

SOAH DOCKET NO. 453-05-4251.M4
MDR Tracking No. M4-04-8416-01

THE TEXAS A&M UNIVERSITY	§	BEFORE THE STATE OFFICE
SYSTEM,	§	
Petitioner	§	
V.	§	OF
	§	
RS MEDICAL,	§	ADMINISTRATIVE HEARINGS
Respondent		

DECISION AND ORDER

The Texas A&M University System (Carrier) appealed the findings and decision of the Texas Workers' Compensation Commission's (Commission) Medical Review Division (MRD), which awarded additional reimbursement to RS Medical (Provider) for the use of an RS4i neuromuscular stimulator used on two occasions: May 13, 2003, and June 13, 2003. In this decision, the Administrative Law Judge (ALJ) finds Provider is entitled to additional reimbursement from Carrier in the amount of \$200.00 for the rental of the RS4i neuromuscular stimulator.

I. JURISDICTION, NOTICE, AND PROCEDURAL HISTORY

There were no contested issues of jurisdiction or notice. Those issues are addressed in the findings of fact and conclusions of law without further discussion here.

The hearing in this matter convened and closed on September 21, 2005, at the State Office of Administrative Hearings (SOAH) before Steven M. Rivas, ALJ. Carrier appeared and was represented by Sandra Kim, attorney. Provider appeared and was represented by Patrick Cougill.¹

II. DISCUSSION

This case concerns the proper level of reimbursement for the rental of an RS4i neuromuscular stimulator, a piece of durable medical equipment (DME). Claimant suffered a compensable back injury on____, and was prescribed an RS4i neuromuscular stimulator to treat her compensable injury. Claimant rented and used the RS4i on two occasions. Provider requested

¹Mr. Cougill is an attorney licensed in Washington State, and authorized to represent Provider in Texas.

reimbursement from Carrier in the amount of \$500.00. Carrier provided reimbursement for the use of the RS4i, but at a lower rate. 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>
5/13/2003	\$250.00	\$150.00	\$100.00
6/13/2003	250.00	150.00	<u>100.00</u>
Total			\$200.00

B. Applicable Statutes

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].

C. Evidence and Arguments

Provider submitted its request for reimbursement using Code E1399. Carrier reimbursed Provider, however, at the rate for a muscle stimulator. Provider 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, Provider asserts it should be reimbursed at a fair and reasonable rate for a device that contains both modalities as the RS4i. Provider argued it billed Carrier fair and reasonable rates.

Carrier contended the RS4i was no different than a muscle stimulator, and as such, should be reimbursed the same as a muscle stimulator would be under CPT Code D0550. Carrier asserted \$150.00 per use was a fair and reasonable rate using CPT Code D0550 because the RS4i was essentially the same thing as a muscle stimulator. In support of this position, Carrier presented Melissa Tonn, M.D., who testified she was familiar with the RS4i. Dr. Tonn also testified the RS4i is comparable and interchangeably used with a TENS unit.² Additionally, Dr. Tonn noted there is no literature or studies that support the efficacy of the RS4i.³ On cross-examination, Dr. Tonn admitted the RS4i has both interferential and muscle stimulator modalities.

Provider's Insurance Relations Manager, Susan Keesee, testified on behalf of Provider that the RS4i unit is not similar to a TENS unit. Ms. Keesee pointed out the RS4i is different from a TENS unit because it has two separate modalities: an interferential and muscle stimulator. Additionally, Ms. Keesee testified an RS4i is capable of treating acute pain as well as chronic muscle pain. According to Ms. Keesee, this characteristic distinguishes it from a TENS unit or a simple muscle stimulator.

Provider also provided documentation from the FDA that acknowledges both modalities. That documentation also indicates, as did Ms. Keesee, 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.

D. Conclusion

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 Carrier did not meet its burden of proving the RS4i should be reimbursed at a level equivalent to a muscle stimulator. Furthermore, the ALJ finds the rates at which Provider billed were fair and reasonable. Therefore, the ALJ finds

² A TENS unit is another electro-therapy device billed under CPT Code D0372 at the rental rate of \$95.00 per use.

³ The hearing in this matter was not over the efficacy of the RS4i, however, the ALJ allowed Carrier to present some evidence regarding its efficacy.

Provider is entitled to addition reimbursement in the amount of \$200.00 from Carrier for the disputed dates of service.

III. FINDINGS OF FACT

1. Claimant __suffered a compensable back injury on__.
2. Claimant was prescribed use of the RS4i neuromuscular stimulator, and used the RS4i on May 13, 2003, and June 13, 2003.
3. RS Medical (Provider) submitted a request for reimbursement to The Texas A&M University System (Carrier) for \$250.00 per use, which totaled \$500.00.
4. Carrier provided reimbursement for both dates of service, but at a lower rate than that billed by Provider.
5. 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>
5/13/2003	\$250.00	\$150.00	\$100.00
6/13/2003	250.00	150.00	<u>100.00</u>
Total			\$200.00

6. Carrier reimbursed Provider at the rate for a muscle stimulator, which was \$150.00 per use.
7. Provider filed a timely request for medical dispute resolution with the Texas Workers' Compensation Commission (the Commission).
8. The Commission' s Medical Review Division found in favor of Provider, and Carrier filed a timely request for a hearing before the State Office of Administrative Hearings (SOAH).
9. Notice of the hearing was provided to the parties February 24, 2005.
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 hearing was convened on September 21, 2005, with ALJ Steven M. Rivas presiding. Carrier appeared and was represented by Sandra Kim, attorney. Provider appeared and was represented by Patrick Cougill, attorney. The hearing was adjourned and the record closed the same day.
12. The RS4i is a dual modality DME device that is not equivalent to a muscle stimulator only.

13. 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.
14. The rates at which Provider 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. Carrier did not meet its burden of proving that Provider should be reimbursed at rates lower than the rates at which it billed.
5. Carrier should be required to reimburse Provider at the billed rates for the RS4i neuromuscular stimulator provided on the disputed dates of service.

ORDER

IT IS, THEREFORE, ORDERED that The Texas A&M University System shall provide additional reimbursement to RS Medical in the amount of \$200.00 for the RS4i rental on May 13, 2003, and June 13, 2003.

SIGNED November 16, 2005.

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