

**SOAH DOCKET NO. 453-05-3779.M4
TWCC MR NO. M4-04-4058-01**

**STATE OFFICE OF RISK
MANAGEMENT,
Petitioner**

V.

**RS MEDICAL,
Respondent**

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BEFORE THE STATE OFFICE

OF

ADMINISTRATIVE HEARINGS

DECISION AND ORDER

This case concerns the proper level of reimbursement for the rental and subsequent purchase of an RS4i neuromuscular stimulator, a piece of durable medical equipment (DME). The Administrative Law Judge (ALJ) concludes reimbursement should be at the amounts billed by the Respondent, RS Medical.

I. FACTUAL AND PROCEDURAL HISTORY

Workers' compensation claimant __ (the Claimant) suffered a compensable injury on __, __. Because she continued to complain of cervical pain and muscle spasms, her treating physician, on March 27, 2003, prescribed use of the RS4i neuromuscular stimulator. The purposes for which he prescribed the unit were to relieve and manage the Claimant's pain, relax her muscle spasms, increase her range of motion, and increase local blood circulation.¹

The Claimant rented the unit for two months and then purchased it. RS Medical submitted a request for reimbursement to the Petitioner, the State Office of Risk Management (SORM). SORM provided reimbursement for both the two months of rental and the purchase, but at a lower rate. The amount billed, the reimbursement provided, and the amounts in dispute are shown below:

¹ Petitioner's Ex. 1 at 24. The medical necessity of the unit is not in dispute in this case.

<u>Date of Service</u>	<u>Amount Billed</u>	<u>Amount Paid</u>	<u>Amount in Dispute</u>
3-27-03	\$250.00	\$150.00	\$ 100.00
4-27-03	250.00	150.00	100.00
6-02-03	2,495.00	900.00	<u>1,595.00</u>
Total Amount in Dispute			\$1,795.00

Under Paragraph IV of the 1996 DME Ground Rules, which apply to this case, there is no specific maximum allowable reimbursement (MAR) amount for DME items. Instead, Paragraph IV states, in pertinent part,

. . . the insurance carrier shall reimburse the DME provider at . . . , if there is no pre-negotiated amount, the fair and reasonable rate for the item described. Use the miscellaneous HCPCS code, E1399, when no other HCPCS code is present for the DME. . . .

The pertinent portion of Subsection C of Paragraph IX of the 1996 DME Ground Rules reads as follows:

. . . Reimbursement shall be an amount pre-negotiated between the provider and carrier or if there is no pre-negotiated amount, the fair and reasonable rate. A fair and reasonable reimbursement shall be the same as the fees set for the “D” codes in the 1991 [MFG].

RS Medical submitted its request for reimbursement using Code E1399. SORM reimbursed RS Medical, however, at the rate for a muscle stimulator. RS Medical contends the RS4i is not just a muscle stimulator, but a sequential device that incorporates both a muscle stimulation modality and an interferential modality. Because there is no ‘D’ code for such a dual-modality DME, it should be reimbursed at a fair and reasonable rate. RS Medical argues its billed rates are fair and reasonable.

RS Medical filed a timely request for medical dispute resolution with the Texas Workers’ Compensation Commission (the Commission).² The Commission’s Medical Review Division found

² Under legislation effective September 1, 2005, the Texas Workers’ Compensation Commission was abolished and its functions transferred to the Division of Workers’ Compensation at the Texas Department of Insurance.

in favor of RS Medical, whereupon SORM filed a timely request for a hearing before the State Office of Administrative Hearings (SOAH).

After proper notice was given, the hearing was convened on August 30, 2005, with ALJ Henry D. Card presiding. Both parties appeared and presented evidence. The hearing was adjourned and the record closed the same day.

Under 28 TEX. ADMIN. CODE (TAC) § 148.14(a), the Petitioner has the burden of proof in hearings, such as this one, conducted pursuant to TEX. LAB. CODE ANN. § 413.031.

II. DISCUSSION

SORM contended the RS4i is equivalent to a muscle stimulator only and should be reimbursed accordingly. It argued that the RS4i had received an exemption from Food and Drug Administration (FDA) premarket testing requirements by virtue of its similarity to muscle stimulators already on the market. It further argued that the interferential modality does not provide any curative effects beyond those provided by the muscle stimulation modality.

SORM's witness, Joel D. Wilk, M.D., agreed the interferential modality is different from the muscle stimulation modality, although he did not agree that the additional modality provided additional benefits. RS Medical provided documentation from the FDA that acknowledges both modalities. That documentation also indicates, as did RS Medical witness Susan Keese, that the muscle stimulation modality is useful in relaxing muscle spasms, increasing range of motion, and increasing local blood supply, while the interferential current modality is useful in providing acute pain relief and in managing chronic pain.

Based on the evidence, the ALJ finds the RS4i is a dual modality DME device that is not equivalent to a muscle stimulator only. The ALJ concludes SORM did not meet its burden of proving the RS4i should be reimbursed at a level equivalent to a muscle stimulator. He further finds the rates at which RS Medical billed to be fair and reasonable. Therefore, he orders SORM to reimburse RS Medical for the disputed dates of service at the billed amounts.

III. FINDINGS OF FACT

1. Workers' compensation claimant __ (the Claimant) suffered a compensable injury on __, __.
2. Because the Claimant continued to complain of cervical pain and muscle spasms, her treating physician, on March 27, 2003, prescribed use of the RS4i neuromuscular stimulator.
3. The purposes for which the treating physician prescribed the unit were to relieve and manage the Claimant's pain, relax her muscle spasms, increase her range of motion, and increase local blood circulation.
4. The Claimant rented the unit for two months and then purchased it.
5. RS Medical submitted a request for reimbursement to the State Office of Risk Management (SORM).
6. SORM provided reimbursement for both the two months of rental and the purchase, but at a lower rate than that billed by RS Medical.
7. The amount billed, the reimbursement provided, and the amounts in dispute are shown below:

<u>Date of Service</u>	<u>Amount Billed</u>	<u>Amount Paid</u>	<u>Amount in Dispute</u>
3-27-03	\$250.00	\$150.00	\$ 100.00
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6-02-03	2,495.00	900.00	<u>1,595.00</u>
Total Amount in Dispute			\$1,795.00

8. SORM reimbursed RS Medical at the rate for a muscle stimulator.
9. RS Medical filed a timely request for medical dispute resolution with the Texas Workers' Compensation Commission (the Commission).
10. The Commission's Medical Review Division found in favor of RS Medical, whereupon SORM filed a timely request for a hearing before the State Office of Administrative Hearings (SOAH).
11. Notice of the hearing was provided to the parties February 9, 2005.
12. 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.
13. The hearing was convened on August 30, 2005, with ALJ Henry D. Card presiding. Both

parties appeared and presented evidence. The hearing was adjourned and the record closed the same day.

14. The RS4i is a dual modality DME device that is not equivalent to a muscle stimulator only.
15. The muscle stimulation modality is useful in relaxing muscle spasms, increasing range of motion, and increasing local blood supply, while the interferential current modality is useful in providing acute pain relief and in managing chronic pain.
16. The rates at which RS Medical billed were fair and reasonable.

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 TEX. ADMIN. CODE (TAC) § 148.14(a), the Petitioner has the burden of proof in hearings, such as this one, conducted pursuant to TEX. LAB. CODE ANN. § 413.031.
4. SORM did not meet its burden of proving that RS Medical should be reimbursed at rates lower than the rates at which it billed.
5. SORM should be required to reimburse RS Medical at the billed rates for the RS4i neuromuscular stimulator provided on the disputed dates of service.

ORDER

It is, therefore, ordered that the State Office of Risk Management shall reimburse RS Medical at the billed rates for the RS4i neuromuscular stimulator provided on the disputed dates of service.

SIGNED October 21, 2005.

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