

SOAH DOCKET NO. 453-04-0009.M2

_____ ,	§	BEFORE THE STATE OFFICE
<i>Petitioner</i>	§	
	§	
V.	§	OF
	§	
INSURANCE COMPANY OF THE STATE	§	
OF PENNSYLVANIA,	§	ADMINISTRATIVE HEARINGS
<i>Respondent</i>	§	
	§	

DECISION AND ORDER

_____ (Claimant) challenges the decision of an Independent Review Organization (IRO) denying her request to preauthorize one visit consisting of eight electromyographic (EMG) guided Botox injections. The Insurance Company of the State of Pennsylvania (Carrier) had denied the claim as medically unnecessary, and the IRO upheld that decision. This decision finds that the requested procedure should be preauthorized.

I. JURISDICTION, NOTICE, AND PROCEDURAL HISTORY

Administrative Law Judge (ALJ) Lilo D. Pomerleau held the hearing on this matter on March 24, 2004. Claimant appeared by telephone and represented herself, with the assistance of Commission Ombudsman Barton Levy. Carrier was represented by Dean George Pappas. Commission staff did not participate in the hearing. Proper notice of the hearing was provided as set out in the findings of fact and conclusions of law.

II. BASIS FOR DECISION

Both Claimant and Carrier submitted exhibits containing medical records. Claimant testified at the hearing but called no other witnesses. Carrier presented the testimony of William Blair, M.D., in support of its contention.

On _____, Claimant suffered a compensable injury to her wrist. Claimant has had a long

medical history post-injury, including six surgeries. Post-injury, Claimant was diagnosed with reflex sympathetic dystrophy (RSD) and myofascial pain of the right upper extremity. During the course of treatment, Claimant received several sets of Botox injections in her right upper back and right upper arm. At some time after the compensable injury, Claimant received a permanent spinal cord stimulator implant.

On March 4, 2003, Claimant's treating physician, Dr. A. T. Carrasco, a pain management specialist, prescribed additional injections for treatment of Claimant's chronic pain in her neck and shoulder girdle. He noted that Claimant underwent Botox injections on November 11, 2002, with good improvement of her symptoms. Carrier's Ex. 1 at Bates 3. After Carrier denied preauthorization, Dr. Carrasco wrote a lengthy letter detailing his rationale for the requested procedure and citing support in medical literature.¹

Claimant testified that she continues to experience extreme pain that interferes with the activities of her daily life. In 1997, she returned to her job as a flight attendant on a full-time basis, but generally takes fewer trips.² She stated that she has received previous Botox injections, the latest in November 2002, and experienced pain relief for four to six months after these injections (reducing her pain level down to a 2 from a 10). Claimant testified that the Botox injections help her function as a normal human being. The resulting pain relief allows her to work more hours and reduce her other medications significantly, sometimes eliminating some medications or reducing others to less than half her normal amount.³

¹ Dr. Carrasco wrote that A[p]ublished reports indicated that when BOTOX is used to treat a variety of neuromuscular disorders, including dystonia, tremor, and spasticity, patients often report significant decrease in pain as well as significant and prolonged pain relief in patients with myofascial pain syndrome, which is characterized by pain that is referred from active myofascial trigger points and muscle dysfunction.

² Claimant is considered by her employer to be full time: a full schedule consists of 85 or more hours per month. When Claimant is in pain, she works about 50-70 hours per month.

³ Claimant takes medications targeted to alleviate nerve damage, pain, muscle stiffness, anxiety, and sleeplessness.

Carrier argues that Claimant has failed to establish that the Botox injections are medically necessary treatment. Rather, Carrier contends Botox injections are a controversial treatment at best. Carrier relies upon the IRO decision, as well as the testimony of Dr. Blair. Dr. Blair testified that Botox injections were not medically necessary to cure and relieve the medical effects of the injury because:

- < Botox is not approved by the Federal Drug Administration (FDA) for the requested use;
- < Some studies show Botox presents as a placebo and is no different than trigger point injections of saline;
- < Muscles injected with Botox could become paralyzed in the future;
- < Treating Claimant's muscle does not make sense because the pain results from psychiatric tension the brain, not the body, is directing Claimant's muscle tightness; and,
- < Claimant's treating physician has responded to the patient's subjective requests for Botox injections without using and relying on objective data such as a physical exam.

The issue presented is whether Claimant has shown that the requested treatment is medically necessary to treat her injury. The ALJ finds that Claimant has met her burden of proof and preauthorizes the Botox injections. The ALJ finds Claimant's testimony established that the Botox injections are helpful in relieving her pain, allow her to reduce her medications, and provide her an opportunity to lead a more normal life, including the ability to work a more normal flight attendant schedule. Her medical history, contained in Dr. Carrasco's treatment notes, and Dr. Carrasco's letter to the Carrier provided sufficient objective data to support the need and efficacy of the Botox treatments. Dr. Blair's testimony was controverted by Dr. Carrasco's March 12, 2003 letter, where Dr. Carrasco outlined the need for Botox injections after other conservative therapies had been performed; stated that the FDA Drug Bulletin of April 1982 addressed the use of approved drugs for unlabeled indications; noted his experience with the use of Botox for pain relief; and cited abstracts of clinical studies showing that Botox does not cause symptomatic weakness in injected or distinct muscles. Carrier Ex. 3.

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

III. FINDINGS OF FACT

1. _____ (Claimant) suffered a compensable wrist injury to her right wrist on _____.
2. Insurance Company of the State of Pennsylvania (Carrier) provided workers' compensation insurance to Claimant's employer on the date of the injury.
3. Carrier declined to preauthorize electromyographic (EMG) guided Botox injections, and Claimant filed a request with the Texas Workers' Compensation Commission (Commission) for medical dispute resolution.
4. On July 14, 2003, an Independent Review Organization (IRO) found that the injections were not medically necessary.
5. Claimant timely appealed the findings of the IRO.
6. Notice of the hearing was sent September 9, 2003. 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 March 24, 2004, with Administrative Law Judge Lilo D. Pomerleau presiding. Carrier appeared at the hearing, represented by counsel. An Ombudsman from the Commission assisted the Claimant in presenting her case; Claimant appeared by telephone. The hearing adjourned and the record closed the same day.
8. On or about March 4, 2003, Claimant's treating physician, Dr. A. T. Carrasco, a pain management specialist, prescribed EMG guided Botox injections for treatment of Claimant's chronic pain in her right upper extremity.
9. Claimant has received Botox injections several times since her injury, and the injections have been helpful in relieving her pain, reducing the number and strength of her medications, and allowing her to work more hours per month for approximately four to six months after the date of the injections.
10. EMG guided Botox injections will help to relieve Claimant's pain and enable her to continue her work.

IV. CONCLUSIONS OF LAW

1. The State Office of Administrative Hearings (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. §§ 2001.051 and 2001.052.
3. As the petitioner, Claimant has the burden of proof in this matter. 28 TEX. ADMIN. CODE § 148.21(h).
4. EMG guided Botox injections are reasonably required health care under TEX. LAB. CODE ANN. § 408.021.
5. The requested preauthorization for one visit with eight EMG guided Botox injections should be approved.

ORDER

IT IS, THEREFORE, ORDERED that preauthorization for EMG-guided Botox injections is granted.

SIGNED April 8, 2004.

**LILO D. POMERLEAU
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS**