

RS MEDICAL,  
Petitioner

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BEFORE THE STATE OFFICE

V.

OF

AMERICAN HOME ASSURANCE  
COMPANY,  
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 Medical Review of Texas, 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 December 10, 2003, before Administrative Law Judge (ALJ) Howard S. Seitzman. Patrick K. Cougill represented Petitioner. Dan C. Kelley represented American Home Assurance Company (Respondent). Susan Keese, Petitioner's Insurance Relation's Manager, and Claimant<sup>2</sup> testified for Petitioner. Brad M. Hayes, D.C., testified for Respondent. There were no contested issues of notice or jurisdiction. The record closed following adjournment of the hearing.

Claimant, a \_\_\_ worker, sustained a work-related injury to her right shoulder on or about \_\_\_, while trying to keep a heavy bag from falling.<sup>3</sup> Claimant was experiencing neck and right shoulder pain and on June 20, 2001, Claimant had an MRI of the cervical spine and of the right shoulder. Gregory Diaz, M.D., the radiologist who reviewed the right shoulder MRI, diagnosed a rotator cuff tear. By letter dated July 19, 2001, Alvin W. Larkins, M.D., cleared Claimant to two modified job positions at her employer. He noted she was experiencing significant pain and would continue on pain medication.

David D. Teuscher, M.D., examined Claimant on July 31, 2001, and after noting that conservative treatment had failed and that Claimant had been "rather extensively evaluated," he recommended outpatient arthroscopic surgery of the right shoulder. On August 31, 2001, Claimant

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1 The decision by the IRO is deemed to be a Commission Decision and Order.  
2 Claimant testified by telephone.  
3 Claimant's medical history includes previous back and bladder suspension surgeries.

had arthroscopic decompression and rotator cuff tear repair surgery on her right shoulder.

Dr. Teuscher examined Claimant on January 8, 2002, and remarked that she had made improvement with physical therapy and he recommended she be advanced on a daily rehabilitation program, including strengthening and full motor activities. He urged discontinuing the use of narcotics.

On March 25, 2002, Dr. Teuscher examined Claimant and remarked that Claimant's continuing radicular-type pain might be from her cervical spine. He was also concerned with the degree of disability she continued to experience with her right shoulder. He recommended a repeat imaging study. The right shoulder arthrogram and MRI were performed on April 11, 2002. Dr. Diaz's impression of the imaging study was a full thickness recurrent supraspinatus rotator cuff tear. On June 4, 2002, Dr. Teuscher performed an arthroscopic resection of glenohumeral adhesions and a repeat arthroscopic decompression of the subacromial bursa. The rotator cuff tendon had completely healed from its previous repair. On June 20, 2002, Dr. Teuscher recommended a daily physiotherapy program.

Adrian Dumitru, M.D., examined Claimant on October 7, 2002, and recommended an RS Medical RS-4i to treat severe myofascial symptoms, increasing the use of Robaxin,<sup>4</sup> trigger point injections in the right shoulder area, and bilateral occipital nerve blocks. The RS-4i was prescribed for a two-month period to relieve muscle spasms and pain and to increase range of motion.

An October 9, 2002 final evaluation by Dr. Teuscher assessed a 14% whole person permanent partial impairment based upon a right upper extremity impairment of 24%.

On November 14, 2002, Dr. Dumitru examined Claimant. He remarked that Claimant's use of the RS-4i had improved her range of motion, decreased her stiffness, improved her sleep pattern and decreased her need for muscle relaxants and narcotics. He also stated that there had been no response to his requests for trigger point injections and occipital nerve blocks. On December 12, 2002, Dr. Dumitru prescribed the RS-4i for indefinite use.

In his notes from a January 23, 2003 examination of Claimant, releasing Claimant to work eight hours per day subject to restrictions, Dr. Dumitru stated that the trigger point injections and occipital nerve blocks have not been approved and that the RS-4i continues to "help tremendously." On February 21, 2003, Dr. Dumitru's notes record that Claimant's reported shoulder pain, shoulder strength and shoulder mobility have improved with the use of the RS-4i. He also noted her decreased use of Methocarbamol and Narco.<sup>5</sup> On March 6, 13, and 27, 2003, Dr. Dumitru administered trigger point injections to Claimant. On April 16, 2003, Dr. Dumitru noted the trigger point injections were somewhat helpful, that Claimant was "very happy" about returning to work on March 29, 2003, and that the RS-4i was being used "faithfully" and was of significant help.

The May 23, 2003 medical notes of Dr. Dumitru record that the request for occipital nerve blocks was denied and that the RS-4i was helping Claimant "greatly."

The RS Medical RS-4i interferential and muscle simulator is a class II medical device

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4 A muscle relaxant used to treat pain caused by muscle spasms. A brand name for Methocarbamol.

5 Dr. Dumitru's May 1, 2003 notes reflect similar findings.

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. Dumitru 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>6</sup>

Claimant continues to experience muscle spasms and pain. The RS-4i provides additional relief that the pain medication does not provide. Claimant previously used a TENS unit but it was not as effective in providing relief as the RS-4i. Her shoulder mobility has increased since using the RS-4i. She is unable to use the RS-4i while at work, and, while she does not use it every day, she uses it quite frequently.<sup>7</sup> The physical therapy provided some assistance, but her treatment under Dr. Dumitru, including the RS-4i, has been more effective in providing relief and improvement.

Dr. Brad Hayes' testimony focused primarily on the general efficacy of the RS-4i and is, therefore, irrelevant to this proceeding. Dr. Hayes prescribes and uses interferential current for treatment in his office. As to evidence specific to Claimant, Dr. Hayes recognized Claimant's testimony that the RS-4i is helpful but found no objective evidence in the medical records as to the device having a positive or lasting impact.

On December 27, 2002, Respondent denied Dr. Dumitru's December 12, 2002 request for indefinite use but did approve a one month rental of the RS-4i. On May 12, 2003, Respondent denied authorization for the RS-4i and on May 27, 2003, Respondent upheld its May 12, 2003 denial.

Petitioner had the burden of proof in this proceeding. The evidence shows Claimant experiences pain and diminished right shoulder capacity as a result of her work-related injury. Claimant uses the RS Medical RS-4i interferential and muscle simulator on a regular basis and it provides Claimant relief from pain and improvement in her shoulder. As a result, Claimant has also been able to decrease her medications.

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

## II. FINDINGS OF FACT

1. \_\_\_\_ (Claimant), a \_\_\_\_ worker, sustained a work-related injury to her right shoulder on or about \_\_\_\_, while trying to keep a heavy bag from falling.
2. Claimant experienced neck and right shoulder pain as a result of the work-related injury

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<sup>6</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).

<sup>7</sup> Petitioner allowed Claimant to retain and use the RS-4i pending resolution of the dispute.

3. On June 20, 2001, Claimant had an MRI of the cervical spine and of the right shoulder and was diagnosed with a rotator cuff tear.
4. By letter dated July 19, 2001, Alvin W. Larkins, M.D., cleared Claimant to two modified job positions at her employer although Claimant was experiencing significant pain and would continue on pain medication.
5. David D. Teuscher, M.D., examined Claimant on July 31, 2001.
6. Conservative treatment failed to resolve or improve the Claimant's condition.
7. Dr. Teuscher recommended outpatient arthroscopic surgery of the right shoulder.
8. On August 31, 2001, Claimant had arthroscopic decompression and rotator cuff tear repair surgery on her right shoulder.
9. By January 8, 2002, post-surgical physical therapy had helped improve Claimant's condition sufficiently that a daily rehabilitation program, including strengthening and full motor activities, was recommended.
10. Dr. Teuscher urged discontinuing the use of narcotics.
11. Claimant's continuing radicular-type pain and right shoulder disability caused Dr. Teuscher, in March 2002, to recommend a repeat imaging study.
12. The right shoulder arthrogram and MRI were performed on April 11, 2002.
13. As a result of those imaging studies, on June 4, 2002, Dr. Teuscher performed an arthroscopic resection of glenohumeral adhesions and a repeat arthroscopic decompression of the subacromial bursa.
14. The rotator cuff tendon had completely healed from its previous repair.
15. On June 20, 2002, Dr. Teuscher recommended a daily physiotherapy program.
16. Adrian Dumitru, M.D., examined Claimant on October 7, 2002, and recommended an RS Medical RS-4i to treat severe myofascial symptoms. He also recommended increased use of Robaxin, trigger point injections in the right shoulder area, and bilateral occipital nerve blocks.
17. The RS-4i was prescribed for a two-month period to relieve muscle spasms and pain and to increase range of motion.
18. An October 9, 2002 final evaluation by Dr. Teuscher assessed a 14% whole person permanent partial impairment based upon a right upper extremity impairment of 24%.
19. On November 14, 2002, Dr. Dumitru concluded that Claimant's use of the RS-4i had improved her range of motion, decreased her stiffness, improved her sleep pattern and decreased her need for muscle relaxants and narcotics.

20. On December 12, 2002, Dr. Dumitru prescribed the RS-4i for indefinite use by Claimant.
21. On January 23, 2003, Dr. Dumitru released Claimant to work eight hours per day subject to restrictions.
22. As of January 23, 2003, the trigger point injections and occipital nerve blocks had not been approved by American Home Assurance (Respondent), but the RS-4i continued to help Claimant tremendously.
23. By February 21, 2003, Claimant's shoulder strength and shoulder mobility had improved with the use of the RS-4i. Her use of Methocarbamol and Narco had decreased.
24. Dr. Dumitru administered trigger point injections to Claimant on March 6, 13, and 27, 2003.
25. The trigger point injections were somewhat helpful.
26. Claimant was very happy about returning to work on March 29, 2003.
27. Claimant used the RS-4i as prescribed and received significant relief.
28. Dr. Dumitru's request for occipital nerve blocks was denied by Respondent.
29. Claimant continues to experience muscle spasms and pain.
30. The RS-4i provides additional relief that the pain medication does not provide.
31. Claimant previously used a TENS unit but it was not as effective in providing relief as the RS-4i.
32. Claimant's shoulder mobility has increased since using the RS-4i.
33. Claimant is unable to use the RS-4i while at work, but does use it quite frequently while at home.
34. While the physical therapy provided some assistance, RS-4i, has been more effective in providing relief and improvement.
35. The RS Medical RS-4i interferential and muscle simulator is a class II medical device approved by the United States Food and Drug Administration (FDA) for specified indications.
36. Dr. Dumitru prescribed the RS Medical RS-4i for FDA approved indications.
37. On December 27, 2002, Respondent denied Dr. Dumitru's December 12, 2002 request for indefinite use but did approve a one month rental of the RS-4i.
38. On May 12, 2003, Respondent denied authorization for the RS-4i as not medically necessary and on May 27, 2003, Respondent upheld its May 12, 2003 denial.

39. RS Medical (Petitioner) seeks preauthorization for Claimant's purchase of an RS Medical RS-4i interferential and muscle simulator for indefinite use by Claimant.
40. Respondent contends that the purchase of an RS Medical RS-4i interferential and muscle simulator for indefinite use by Claimant is not medically necessary.
41. By letter dated July 24, 2003, Medical Review of Texas, an Independent Review Organization (IRO), denied the preauthorization request of Petitioner for the purchase of an RS Medical RS-4i interferential and muscle simulator for indefinite use by Claimant.
42. The IRO decision is deemed a Decision and Order of the Texas Workers' Compensation Commission (Commission).
43. Petitioner timely requested a hearing to contest the Commission's decision.
44. By letter dated August 29, 2003, the Commission issued a notice of hearing.
45. Administrative Law Judge Howard S. Seitzman convened a hearing on December 10, 2003, in the hearing rooms of the State Office of Administrative Hearing. The record closed following adjournment of the hearing.
46. Patrick K. Cougill represented Petitioner. Dan. C. Kelley 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 simulator for indefinite use by Claimant is reasonable and 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 simulator for indefinite use by \_\_\_ is **GRANTED**.

**SIGNED February 6, 2004.**

**HOWARD SEITZMAN  
ADMINISTRATIVE LAW JUDGE  
STATE OFFICE OF ADMINISTRATIVE HEARINGS**