, 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.
17. The IRO decision is deemed a Decision and Order of the Texas Workers' Compensation Commission (Commission).
18. Petitioner requested a hearing to contest the Commission's decision.
19. By letter dated August 18, 2003, the Commission issued a notice of hearing.
20. The hearing was reset several times at parties request.
21. Administrative Law Judge Stephen J. Pacey convened a hearing on August 4, 2004, in the hearing rooms of the State Office of Administrative Hearing. After a post-hearing motion was decided, the record closed on September 15, 2004.
22. Patrick K. Cougill represented Petitioner. W. Jon Grove 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 September 21, 2004.**

**STEPHEN J. PACEY  
ADMINISTRATIVE LAW JUDGE  
STATE OFFICE OF ADMINISTRATIVE HEARINGS**