

MEDICAL CONTESTED CASE HEARING 20017

DECISION AND ORDER

This case is decided pursuant to Chapter 410 of the Texas Workers' Compensation Act and the Rules of the Texas Department of Insurance, Division of Workers' Compensation (DWC). For the reasons discussed herein, the Administrative Law Judge determines that Claimant is entitled to spinal cord stimulator replacement non rechargeable for the compensable injury of (Date of Injury).

STATEMENT OF THE CASE

On November 9, 2020, Jeff Carothers, a DWC administrative law judge, held a contested case hearing to decide the following disputed issue:

Is the preponderance of the evidence contrary to the decision of the Independent Review Organization that Claimant is not entitled to spinal cord stimulator replacement non rechargeable for the compensable injury of (Date of Injury)?

PERSONS PRESENT

The contested case hearing was held by teleconference due to the COVID-19 pandemic. MM, M.D., the petitioner in this case, appeared and represented himself. (Claimant) appeared and was assisted by AW, ombudsman. Insurance Carrier appeared and was represented by PS, attorney. Claimant's spouse, observed the hearing and testified.

EVIDENCE PRESENTED

The following witnesses testified:

For Claimant: (Claimant's spouse)

For Petitioner: MM, M.D.

For Insurance Carrier: None

The following exhibits were admitted into evidence:

Administrative Law Judge Exhibit: ALJ-1

Claimant Exhibits: C-1 through C-3

Petitioner Exhibits: None

DISCUSSION

Claimant sustained a compensable injury to his right upper extremity on (Date of Injury). Claimant treated with MM, M.D., a pain management doctor, who recommended a spinal cord stimulator (SCS) replacement non rechargeable, the disputed treatment in this case, as treatment for the compensable injury. Insurance Carrier's utilization review agent denied preauthorization on the ground that there was no clear evidence in functional improvement of range of motion (ROM), strength, or reflexes documented for review. The disputed treatment was then denied upon reconsideration for the same reason. Dr. M requested an independent review organization (IRO) review of the denial. In the decision letter dated July 12, 2020, the IRO upheld Insurance Carrier's denial. The IRO stated that the requested service is not medically necessary because "the functional improvement from the continued using the SCS could not be fully established to warrant the need for the request as there was no clear evidence in improvement of ROM, strength, reflexes documented for review." Dr. M is now appealing the IRO decision.

To determine if treatment is medically necessary, Texas law requires DWC to use treatment guidelines. These guidelines must be evidence-based, scientifically valid, and outcome-focused. Use of these guidelines ensures that an injured employee will receive reasonable and necessary health care. (*See Texas Labor Code §413.011(e) and 413.017(1).*) DWC uses the current edition of the *Official Disability Guidelines (ODG)*. If the *ODG* does not address the requested treatment, then other guidelines or generally accepted standards of practice recognized in the medical community are used.

In this dispute, the Dr. M has the burden of showing by a preponderance of the medical evidence that the IRO decision is wrong. Dr. M provided his testimony in support of his position that the disputed treatment is medically necessary for the compensable injury. Claimant presented his medical records from Dr. M as well as testimony from his spouse. Carrier's presented the reports from the utilization review agents, the IRO report, and an excerpt from the *ODG* governing SCS for cervical surgery, cervical post-surgical pain, or cervical radiculopathy.

Dr. M testified that Claimant started treating at his pain clinic in November 2017. His treatment for Claimant included pain medications and a SCS for the diagnosis of reflex sympathetic dystrophy of the right hand. The medical records state that the SCS provided Claimant with excellent relief of his right arm pain. Dr. M testified that while Claimant was using the SCS, Claimant used his pain medication (Percocet) about three time per day, if needed. The evidence shows that the battery on Claimant's SCS started to expire during the latter part of 2019 and ultimately stopped working in April 2020. Dr. M's testimony reflects that Claimant's pain increased as the SCS started to fail and that he increased Claimant's pain medication to treat this increase in Claimant's pain levels. Medical records in evidence, which were provided to the IRO, corroborate Dr. M's testimony on this point. Dr. M also testified that Claimant's functional

capacity with respect to sleep also declined with the increase in Claimant's pain level from the failure of the SCS. This aspect of Dr. M's testimony is supported mainly by medical records in evidence that were not provided to IRO.

After careful review of all the evidence presented, it is determined that that *ODG* supports the medical necessity of the disputed treatment. The IRO determined the disputed treatment was not medically necessary because functional improvement from the continued use of the SCS could not be fully established to warrant the need for the request as there was no clear evidence in improvement of ROM, strength, reflexes documented for review. This determination by the IRO is apparently based on the requirement in the *ODG* applicable to SCSs for CRPS 1 that "Permanent placement requires evidence of 50% pain relief and medication reduction or functional improvement after temporary trial." However, the plain reading of this requirement in the *ODG* states that this requirement may also be met if there is evidence of 50% pain relief and medication reduction. The persuasive evidence in this case establishes that Claimant's SCS did provide him with 50% pain relief and medication reduction. Specifically, the medical records in evidence, which were provided to the IRO, together with the testimony from Dr. McCarty establishes that Claimant's use of the SCS did provide him with 50% reduction of pain and medication reduction as evidenced by Claimant's increase in pain and increased use of pain medication with the failure of his SCS. The preponderance of the evidence is contrary to the decision of the IRO that Claimant is not entitled to spinal cord stimulator replacement non rechargeable.

The ALJ considered all the evidence admitted. The Findings of Fact and Conclusions of Law are based on an assessment of all the evidence, whether or not the evidence is specifically discussed in this Decision.

FINDINGS OF FACT

1. The parties stipulated to the following facts:
 - A. Venue is proper in the (City) Field Office of the Texas Department of Insurance, Division of Workers' Compensation.
 - B. On (Date of Injury), Claimant was the employee of (Employer), Employer.
 - C. On (Date of Injury), Employer provided workers' compensation insurance with Old Republic Insurance Company, Insurance Carrier.
 - D. Claimant sustained a compensable injury on (Date of Injury).
2. Insurance Carrier delivered to Claimant and the health care provider a document stating the insurance carrier's true corporate name and the registered agent's name. This document was admitted into evidence.

3. The Independent Review Organization decision upheld the insurance carrier's denial of spinal cord stimulator replacement non rechargeable.
4. Claimant does meet the requirements of the *Official Disability Guidelines* for a spinal cord stimulator replacement non rechargeable.
5. A spinal cord stimulator replacement non rechargeable is health care reasonably required for the compensable injury of (Date of Injury).

CONCLUSIONS OF LAW

1. The Texas Department of Insurance, Division of Workers' Compensation, has jurisdiction to hear this case.
2. The preponderance of the evidence-based medical evidence is contrary to the decision of the Independent Review Organization that Claimant is not entitled to spinal cord stimulator replacement non rechargeable for the compensable injury of (Date of Injury).

DECISION

Claimant is entitled to spinal cord stimulator replacement non rechargeable for the compensable injury of (Date of Injury).

ORDER

Insurance Carrier is liable for the benefits in dispute in this hearing. Claimant remains entitled to medical benefits for the compensable injury in accordance with Texas Labor Code §408.021.

The true corporate name of the insurance carrier is **OLD REPUBLIC INSURANCE COMPANY**. The name and address of its registered agent for service of process is:

**OLD REPUBLIC INSURANCE COMPANY
CORPORATION SERVICE COMPANY
211 EAST 7TH STREET, SUITE 620
AUSTIN, TX 78701-3218**

Signed this 18th day of November 2020.

Jeff Carothers
Administrative Law Judge