

___,	:	<b>BEFORE THE STATE OFFICE</b>
<b>Petitioner</b>	:	
	:	
<b>VS.</b>	:	<b>OF</b>
	:	
<b>TPS JOINT SELF</b>	:	<b>§</b>
<b>INSURANCE FUNDS</b>	:	<b>ADMINISTRATIVE HEARINGS</b>
<b>Respondent</b>	:	

**DECISION AND ORDER**

\_\_\_ (Claimant) challenged the decision of TPS Joint Self Insurance Funds (Carrier) denying preauthorization for cervical facet joint injections with Lidocaine infusions. In this decision, the Administrative Law Judge (ALJ) finds that Claimant did not meet her burden of showing that the requested procedure is reasonable and necessary medical care and should be preauthorized. Therefore, the ALJ does not order Carrier to authorize the requested treatment.

The hearing convened and closed on January 11, 2005, before ALJ Steven M. Rivas. Claimant appeared and was assisted by Juan Mireles, Ombudsman. Carrier appeared and was represented by Greg J. Vamvakias, attorney

**I. DISCUSSION**

1. Background Facts

Claimant sustained a compensable neck injury on \_\_\_, while lifting a student from a wheelchair onto a table. After her injury, Claimant sought treatment from Ray Mireles, M.D, who administered an EMG/NCV test on Claimant and recommended Claimant undergo fusion surgery on her cervical spine. On July 8, 1999, Claimant underwent fusion surgery, which included the placement of plates and screws in her cervical spine. Following her surgery, Claimant continued to experience neck pain and sought treatment from several physicians who administered various diagnostic examinations including two MRI exams, X-rays, a CT scan, a myelogram, and another EMG. In addition, Claimant was treated with physical therapy, epidural steroid and facet injections,

and a series of medications. Claimant's current treating doctor, Victor Pallares, M.D., began treating Claimant in 2001. Dr. Pallares has previously treated Claimant with facet injections and Lidocaine infusions. The same treatment Claimant currently requests. Carrier denied preauthorization for the requested treatment and this dispute was referred to an Independent Review Organization (IRO), which agreed with Carrier. Claimant appealed the IRO decision to the State Office of Administrative Hearings.

## 2. Applicable Law

Pursuant to the Texas Workers' Compensation Act (the Act), TEX. LAB. CODE ANN. ' 408.021 *et seq.*, an employee who sustains a compensable injury is entitled to all 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.

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

Certain categories of health care identified by the Commission require preauthorization, which is dependant upon a prospective showing of medical necessity under ' 413.014 of the Act and 28 TEX. ADMIN. CODE (TAC) ' 134.600. In this instance under 28 TAC ' 134.600(h), preauthorization is required for the treatment requested by Claimant.

## 3. Evidence and Arguments

Dr. Pallares testified the requested treatment is reasonable and medically necessary because, in the past, it has brought Claimant some relief from her neck pain. Dr. Pallares believes Claimant suffers from chronic neck pain as a result of her compensable injury and subsequent surgery.

Dr. Pallares admitted the requested treatment has not brought Claimant any lasting relief from her neck pain. However, Dr. Pallares asserted the requested treatment is part of an overall treatment plan that will eventually prepare Claimant for radio frequency therapy in the future if her neck pain persists. The ALJ is unclear whether the requested treatment was a necessary prerequisite for radio frequency therapy because Dr. Pallares did not offer any testimony in that regard.

Carrier argued the requested treatment is not medically necessary because it has been shown to provide only temporary comfort to Claimant. In support of this position, Carrier pointed out several notations in the record where Claimant expressed relief from prior facet injections and Lidocaine infusions that lasted between 2-3 hours to two weeks. Additionally, Carrier pointed out several instances in the record that do not support the medical necessity of the requested treatment. The first was noted in a medical records review performed by Scott Limpert, M.D., dated July 29, 2004, where he quoted another physician, Cynthia Garcia, M.D., who wrote in 2003 that Claimant's current pain management had been excessive and non-beneficial and not related to the compensable injury. Dr. Garcia also noted that in 2003, Lidocaine infusion therapy and pain injections were not reasonable, and that future medical treatment was not casually related to the original injury but related to the subsequent medical treatment.

In his report, Dr. Limpert believed a Lidocaine infusion would be reasonable if it resulted in significant reduction in pain complaints. Carrier argues that because Claimant had not experienced a significant reduction in her pain complaints from prior infusions, she should not receive preauthorization for her current request.

#### 4. Analysis and Conclusion

The requested cervical facet joint injections with Lidocaine infusions are not warranted based on previous occasions where Claimant received this treatment and experienced only temporary relief

Carrier argues, and the ALJ agrees, that while ' 408.021 does not distinguish between temporary and lasting relief, there is an overriding issue here regarding Acost-effectiveness,@ especially in light of Dr. Pallares= testimony. Dr. Pallares admitted the treatment in question has so far been ineffective in rendering significant pain relief and, in light of its ineffectiveness, plans to perform radio frequency therapy in the near future. If the treatment requested has repeatedly shown to be ineffective, it is likely that Claimant would require additional injections and infusions before her treating doctors recommend another course of action like radio frequency or a chronic pain management program. Claimant=s prior treatments with cervical facet injections and Lidocaine infusions has provided no lasting benefit but has simply brought her back to request another series of the same treatment. Based on this pattern, the likelihood that she will request additional cervical facet injections and Lidocaine infusions is great due to their overall ineffectiveness six years after her compensable injury. Therefore, the cervical facet joint injections with Lidocaine infusions are not medically necessary and should not be preauthorized.

## **II. FINDINGS OF FACT**

1. \_\_\_\_ (Claimant) sustained a compensable neck injury on \_\_\_\_.
2. Claimant came under the care of Victor Pallares, M.D. (Provider), who recommended cervical facet injections with Lidocaine infusions as treatment for Claimant=s compensable injury.
3. Claimant sought preauthorization for the treatment from TPS Joint Self Insurance Funds (Carrier) which was denied.
4. Claimant sought medical dispute resolution with the Texas Workers=Compensation Commission=s Medical Review Division, which referred this matter to an Independent Review Organization (IRO). The IRO report concurred with Carrier and denied preauthorization.
5. Claimant timely requested a hearing before the State Office of Administrative Hearings (SOAH).

6. Notice of the hearing in this case was mailed to the parties on December 17, 2004. 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.
7. The hearing convened and closed on January 11, 2005, before Steven M. Rivas, Administrative Law Judge (ALJ). Claimant appeared and was assisted by Juan Mireles, Ombudsman. Carrier appeared and was represented by Greg J. Vamvakias, attorney. The hearing was adjourned and the record closed the same day.
8. Claimant has undergone prior cervical facet injections with Lidocaine infusions.
9. Claimant's prior cervical facet joint injections and Lidocaine infusions have been ineffective in rendering lasting relief from Claimant's neck pain.
10. Claimant's treating doctor plans to treat Claimant with radio frequency therapy due to the overall ineffectiveness of Claimant's prior cervical facet joint injections with Lidocaine infusions.
11. The requested cervical facet joint injections with Lidocaine infusions are not likely to render effective relief from Claimant's neck pain.

### **III. CONCLUSIONS OF LAW**

1. The Commission has jurisdiction over this matter pursuant to Section 413.031 of the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. ' 401.001 *et seq.* (Athe Act@).
2. SOAH has jurisdiction over this proceeding, including the authority to issue a decision and order, pursuant to ' 413.031(k) 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 Claimant, as Petitioner, had the burden of proof on appeal by a preponderance of the evidence under ' 413.031 of the Act, and 28 TEX. ADMIN. CODE ' 148.21(h).
5. Claimant has not shown by a preponderance of the evidence that the requested cervical facet joint injections with Lidocaine infusions are medically necessary for treating Claimant's compensable injury.

**ORDER**

**IT IS, THEREFORE, ORDERED** that the requested cervical facet joint injections with Lidocaine infusions not be preauthorized.

**Signed on February 3, 2005.**

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**STEVEN M. RIVAS  
ADMINISTRATIVE LAW JUDGE  
STATE OFFICE OF ADMINISTRATIVE HEARINGS**