

—	§	BEFORE THE STATE OFFICE
<i>Petitioner</i>	§	
	§	
V.	§	OF
	§	
ST. PAUL MERCURY INSURANCE	§	
COMPANY,	§	
<i>Respondent.</i>	§	ADMINISTRATIVE HEARINGS

DECISION AND ORDER

St. Paul Mercury Insurance Company (Carrier) denied ___’s (Petitioner) request to preauthorize a radiofrequency thermocoagulation stellate ganglion block procedure recommended by Petitioner’s pain management physician, C. Michel Oliva, M.D. An Independent Review Organization (IRO) agreed with Carrier’s denial and Petitioner has appealed to the State Office of Administrative Hearings (SOAH). At issue is whether the recommended procedure is medically necessary to treat Petitioner’s compensable complex regional pain syndrome. The SOAH Administrative Law Judge (ALJ) finds, based on this evidentiary record, that Petitioner failed to prove the requested procedure is reasonably required or medically necessary health care for her injury. Preauthorization is, therefore, denied.

I. NOTICE, JURISDICTION, AND PROCEDURAL HISTORY

Notice and jurisdiction were not disputed and are established in the findings of fact and conclusions of law. On September 26, 2003, Carrier denied Petitioner’s request to preauthorize a radiofrequency thermocoagulation stellate ganglion block procedure to treat Petitioner’s complex regional pain syndrome because: 1) Dr. Oliva’s medical records did not objectively verify that Petitioner received complete pain relief from a test series of three stellate ganglion blocks; and 2) no medical literature exists establishing that the procedure significantly resolves pain by returning function to the affected area. (See Carrier’s Ex. 1 at Preauthorization Reconsideration by Jonathan Sklar, M.D.)

On January 23, 2004, an IRO performed an independent review to ascertain whether Carrier’s adverse determination was appropriate. In agreeing with Carrier’s denial, the IRO concluded that the procedure was not medically necessary because the medical literature provides no evidence that the procedure can significantly resolve pain and return function. The Commission affirmed the IRO decision, and Petitioner appealed to SOAH on February 12, 2004.

The contested case before SOAH was abated until August 20, 2004, to allow time for a Texas Workers’ Compensation Commission (Commission) Hearing Officer to determine if Petitioner’s compensable injury extends to complex regional pain syndrome. On July 19, 2004, a Commission Hearing Officer found that Petitioner’s compensable injury includes the diagnosis of complex regional pain syndrome in her right arm.

The abatement was lifted on August 25, 2004, and the SOAH contested hearing on the preauthorization issue proceeded before ALJ Deborah L. Ingraham on October 21, 2004, in Austin, Texas. Petitioner appeared and represented herself with the assistance of Commission Ombudsman Juan Mireles. Attorney Steven M. Tipton represented Carrier. The Commission was not a party to the case. The record closed October 21, 2004.

II. REASONS FOR ALJ'S DECISION

A. Parties' Positions

Petitioner has the burden of proof in this appeal. When Petitioner was 23 years old, she drove a school bus for ____. Beginning ____, she experienced the onset of a repetitive motion injury on her right side from the motion of turning the bus steering wheel. Now 27 years old, Petitioner has undergone a carpal tunnel release surgery and a right ulnar nerve transposition, but she continues to experience pain in her right arm. Suspecting she may be suffering from complex regional pain syndrome, Petitioner's surgeon referred her to Dr. Oliva, who diagnosed her with that syndrome. To support her preauthorization request, Petitioner relies on her own testimony, Dr. Oliva's progress notes, her independent medical examination by Gerald Hill, M.D., and the Commission's finding that her complex regional pain syndrome is included in her compensable injury.

Carrier argues that Dr. Oliva's notes are simply inadequate to support the need for a radiofrequency thermocoagulation stellate ganglion block because they do not contain adequate objective findings showing Petitioner has a sympathetic nerve pain cycle that would benefit from destroying the ganglion.

B. ALJ's Analysis

When her symptoms appeared, Petitioner was diagnosed with mild right sensory carpal tunnel syndrome and underwent physical therapy and other conservative treatment for four months. She then underwent an open incision, carpal tunnel release surgery on May 22, 2001, after which her pain increased and extended up her right arm. In 2002, Petitioner underwent a right ulnar nerve transposition for cubital tunnel syndrome at the elbow. After that surgery, Petitioner's complaints of pain persisted and she was referred to Dr. Oliva for pain management treatment in November 2002.

Dr. Oliva diagnosed Petitioner with complex regional pain syndrome, type I, in the right upper extremity. On January 8, 2003, he noted that Petitioner continued to complain of right upper extremity pain and that her pain medications were ineffective. On April 30, 2003, Petitioner's pain was significantly worse in her right upper extremity, which Dr. Oliva described as looking "mottled," and the pain was radiating into her upper arm, neck, and head, and moving to her upper left extremity. Dr. Oliva then performed a series of three stellate ganglion blocks on her right arm on June 13, August 5, and August 21, 2003. The first block gave Petitioner seven to eight weeks of pain relief; the second block gave her about seven days of pain relief; the third block gave her a few days relief.

On September 17, 2003, Dr. Oliva again observed a mottled appearance in Petitioner's right upper extremity and noted that her skin looked sweaty and shiny. While the blocks did relieve

Petitioner's pain, her pain returned. Because she experienced pain relief with the blocks, Dr. Oliva recommended performing a radiofrequency thermocoagulation of the stellate ganglion on her right side. Carrier denied that request, and on February 17, 2004, Dr. Oliva again recommended the stellate ganglion block as a medically necessary treatment because Petitioner's upper extremity had swelled significantly since her previous examination and the effects of the previous blocks were fading.

At the hearing, Petitioner testified that she continues to suffer from pain in her upper extremity on the right side and that she received significant pain relief from the three-block series. She wants Dr. Oliva to perform the requested procedure.

To contest Dr. Oliva's request, Carrier presented the testimony of orthopaedic surgeon Aaron Combs, M.D., who reviewed Petitioner's medical records from Dr. Oliva. Dr. Combs explained that complex regional pain syndrome is thought to be an "over firing" of the sympathetic nervous system, and stellate ganglion blocks are intended to break the sympathetic chain of pain. He testified that a series of three stellate blocks should be performed before doing radiofrequency thermocoagulation stellate ganglion block to determine whether the patient is really suffering from a sympathetic nerve pain cycle. If the three test blocks show a change in the temperature of the skin when the injections are given, increased or decreased blood flow to the limb, or a cold, clammy limb, Dr. Combs would conclude that the blocks successfully interrupted the pain cycle.

Three successful test blocks would then support the procedure Dr. Oliva is requesting, which introduces a heat wand into the ganglion using radiofrequency thermocoagulation. According to Dr. Combs, this type of block destroys the ganglion to resolve the patient's pain permanently. He added, however, that this procedure is relatively unstudied and has no track record of possible complications.

In looking at Petitioner's condition, Dr. Combs testified that he did not see any objective findings in Dr. Oliva's notes, such as temperature changes in the skin, decreased or increased blood flow, or sweating of the limb to indicate that the series of three stellate block procedures were successful. He criticized in particular the absence of any objective observations recorded immediately after the block injections were given. Dr. Combs would not recommend the requested procedure based only on Petitioner's subjective reports of pain. Instead, he would want to see notes on her immediate reaction to the injections, and a daily record of how her extremity was responding.

Unfortunately, Dr. Oliva did not testify at the hearing and his notes do not directly address some of Carrier's concerns about preauthorizing this procedure. Contrary to Carrier's argument, the ALJ finds some objective findings in Dr. Oliva's notes, but they are minimal and consist of Dr. Oliva's observations of the mottled, shiny appearance of the skin in Petitioner's right upper extremity and some sweating several weeks after he administered the third stellate block. Overall, Dr. Oliva has done a poor job of explaining in his progress notes why the requested procedure is a medically necessary treatment.

The evidence also contains one independent medical examination performed by Gerald Hill, M.D. on March 29, 2004. Unlike Carrier's experts, Dr. Hill actually examined Petitioner, and made these observations of Petitioner's right upper extremity:

- X Little reduced tone in biceps area;
- X No significant color change in skin;
- X Right hand was not cold;
- X No difference in perspiration between hands;
- X No hyperthesia;
- X Moderately reduced grip strength on right side;
- X Slight difference in adduction of right thumb;
- X Fairly functional right wrist, only mild reduction in range of motion;
- X Fine motor skills slightly sluggish on right;
- X Percussion over carpal tunnel radiates some discomfort and tingling in digits;
- X Right wrist slightly tender on compression;
- X Limited range of motion in right shoulder;
- X Sluggish cervical range of motion;
- X Significant tenderness and tightness in right trapezius and right shoulder girdle musculature.

He did not observe a significant color change, swelling, a temperature or sweating abnormality, or hyperesthesia in her right upper extremity, and had only Petitioner's subjective reports of pain and tingling.

Unless there is a psychological reason for her complaints¹, which could not evaluate at that time, Dr. Hill concluded that complex regional pain syndrome is the most probable cause of Petitioner's symptoms. His examination is the most recent in evidence and he thinks Petitioner's right shoulder myofascitis needs to be aggressively treated with a combination of modalities, perhaps massage and injections. He does not give an opinion about the procedure Dr. Oliva is requesting and thinks another series of three sympathetic stellate blocks should be performed due to the amount of time that has passed since the last series. He also opines that Petitioner may need to take medication under the supervision of a pain management specialist.²

Petitioner is entitled to all health care that is reasonably necessary to treat her compensable injury.³ However, because the issue in this case concerns the preauthorization to perform a

¹ In opposing the compensability of the complex regional pain syndrome, Carrier's peer review physician rendered a strong opinion that Petitioner's pain is caused by a stress disorder that typically manifests itself in the shoulder and scapula areas. Dr. Oliva's notes indicate he is providing Petitioner with some psychological care and sample medication.

² However, Dr. Oliva notes repeatedly in his records that her prescriptions are not covered by insurance.

³ The Texas Labor Code contains the Texas Workers' Compensation Act (Act), which sets forth the statutory requirements regarding compensable treatment for workers' compensation claims. TEX. LAB. CODE ANN. § 408.021. The Act provides in pertinent part that: An employee who sustains 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: (1) cures or relieves the effects naturally resulting from the compensable injury; (2) promotes recovery; or (3) enhances the ability of the employee to return to or retain employment.

* *

Health care includes all reasonable and necessary medical aid, medical examinations, medical treatment, medical diagnoses, medical evaluations, and medical services. TEX. LAB. CODE ANN. § 401.011(19).

radiofrequency thermocoagulation stellate ganglion block, the ALJ cannot authorize a new series of the stellate blocks Dr. Hill thought prudent. Considering the evidence overall, the ALJ concludes that Petitioner has not carried her burden of proof in this case. Dr. Oliva has not adequately supported in his progress notes medical necessity of the requested procedure. Moreover, the pain and swelling he observed during his last examination on February 17, 2004, appears to have considerably improved by the time Petitioner saw Dr. Hill on March 29, 2004. Therefore, based on this evidentiary record, the ALJ finds that the requested procedure is not reasonably required or medically necessary health care for Petitioner's injury.

III. FINDINGS OF FACT

1. Petitioner is a 23 year old female who sustained a compensable work-related injury to her right wrist on____.
2. At the time of her injury, Petitioner's employer had workers' compensation coverage through St. Paul Fire Insurance Company (Carrier).
3. Petitioner was diagnosed with mild right sensory carpal tunnel syndrome and underwent physical therapy and other conservative treatment for four months.
4. Petitioner underwent an open incision, carpal tunnel release surgery on May 22, 2001, after which her pain increased and extended up her upper right extremity.
5. In 2002, Petitioner underwent a right ulnar nerve transposition at the right elbow for cubital tunnel syndrome.
6. Petitioner complained of pain in her right upper extremity and was referred to pain management specialist Michel Oliva, M.D. in November 2002 for treatment.
7. Dr. Oliva diagnosed Petitioner with complex regional pain syndrome and sought preauthorization from Carrier to perform a radiofrequency thermocoagulation stellate ganglion block to resolve the pain on Petitioner's right upper extremity.
8. Carrier denied preauthorization and Petitioner appealed to the Texas Workers' Compensation Commission (Commission), which referred the dispute to an Independent Review Organization (IRO).
9. Based on the IRO's determination that Carrier's appropriately denied the procedure, the Commission denied Petitioner's appeal.
10. On February 12, 2004, Petitioner appealed the Commission's decision to the State Office of Administrative Hearings (SOAH)
11. After a notice of hearing was issued on March 15, 2004, giving the time place and nature of the hearing and the statutes, rules, and contested issues involved, the case was abated pending a Commission hearing on the compensability of Petitioner's complex regional pain syndrome.

12. Petitioner's pain syndrome was found compensable and the contested hearing before SOAH proceeded on October 21, 2004.
13. Before performing a radiofrequency thermocoagulation stellate block procedure to destroy the ganglion, a test series of three temporary stellate ganglion blocks should be performed to determine whether the patient's pain is caused by an over firing of the sympathetic nervous system.
14. A successful series of stellate ganglion blocks will show a break in the pain cycle and objective signs of a change in skin temperature, increased or decreased blood flow in the limb, or a warm or cold, clammy limb, particularly at the time the injections are administered.
15. Dr. Oliva administered a series of three stellate ganglion block injections to Petitioner's right ganglion on June 13, 2003, August 5, 2003, and August 21, 2003, which reduced Petitioner's pain for seven weeks the first time, seven days the second time, and a few days the third time.
16. On September 17, 2003, the skin on Petitioner's right upper extremity appeared mottled, swollen, sweaty, and shiny, but by February 17, 2004, she was doing very well.
17. Dr. Oliva's clinical notes do not document any objective observations of Petitioner's immediate reaction to the three stellate ganglion block injections, and contain minimal observations of Petitioner's objective symptoms during his examinations.
18. On March 29, 2004, although Petitioner subjectively complained of pain and tingling in her right arm, an independent medical examination showed no a significant color change, swelling, temperature change or sweating or hyperesthesia in Petitioner's right upper extremity.
19. A radiofrequency thermocoagulation stellate block procedure is not medically reasonable or necessary for the treatment of Petitioner's compensable injury.

IV. CONCLUSIONS OF LAW

1. The Texas Workers' Compensation Commission has jurisdiction to decide the issue presented pursuant to the Texas Workers' Compensation Act (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 § 413.031(d) of the Act and TEX. GOV'T CODE ANN. ch. 2003.
3. Adequate and timely notice of the hearing was provided in accordance with TEX. GOV'T CODE ANN. §§ 2001.051 and 2001.052.

4. The hearing was conducted pursuant to the Administrative Procedure Act, TEX. GOV'T CODE ANN. ch. 2001.
5. As the party seeking relief, Petitioner bore the burden of proof in this case pursuant to 28 TEX. ADMIN. CODE § 148.21(h).
6. Petitioner failed to establish that the treatment requested is reasonably required under the Act § 408.021.
7. Based upon the foregoing findings of fact, the requested medical procedure is not health care that the Claimant reasonably and medically needs at this time as contemplated in § 408.021 of the Act.

ORDER

IT IS, THEREFORE, ORDERED that Petitioner's preauthorization request for a radiofrequency thermocoagulation stellate block procedure is **DENIED**.

SIGNED December 17, 2004.

DEBORAH L. INGRAHAM
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS