

**SOAH DOCKET NO. 453-05-9150.M2
(TWCC MRD NO. M2-05-1636-01)**

AMERICAN HOME ASSURANCE COMPANY, Petitioner	§ § § § § § § § §	BEFORE THE STATE OFFICE OF ADMINISTRATIVE HEARINGS
V.		
RS MEDICAL, Respondent		

DECISION AND ORDER

I. INTRODUCTION

American Home Assurance Company (Carrier) disputes a decision of an independent review organization (IRO) on behalf of the former Texas Workers' Compensation Commission (TWCC)¹ regarding medical services for ___ (Claimant). The IRO found that a four channel sequential interferential and muscle stimulator (RS-4i), to be provided by RS Medical (Provider), was medically necessary to treat pain naturally resulting from the Claimant's compensable injury and its purchase should be pre-authorized.

The only disputed issue is whether the RS-4i is medically necessary to relieve pain naturally resulting from the Claimant's compensable injury. As set out below, the Administrative Law Judge (ALJ) finds that it is not and denies pre-authorization.

II. FINDINGS OF FACT

1. On ___, the Claimant sustained a work-related injury to her lower back as a result of work activities (compensable injury) when she lifted boxes weighing 15 to 20 pounds each.
2. On the date of injury, the Carrier was the workers' compensation insurance carrier for the Claimant's employer.

¹ Effective September 21, 2005, the functions of TWCC were transferred to the newly created Division of Workers' Compensation of the Texas Department of Insurance.

3. As a result of the compensable injury, the Claimant suffered lower back pain.
4. Throughout the seven years and nine months since she was injured, the Claimant has continued to complain of lower back pain.
5. Since she was injured, the Claimant has received numerous physical therapy visits, work hardening, injections into her spine to relieve pain, other medical services, and nearly daily dosages of hydrocodone (a narcotic pain reliever), Carisoprodol (a muscle relaxant), and Zoloft (an anti-depressant and anti-anxiety medication).
6. On October 25, 2004, Richard Vera, M.D. (Treating Physician) prescribed that the Claimant use an RS-4i for two months to treat her lower back pain.
7. The Claimant used the RS-4i and reported that it reduced her lower back pain to a more acceptable level, which allowed her to reduce her consumption of pain medication.
8. On January 4, 2005, the Treating Physician prescribed indefinite use of the RS-4i for the Claimant's lower back pain.
9. On January 9, and March 8, 2005, the Treating Physician sought preauthorization from the Carrier for purchase of the RS-4i. On February 25, 2005, another physician, M. Lewis Frazier, also sought the same pre-authorization.
10. Each time, the Carrier reviewed the request and sent a review determination to the Treating Physician or Dr. Lewis, as appropriate, denying the pre-authorization and contending that the RS-4i was not reasonably medically necessary to treat the Claimant's compensable injury.
11. The Provider filed a request for medical dispute resolution with the TWCC.
12. The IRO reviewed the medical dispute and found that the RS-4i was medically necessary and should be preauthorized.
13. The Carrier continued to disagree and filed a request with TWCC for a contested-case hearing by a State Office of Administrative Hearings (SOAH) ALJ to review the dispute.
14. This case was referred by TWCC's successor, the Texas Department of Insurance (TDI), to SOAH for hearing.
15. Required notice of a contested-case hearing concerning the dispute was mailed to the Carrier, the Provider, and the Claimant.
16. With the agreement of the parties, the hearing was twice continued; and the parties were

given required notice of the new hearing date.

17. On September 27, 2006, SOAH ALJ William G. Newchurch held a contested-case hearing concerning the dispute at the William P. Clements Office Building, Fourth Floor, 300 West 15th Street, Austin, Texas. The hearing concluded and the record closed on that same day.
18. The Claimant appeared, by telephone, at the hearing and testified.
19. The Carrier appeared at the hearing through its attorney, Dan C. Kelly.
20. The Provider appeared at the hearing through its authorized representative, Patrick K. Cougill.
21. At least three magnetic resonance images (MRIs) since the injury showed that the Claimant's lumbar spine was normal except for dehydration without herniation of the disc between lumbar vertebrae four and five.
22. Disc dehydration is degenerative and could not have been caused by the compensable injury.
23. The Claimant has no motor or sensory abnormalities in her lower extremities.
24. The compensable injury was a muscle sprain or strain, which should have resolved with no intervention in six weeks or less.
25. The Claimant's pain on January 4, 2005, and since did not naturally result from the compensable injury.
26. Since the Claimant's pain on January 4, 2005, and since did not naturally result from the compensable injury, an RS-4i is not medically necessary to treat pain resulting from the compensable injury.

III. CONCLUSIONS OF LAW

1. SOAH has jurisdiction over matters related to the hearing in this proceeding, including the authority to issue a decision and order, pursuant to TEX. LABOR CODE ANN. (Labor Code) §§402.073(b) and 413.031(k) (West 2005), TEX. GOV'T CODE ANN. (Gov't Code) ch. 2003 (West 2005), and Acts 2005, 79th Leg., ch. 265, §8.013, eff. Sept. 1, 2005.
2. Adequate and timely notice of the hearing was provided in accordance with Gov't Code §§ 2001.051 and 2001.052.

3. Based on the above Findings of Fact and Gov't Code § 2003.050 (a) and (b), 1 TEX. ADMIN. CODE (TAC) §1155.41(b) (2006), and 28 TAC § 148.14 (2006), the Carrier has the burden of proof in this case.
4. An employee who sustains a compensable injury is entitled to all health care reasonably required by the nature of the injury as and when needed 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. Labor Code § 408.021 (a).
5. When the requests for pre-authorization of the RS-4i were filed, TWCC was required to specify by rule the health care treatments and services for which expressed pre-authorization was required. A carrier was not liable for those specified treatments and services unless pre-authorization was sought by the claimant or a health care provider and either obtained from the carrier or ordered by TWCC. The same provisions remain in effect under TDI's administration. Labor Code §413.014
6. Pre-authorization is required for purchase of an RS-4i. 28 TAC § 134.600.
7. Based on the above Findings of Fact and Conclusions of Law, an RS-4i is not reasonably medically necessary due to the compensable injury.
8. Based on the above Findings of Fact and Conclusions of Law, the Claimant's purchase of an RS-4i should not be pre-authorized.

ORDER

IT IS ORDERED THAT the Claimant's purchase of an RS-4i is not pre-authorized.

Signed October 20, 2006.

**WILLIAM G. NEWCHURCH
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS**