

—,	§	BEFORE THE STATE OFFICE
<i>Petitioner</i>	§	
	§	
VS.	§	
	§	OF
	§	
TEXAS DEPARTMENT OF	§	
TRANSPORTATION,	§	
<i>Respondent</i>	§	ADMINISTRATIVE HEARINGS

DECISION AND ORDER

The issue in this case is whether electromyographic (EMG) guided Botox injections should be preauthorized to treat the compensable work injury of ___ (Claimant). The Administrative Law Judge (ALJ) disagrees with the decision of the Independent Review Organization (IRO) and issues this decision and order preauthorizing the injections.

I. DISCUSSION

On ___, Claimant’s back was injured in a workplace accident. Claimant sustained a fall to his left side with his arms outstretched. He was seen by his primary care physician the next day and referred for an MRI. An MRI performed shortly after the accident revealed a disc herniation at the L5-S1 level of the spine and mild bulging at the L3-L4 level. Prior to his injury, Claimant was symptom-free. David L. Fox, M.D., who performed the MRI, recommended shoulder surgery and Claimant underwent shoulder arthroscopy on March 14, 1996, followed by physical therapy. Claimant initially stopped working for some period of time on May 22, 1996, due to persistent pain. On August 1, 1996, Claimant underwent an exam by his treating physician, Dr. A. T. Carrasco, who recommended EMG guided Botox injections. He presented “muscular” pain in the left distribution of the cervical, thoracic, and lumbar areas. After this evaluation, there is a five-year gap in the patient’s medical records. Claimant represents he was able to return to work during this time and apparently did not see Dr. Carrasco for back pain. Dr. Carrasco’s medical record makes no reference to the gap.

The next office note from Dr. Carrasco is on June 12, 2001. At this visit, Dr. Carrasco references a Botox chemodenervation in which Claimant purportedly did “very well” in November of 2000. After this, Claimant reported that his pain returned five months after the treatment. Up to

the hearing date, Claimant has received four other Botox chemodenervations on the following dates: June 21, 2001, December 23, 2002, May 28, 2003, and May 27, 2004. After each of these outpatient injections, Claimant testified, he received back pain relief for four-six months. Claimant also underwent three sessions of myoneural injections on February 27, 2002, November 6, 2002, and January 28, 2004.

Petitioner again sought preauthorization for Botox chemodenervation injections to the back, cervical, and shoulder prescribed by Dr. Carrasco. Upon denial of preauthorization for, Claimant filed a request for medical dispute resolution with the Texas Workers' Compensation Commission (the Commission). The IRO found in favor of the Carrier. Claimant appealed that decision and has the burden of proof in this proceeding. 28 TEX. ADMIN. CODE (TAC) §148.21(h).

In Claimant's medical records, Dr. Carrasco writes that the Botox injections "provided him with significant and long term relief that made a difference in his pain over the past few years [and]. . . the injections allowed him to continue to work without him having to take increased doses of medication." For each time he received Botox injections, Claimant later reported to Dr. Carrasco an improvement in his pain levels.

Claimant testified that he is currently in a lot of pain. He testified that at one point he asked his wife to "kill him" and the medical records show he has been treated with medication and therapy for major depression. He testified that the past Botox injections helped to keep his pain within tolerable levels and gave him relief for approximately four-six months.

The IRO found that no rationale for medical necessity has been shown by the treating physician. The IRO noted that there has been only minimal mention and treatment of cervical and left shoulder pathologies. The IRO reviewer does not believe the record indicates the left shoulder was taken into account following the surgery in 1996. The IRO decision further found that the last three years have reflected simply intermittent intervention through Botox chemodenervation and myoneural injections, which have only provided short-lived relief and no increase in functional capacity.

Carrier argues that Claimant has failed to establish that the Botox injections are medically

necessary treatment. Carrier relies upon the IRO decision.

II. ALJ'S ANALYSIS

The ALJ finds that Claimant has met his burden of proof and preauthorizes the Botox injections. Although the ALJ generally agrees with the very well-reasoned IRO decision, he disagrees that the four-six month pain relief was short-lived, as the IRO found. Rather, the ALJ finds the Claimant's own testimony about this relief, in addition to his medical history contained in Dr. Carrasco's treatment notes, compelling in establishing the need and efficacy of the Botox treatments. While the IRO seemed to question the relationship between Claimant's injury and Claimant's pain, compensability has never been challenged. Nor did Carrier present any evidence that Claimant's pain is not related to the underlying injury.

The ALJ agrees generally that better overall documentation of other efforts by the treating physician should be shown for the possible future preauthorization. For instance, Claimant testified that at one time water therapy had been helpful. Documentation that this likely less expensive alternative has been completely exhausted should be shown. Additionally, some of Dr. Carrasco's notes (Ex. 1, p. 24) suggest that Claimant should be as active as possible. The ALJ is not certain that Dr. Carrasco has exhausted all avenues of pain treatment through conditioning, and this might be a legitimate medical question in any future requests for preauthorization.

Based upon the record, though, in this matter, the ALJ finds that the EMG guided Botox injections should be preauthorized.

III. FINDINGS OF FACT

1. Claimant sustained a compensable back injury on ____.
2. Texas Department of Transportation (Carrier) was the employer and provided workers' compensation coverage to Claimant on the date of the injury.
3. Carrier declined to preauthorize EMG guided Botox injections, and Claimant filed a request with the Texas Workers' Compensation Commission (Commission) for medical dispute resolution.
4. On March 29, 2005, the Commission's Medical Review Division (MRD), through an independent review organization (IRO), found that the injections were not medically

necessary.

5. The Claimant appealed the findings of the IRO.
6. Notice of the hearing was sent April 22, 2005. 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 was held May 12, 2005, with Administrative Law Judge Bill Zukauckas presiding and a representative for Carrier participating. An Ombudsman from the Commission assisted Claimant in presenting his case. Claimant appeared in person. The hearing adjourned and the record closed the same day.
8. Claimant underwent shoulder arthroscopy on March 14, 1996, followed by physical therapy.
9. Claimant stopped working on May 22, 1996, due to persistent pain, but returned to work soon after and continued to work until some time in 2001, when he again stopped working due to persistent pain.
10. Claimant has experienced chronic pain to his left shoulder of varying degrees since the time of his ___ injury.
11. Claimant underwent an exam by his treating physician, Dr. A. T. Carrasco, a pain management specialist. At that exam, he presented “muscular” pain in the left distribution of the cervical, thoracic, and lumbar areas. After this evaluation there is a five-year gap in the patient’s medical records and the medical record makes no reference to the gap.
12. Claimant’s treating physician prescribed the EMG guided Botox injections for treatment of Claimant’s chronic pain in his lumbar spine.
13. The Claimant has received Botox injections five times since his injury, and each injection has been helpful in relieving his pain for a period of four to six months.
14. EMG guided Botox injections will help to relieve the Claimant’s pain for four to six months. This period of time is not so short as to reflect medically unnecessary treatment.

IV. CONCLUSIONS OF LAW

1. The Commission has jurisdiction over this matter pursuant to TEX. LAB. CODE ANN § 413.031.
2. 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.

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3. Adequate and timely notice of the hearing was provided in accordance with TEX. GOV'T CODE ANN. § 2001.052.
4. The Claimant has the burden of proof in this matter. 28 TEX. ADMIN. CODE §148.21(h).
5. EMG guided Botox injections are reasonably required health care under TEX. LAB. CODE ANN § 408.021.

ORDER

IT IS, THEREFORE, ORDERED that preauthorization for one outpatient session to receive eight EMG guided Botox injections is granted.

Signed May 26, 2005.

**BILL ZUKAUCKAS
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS**