

SOAH DOCKET NO. 453-04-1159.M2
TWCC MR No. M2-04-0105-01

RS MEDICAL,	§	BEFORE THE STATE OFFICE
Petitioner	§	
	§	
V.	§	OF
	§	
LIBERTY MUTUAL INSURANCE	§	
COMPANY,	§	
Respondent	§	ADMINISTRATIVE HEARINGS

DECISION AND ORDER

I. DISCUSSION

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 Medical Review of Texas, 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 April 5, 2004, before Administrative Law Judge (ALJ) Howard S. Seitzman. Patrick K. Cougill represented Petitioner. Charlotte Salter represented Liberty Mutual Insurance Company (Respondent). Susan Keesee, Petitioner's Insurance Relations Manager, and Claimant testified for Petitioner.² Casey Cochran, 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 to his back on or about _____, and has been unable to return to work. A February 7, 2001 MRI revealed a herniated disk at the L5-S1 level compressing the S1 nerve root. Lumbar disk surgery on July 9, 2001, failed to relieve the severe pain in his lower back and the pain radiating into his left leg. A second surgical procedure, a posterior lumbar fusion, on February 25, 2002, was also unsuccessful in relieving the pain. Following the second surgical procedure, Claimant began experiencing pain in his right leg as well. Physical therapy, pain therapy and steroid injections did not work. Claimant has been prescribed various medications, including OxyContin, to treat the pain. In addition to the pain, Claimant also experiences leg cramps at night while trying to sleep.

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

² Both Claimant and Ms. Keesee testified by telephone.

On April 30, 2003, H. Keith Pinchot, M.D., prescribed an RS Medical RS-4i interferential and muscle stimulator for a two month period to treat back pain and the muscle spasms. On June 18, 2003, Dr. Pinchot 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. Pinchot 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.³

The RS-4i contains an onboard data collection system. Petitioner retrieved utilization data from the RS-4i for the period April 30, 2003, through March 8, 2004.⁴ The data showed that Claimant used the RS-4i almost every day during that time period and almost always used it for multiple program sessions. 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, and that the device facilitated his ability to sleep at night. As noted at the hearing, the RS-4i treatment sessions are the only treatments that appear to give Claimant relief. 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 and that he uses the device both in the morning and in the evening.

Claimant has reached Maximum Medical Improvement (MMI). There is no expectation that Claimant's condition will either improve or be cured.

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 on a daily basis and it relieves Claimant's pain and helps reduce muscle spasm.

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.

³ 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).

⁴ Petitioner allows Claimant to continue to use the RS-4i pending a SOAH decision.

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. A February 7, 2001 MRI revealed a herniated disk at the L5-S1 level compressing the S1 nerve root.
4. Neither the July 9, 2001 surgery nor the February 25, 2002 surgery relieved Claimant's severe back pain or the pain radiating into his legs.
5. Physical therapy and pain therapy have not relieved Claimant's severe back pain or the pain radiating into his legs.
6. Prescription medications, including OxyContin, and steroid injections, have not relieved Claimant's severe back pain or the pain radiating into his legs.
7. H. Keith Pinchot, M.D., prescribed an RS Medical RS-4i interferential and muscle stimulator on April 30, 2003, for a two-month period for treatment of back pain and muscle spasms.
8. On June 18, 2003, Dr. Pinchot prescribed an RS Medical RS-4i interferential and muscle stimulator for indefinite use for treatment of back pain and muscle spasms.
9. 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.
10. Dr. Pinchot prescribed the RS Medical RS-4i for FDA approved indications.
11. Data was retrieved from the RS-4i's data collection system for the period April 30, 2003, through March 8, 2004.
12. Claimant used the RS-4i almost every day during that time period and almost always used it for multiple program sessions.
13. Claimant has not returned to work.
14. Claimant continues to experience muscle spasms and pain as a result of his work-related injury.
15. Claimant uses the RS-4i daily in the morning and in the evening.
16. The RS Medical RS-4i interferential and muscle stimulator relieves Claimant's pain and helps reduce muscle spasm.

17. On or about June 27, 2003, Liberty Mutual Insurance Company (Respondent) denied Claimant's June 18, 2003 preauthorization request for purchase of an RS Medical RS-4i as not medically necessary.
18. On or about July 29, 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 October 13, 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 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 requested a hearing to contest the Commission's decision.
23. By letter dated November 13, 2003, the Commission issued a notice of hearing.
24. On December 4, 2003, the hearing was reset at Petitioner's request.
25. Administrative Law Judge Howard S. Seitzman convened a hearing on April 5, 2004, in the hearing rooms of the State Office of Administrative Hearing. The record closed following adjournment of the hearing.
26. Patrick K. Cougill represented Petitioner. Charlotte Salter 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 April 19, 2004.

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