

SOAH DOCKET NO. 453-04-2297.M2

—,	§	BEFORE THE STATE OFFICE
PETITIONER	§	
	§	
V.	§	OF
	§	
NATIONAL FIRE INSURANCE	§	
COMPANY OF HARTFORD,	§	
RESPONDENT	§	ADMINISTRATIVE HEARINGS

DECISION AND ORDER

— (Claimant) challenges the decision of an Independent Review Organization (IRO) denying his request to preauthorize the purchase of an orthopaedic bed. The National Fire Insurance Company of Hartford (Carrier) had denied the claim as medically unnecessary and the IRO upheld that decision. This decision finds that the requested purchase should not be preauthorized.

I. JURISDICTION, NOTICE, AND PROCEDURAL HISTORY

Administrative Law Judge (ALJ) Kerry D. Sullivan held the hearing on this matter on April 28, 2004. The Claimant appeared by telephone and represented himself, with the assistance of Ombudsman Juan Mireles with the Texas Workers’s Compensation Commission (Commission). The Carrier was represented by Erin Shanley. Proper notice of the hearing was provided as set out in the findings of fact and conclusions of law.

II. BASIS FOR DECISION

The record in this proceeding consists of procedural documents setting out the history of the case, a description for the disputed items by the Claimant’s treating physician, and a written narrative by the Claimant explaining the basis for his request. In addition, the Claimant testified on his own behalf. The Carrier presented no witnesses.

The evidence shows that, on —, the Claimant suffered a serious compensable injury to his

left leg and lower back. Since then, he has undergone conservative treatment including physical therapy, multiple pain relief injections, and extensive use of oral pain medications. He has also undergone two spinal surgeries. The first was to trim a herniated disc. The second surgery, which occurred in 1999, was a spinal fusion of the vertebrae at L5-S1 and was undertaken to address instability in the Claimant's spine.

Since the second surgery, the Claimant has not been able to sleep comfortably on a regular mattress. Four years later, the Claimant testified that he sleeps only two to three hours at a time and rotates between sleeping in his bed, on the couch, and on the floor on a thin foam mattress. His treating doctor has now prescribed "K. Sealy Cranfield Europtop mattress set-roller frame & headboard" to help the Petitioner sleep better.

The Petitioner testified that he obtained several price quotes for the type of firm mattress that he needs. He did this at the suggestion of his case worker with the Carrier. The estimates ranged from \$1,500 to \$1,800, including the headboard and footboard, which the Petitioner testified are required components of the bed. The Claimant testified that he has slept on the type of bed his doctor prescribed at the home of a relative and that it helped him sleep and allowed him to reduce his pain medication. Finally, the Claimant emphasized that he is hoping to return to work this fall through the assistance of the Texas Rehabilitation Commission's Ticket to Work Program, and that he believes the requested bed would help him in this endeavor.

While sympathetic with the contention that the Claimant needs the requested bed or one like it to further his physical rehabilitation, the ALJ is unable to conclude, under the circumstances of this case, that these items constitute health care, as defined by the Texas Workers' Compensation Act (the Act).¹

Section 401.011(19) of the Act defines "health care" as follows:

Health care includes all reasonable and necessary medical aid, medical examinations, medical treatments, medical diagnoses, medical evaluations, and medical services. The term does not include vocational rehabilitation. The term includes:

¹ Tex. Labor Code Ann ch. 401, *et seq.*

- (1) medical, surgical, chiropractic, podiatric, optometric, dental, nursing, and physical therapy services provided by or at the direction of a doctor;
- (2) physical rehabilitation services performed by a licensed occupational therapist provided by or at the direction of a doctor;
- (3) psychological services prescribed by a doctor;
- (4) the services of a hospital or other health care facility;
- (5) a prescription drug, medicine, or other remedy; and
- (6) a medical or surgical supply, appliance, brace, artificial member, or prosthesis, including training in the use of the appliance, brace, member, or prosthesis.

The statute's consistent use of the adjective "medical" and similar qualifying language indicates an intention to restrict coverage to those services provided by medical professionals, along with such tangible goods as are necessarily ancillary to the provision of such service. In characterizing such goods as "medical" supplies or appliances, Subsection F apparently requires that they be specialized goods designed to address medical conditions, or at least that their use be chosen or directed through the specialized expertise of the professional care-giver, as an integral part of the medical treatment.²

Additional guidance can be found in the Commission's definition of "durable medical equipment" (DME), which the bed would likely qualify as if it did, in fact, constitute health care. The DME Ground Rules state that durable medical equipment is an item that can withstand repeated use; is primarily used to serve a medical purpose; is generally not useful to a person in the absence of illness, injury, or disease; and is appropriate for use in the injured worker's home. The bed in dispute here does not appear to fit this description. It is sold in a general retail store and marketed to a general retail clientele. It would plainly be useful in the absence of an injury and would, in fact, also be used by the Claimant's spouse.

The Petitioner's frustration is understandable. His sleeping arrangements are unacceptable and have been so for a long time. Additionally, his difficulty sleeping is probably hindering his recovery. But the Claimant's doctor has provided no explanation why the bed in question is medically necessary and he has not explained its connection to the Claimant's overall plan of

² The ALJ's legal analysis is consistent with and borrows from prior SOAH decisions the ALJ finds persuasive, in particular 453-97-0396.M2 (1997) and 453-98-2026 (1998).

medical treatment-he has simply prescribed it without elaboration. Again, the Petitioner's frustration that the Carrier never contacted his doctor to inquire into his rationale is understandable. But as the party appealing the IRO decision, the burden of providing this information was on the Petitioner. More to the point, there is no indication that the bed at issue is anything more than a particularly firm mattress and box springs set, useful and desirable to the population at large as a sleeping surface. That being the case, the ALJ finds that it has not been shown to constitute "health care" within the meaning of the Act.

III. FINDINGS OF FACT

1. On ____, the Claimant suffered a serious compensable injury to his left leg and lower back.
2. At the time of the Claimant's injury, his employer held workers' compensation insurance coverage through the National Fire Insurance Company of Harford ("the Carrier").
3. The Claimant seeks preauthorization for a particular firm mattress set, including a frame and headboard.
4. The Carrier denied the request for preauthorization.
5. The Claimant requested medical dispute resolution at the Texas Workers' Compensation Commission, which referred the matter to an Independent Review Organization (IRO).
6. The IRO found that the requested mattress set and bed were not medically necessary.
7. The Claimant timely requested a hearing before the State Office of Administrative Hearings (SOAH).
8. Notice of the SOAH hearing was sent to the parties on January 22, 2004. The notice informed the parties of the date, time, and location of the hearing, a statement of the matters to be considered, the legal authority under which the hearing would be held, and the statutory provisions applicable to the matters to be considered.
9. The SOAH hearing convened and closed on April 28, 2004. The Claimant and the Carrier appeared and participated in the hearing.
10. The requested mattress set and bed were not shown to be medically necessary. The Claimant's treating doctor did not document its need or connect it to the Claimant's overall plan of medical treatment.
11. The requested bed was not shown to be anything more than a particularly firm mattress and box springs set and frame that would be useful and desirable to the population at large as a

sleeping surface.

IV. CONCLUSIONS OF LAW

1. 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.
2. Adequate and timely notice of the hearing was provided in accordance with TEX. GOV'T CODE ANN. §§2001.051 and 2001.052.
3. As the Petitioner, the Claimant has the burden of proof in this matter. 28 TEX. ADMIN. CODE §148.21(h).
4. The Claimant failed to establish that the requested mattress set and frame were medically necessary.
5. The requested mattress set and frame were not shown to constitute "health care" within the meaning of the Act. TEX. LAB. CODE ANN. § 401.011(19).
6. The requested preauthorization of a mattress set and frame should be denied. TEX. LAB. CODE ANN. § 408.021.

ORDER

IT IS ORDERED that the request submitted by ___ for preauthorization of the requested mattress set and frame is denied.

Signed this 28th day of May, 2004.

KERRY D. SULLIVAN
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS