

**SOAH DOCKET NO. 453-05-2673.M2
TWCC MR. NO. M2-05-0095-01**

____ , Petitioner	§ § § § § § § § § §	BEFORE THE STATE OFFICE OF ADMINISTRATIVE HEARINGS
V.		
ZURICH AMERICAN INSURANCE COMPANY, Respondent		

DECISION AND ORDER

I. INTRODUCTION

____ (Claimant) disputes a decision of an independent review organization (IRO) on behalf of the Texas Workers' Compensation Commission (TWCC). The IRO agreed with Zurich American Insurance Company (Carrier) and found that an item of durable medical equipment (DME) that RS Medical (Provider) provided to the Claimant was not reasonably medically necessary due to his compensable injury.

As set out below, the Administrative Law Judge (ALJ) finds that the Claimant has not shown that the DME was reasonably medically necessary.

II. FINDINGS OF FACT

1. On ____, the Claimant sustained a work-related injury to his left shoulder as a result of his work activities (Compensable Injury).
2. On the date of injury, the Claimant's employer was ____ (company name)., and the Carrier was its workers' compensation insurance carrier.
3. Since at least April 30, 2003, the Claimant has had pain in his left shoulder.
4. In February 2004, the Provider requested pre-authorization for an RS-4i Sequential Stimulator 4 Channel Combination Interferential and Muscle Stimulator Unit (RS-4i) to treat the Claimant's left shoulder pain.

5. On February 26, 2004, the Carrier denied the requested pre-authorization, contending that the RS-4i had not been shown to be medically necessary due to the Compensable Injury.
6. The evidence in this case does not show that the RS-4i was reasonably medically necessary to reduce the Claimant's pain or otherwise reasonably required to treat his compensable injury.
7. On September 13, 2004, the Provider filed a request with TWCC for dispute resolution concerning the requested pre-authorization.
8. On October 28, 2004, an independent review organization (IRO), as assigned by TWCC, reviewed the pre-authorization request and found that the RS-4i was unproven and experimental and was not reasonably medically necessary to treat the Claimant's pain.
9. After the IRO decision was issued, the Claimant on November 8, 2004, and the Provider on November 11, 2004, asked for a contested-case hearing by a State Office of Administrative Hearings (SOAH) ALJ concerning the pre-authorization request.
10. Required notice of a contested-case hearing concerning the dispute was mailed to the Carrier, the Provider, the Treating Physician, and the Claimant.
11. On June 15, 2005, SOAH ALJ William G. Newchurch held a contested-case hearing concerning the dispute at the William P. Clements Office Building, Fourth Floor, 300 West 15th Street, Austin, Texas. The hearing concluded and the record closed on that same day.
12. The Claimant appeared at the hearing by telephone.
13. TWCC Ombudsman Juan Mirales appeared at the hearing to assist the Claimant.
14. The Carrier appeared at the hearing through its attorney, Steven M. Tipton.
15. The Provider did not appear at the hearing.
16. On June 16, 2005, the Provider withdrew its request for a contested-case hearing.

III. CONCLUSIONS OF LAW

1. 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. LABOR CODE ANN. (Labor Code) §§ 402.073(b) and 413.031(k) (West 2004) and TEX. GOV'T CODE ANN. (Gov't Code) ch. 2003 (West 2004).

2. Adequate and timely notice of the hearing was provided in accordance with Gov't Code §§ 2001.051 and 2001.052.
3. Based on the above Findings of Fact and Gov't Code § 2003.050 (a) and (b), 1 TEX. ADMIN. CODE (TAC) § 155.41(b) (2004), and 28 TAC §§ 133.308(v) and 148.21(h) (2004), the Claimant has the burden of proof in this case.
4. 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 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. Labor Code § 408.021 (a).
5. Pre-authorization is required for the RS-4i, which is durable medical equipment (DME) in excess of \$500 per item. 28 TAC § 134.600.
6. Based on the above Findings of Fact and Conclusions of Law, the request for pre-authorization of the RS-4i should be denied.

ORDER

IT IS ORDERED THAT the request for pre-authorization of the RS-4i is denied.

Signed August 12, 2005.

**WILLIAM G. NEWCHURCH
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS**