

**SOAH DOCKET NO. 453-05-0160.M2
TWCC MR NO. M2-04-1690-01**

___,
Petitioner

V.

**TPCIGA FOR RELIANCE NATIONAL
INDEMNITY COMPANY,
Respondent**

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BEFORE THE STATE OFFICE

OF

ADMINISTRATIVE HEARINGS

DECISION AND ORDER

This is a dispute over a request for preauthorization for botox injections to relieve back pain suffered by workers' compensation claimant ___ (the Claimant). The Administrative Law Judge (ALJ) concludes the request should be denied.

I. HISTORY

The Claimant suffered a compensable injury to his back and leg on ___. He has been undergoing conservative treatment, including medications, epidural steroid injections, and use of a deep muscle stimulator, since that time. His symptoms continue.

The Claimant's treating physician, Mark Barhorst, M.D., sought approval for botox injections to relieve the Claimant's symptoms. The workers' compensation carrier, TPCIGA for Reliance National Indemnity Company (the Carrier), denied that request. The Claimant filed a Request for Medical Dispute Resolution with the Texas Workers' Compensation Commission (the Commission). That request was referred to an Independent Review Organization, which denied the request as well. The Claimant then filed a timely request for a hearing before the State Office of Administrative Hearings (SOAH).

The SOAH hearing was held October 19, 2004, with ALJ Henry D. Card presiding. The Claimant participated, assisted by the Commission's Ombudsman. The Carrier also participated. The hearing was adjourned the same day.

II. DISCUSSION

Under TEX. LAB. CODE ANN. § 408.021(a),

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.

Under 28 TEX. ADMIN. CODE (TAC) § 148.21(h), the Petitioner has the burden of proof in hearings, such as this one, conducted pursuant to TEX. LAB. CODE ANN. § 413.031.

The Claimant has received a great deal of conservative therapy for this injury. His treating physician, Dr. Barhorst, testified that, in his opinion, the botox injections could relieve the Claimant's back pain and muscle spasms. In his experience, such injections had been effective 100 percent of the time, with relief lasting from six to twelve months. The injections would not help with the Claimant's leg pain.

Dr. Barhorst stated that the deep muscle stimulator had been effective, though not as effective as botox injections would be. He testified that the stimulator had been disallowed by the Carrier, however, and that botox injections were the next logical alternative.

As the Carrier pointed out, the medical records suggest that the deep muscle stimulator was not working particularly well for the Claimant. In January of 2004, Dr. Barhorst's notes discussed the Claimant's sporadic use of the device and suggested it be discontinued. In July of 2004, his notes discussed the same issue and called the stimulator a "helpful modality," stating he would approach the Claimant about the frequency of his use to evaluate its continuing efficacy.

According to those records, medication was also successful in treating the Claimant's symptoms. Dr. Barhorst stated that the Carrier had ceased reimbursement for those medications, however. The Carrier's written rejection of reimbursement for medications was not in the record.

As was mentioned above, the Claimant has the burden of proof in this case to show the IRO decision should be overturned. The ALJ concludes he did not meet that burden. Medications and the deep muscle stimulator are more cost effective than botox injections. The evidence is inconsistent and unclear as to whether those modes of treatment were effective and why they were discontinued. Therefore, the record is insufficient to prove the medical necessity of the requested injections. The ALJ denies the request for preauthorization.

III. FINDINGS OF FACT

1. ____ (the Claimant) suffered a compensable injury to his back and leg on ____.
2. The Claimant has been undergoing conservative treatment, including medications, epidural steroid injections, and use of a deep muscle stimulator, since the date of his injury.
3. The Claimant's symptoms continue.
4. The Claimant's treating physician, Mark Barhorst, M.D., sought approval for botox injections to relieve the Claimant's symptoms.
5. The workers' compensation carrier, TPCIG for Reliance National Indemnity Company (the Carrier), denied the preauthorization request.
6. After the Carrier's denial, the Claimant filed a Request for Medical Dispute Resolution with the Texas Workers' Compensation Commission (the Commission).
7. The request for Medical Dispute Resolution was referred to an Independent Review Organization (IRO), which denied the request as well.
8. After the IRO decision, the Claimant filed a timely request for a hearing before the State Office of Administrative Hearings (SOAH).
9. Notice of the hearing was sent September 14, 2004.

10. The notice contained a statement of the time, place, and nature of the hearing; a statement of the legal authority and jurisdiction under which the hearing was to be held; a reference to the particular sections of the statutes and rules involved; and a short, plain statement of the matters asserted.
11. The SOAH hearing was held October 19, 2004, with ALJ Henry D. Card presiding. The Claimant participated, assisted by the Commission's Ombudsman. The Carrier also participated. The hearing was adjourned the same day.
12. Medications and the deep muscle stimulator are more cost effective than botox injections.
13. The evidence is inconsistent and unclear as to whether medications and the deep muscle stimulator were effective and why they were discontinued.

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. § 2001.052.
3. Under 28 TAC § 148.21(h), the Petitioner has the burden of proof in hearings, such as this one, conducted pursuant to TEX. LAB. CODE ANN. § 413.031.
4. The Claimant did not prove the requested procedure was medically necessary under TEX. LAB. CODE ANN. § 408.021.
5. The request for preauthorization should be denied.

ORDER

It is, therefore, ordered that the Carrier, TPCIGA for Reliance National Indemnity Company, shall not be required to preauthorize botox injections for Claimant ____

SIGNED November 18, 2004.

HENRY D. CARD
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS