

**SOAH DOCKET NO. 453-05-7763.M2
TWCC NO. M2-05-1305-01**

<p>— Petitioner</p> <p>V.</p> <p>AMERICAN EMPLOYERS INSURANCE COMPANY, Respondent</p>	§ § § § § § § § § §	<p>BEFORE THE STATE OFFICE</p> <p>OF</p> <p>ADMINISTRATIVE HEARINGS</p>
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DECISION AND ORDER

Workers’ compensation claimant __ (Claimant) challenges the decision of an Independent Review Organization¹ denying preauthorization for the purchase of an interferential muscle stimulator, model RS4i (RS4i), at a cost of \$2,495. In this decision, the Administrative Law Judge (ALJ) finds that the Claimant did not establish that the requested equipment is medically necessary. Accordingly, the requested preauthorization is denied.

The hearing convened and closed on November 29, 2005, before ALJ Kerry D. Sullivan. The Claimant appeared by telephone and represented himself. American Employers Insurance Company, the respondent carrier, was represented by Tommy Smith.

I. BASIS FOR DECISION

The record establishes that the Claimant, a __-year old male, sustained a compensable injury to his back on __. He was diagnosed with low back pain, lumbar radiculopathy, and lumbar disc displacement. He had surgery to alleviate a herniated disc associated with the injury in __. Beyond these bare facts, the documentary record is quite sparse. Only the Respondent Carrier submitted documents, and these consisted of twenty pages of medical records that support the Carrier’s decision to deny preauthorization of the requested equipment. These include an

¹ The IRO acted on behalf of the Texas Workers’ Compensation Commission. Effective September 1, 2005, the functions of the Commission have been transferred to the newly created Division of Workers’ Compensation at the Texas Department of Insurance.

April 5, 2004 clinical note stating that the Claimant's "strength is intact," that the lumbar radiculopathy had been resolved, and that the Claimant was being released to return to work at "full duty."² Additionally, an April 22, 2004, therapy progress note reports the Claimant "states that he only has pain in his back or lower extremity with bad weather"

The Carrier's utilization review agent denied the requested equipment on the basis that there is insufficient evidence to determine the effectiveness of interferential therapy, noting that it is not recommended by the Official Disability Guidelines (ODG) or the American College of Occupational and Environmental Medicine (ACOEM). The IRO concurred with the Carrier's reasoning.

The Claimant did not dispute the accuracy of the records introduced, but he testified that his back began hurting him again around the beginning of 2005, and that the use of the RS4i - which the Carrier has apparently been renting for him since February 2004 - helps relax his back and allows him to perform the daily activities of living. He acknowledged, however, that he has been on pain medication ever since the injury, and that his use of the RS4i has not impacted his medication requirements.

The ALJ finds that the Claimant has not established that the continuing and permanent use of the RS4i is medically necessary. The documentary record indicates the Claimant's condition has been resolved. While the ALJ accepts the Claimant's contention that his back has, in fact, begun bothering him again, use of the equipment has not allowed him to reduce or eliminate his pain medication, and there is no medical testimony, study, or other documentation to overcome the IRO decision, which is supported by the ODG and the ACOEM. Accordingly, the ALJ finds that the RS4i should not be preauthorized.

II. FINDINGS OF FACT

1. ___ (Claimant) sustained a compensable injury on__.

² Carrier Ex. 1, p. 17.

2. At the time of the Claimant's injury, his employer held workers' compensation insurance coverage through American Employers Insurance Company (Carrier).
3. The Claimant's treating doctor has prescribed permanent use of the RS4i unit in dispute, which Claimant began using without preauthorization.
4. The Claimant has requested preauthorization for the purchase of the RS4i unit and associated supplies from American Employers Insurance Company (Carrier), which the Carrier denied.
5. The 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 concurred with the Carrier and denied preauthorization.
6. The Claimant timely requested a hearing before the State Office of Administrative Hearings (SOAH).
7. Notice of the hearing was mailed to the parties on July 20, 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.
8. The hearing was continued twice at the Claimant's request. The hearing convened and closed on November 29, 2005, before Administrative Law Judge Kerry D. Sullivan. The Claimant appeared by telephone and represented himself. The Carrier appeared and was represented by Tommy Smith, attorney.
9. The Claimant's injury was diagnosed as low back pain, lumbar radiculopathy, and lumbar disc displacement. He had surgery to alleviate a herniated disc associated with the injury in ____, and has been on pain medications since the injury.
10. The documentary record indicates that the Claimant's injury has resolved and the Claimant has been released for work without restriction.
11. The Claimant's use of RS4i has not allowed him to reduce or eliminate his pain medications.
12. No medical testimony, studies, or other documents were introduced to support the efficacy of the RS4i to treat the Claimant's injury.
13. The Claimant failed to establish that the purchase and long-term use of the RS4i is medically necessary.

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.* (“the 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. The Claimant has failed to show the RS4i will cure or relieve the effects of the Claimant's compensable injury under TEX. LAB. CODE ANN. § 408.021, *et seq.*
6. The requested RS4i has not been shown to be medically necessary for treating Claimant's compensable injury.

ORDER

IT IS, THEREFORE, ORDERED that preauthorization for the RS4i and associated supplies is denied.

SIGNED December 29, 2005.

Kerry D. Sullivan
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS