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| RS MEDICAL, | § | BEFORE THE STATE OFFICE |
| Petitioner | § | |
| | § | |
| V. | § | OF |
| | § | |
| LIBERTY MUTUAL FIRE INSURANCE | § | ADMINISTRATIVE HEARINGS |
| COMPANY, | § | |
| Respondent | § | |

DECISION AND ORDER

I. DISCUSSION

RS Medical (Petitioner) requested a hearing before the State Office of Administrative Hearings (SOAH) following a Decision of the Texas Workers' Compensation Commission (Commission) acting through Independent Review Incorporated, an Independent Review Organization (IRO), denying the preauthorization request of Petitioner for the purchase of an interferential and muscle stimulator for indefinite use by ___ (Claimant).¹

This decision grants the relief sought by Petitioner.

A hearing convened on May 4, 2004, before Administrative Law Judge (ALJ) Howard S. Seitzman. Patrick K. Cougill represented Petitioner. Charlotte Salter represented Liberty Mutual Fire Insurance Company (Respondent). Susan Keesee, Petitioner=s Insurance Relations Manager, and Claimant testified for Petitioner.² Neal Blauzvern, D.O., testified for Respondent. There were no contested issues of notice or jurisdiction. By agreement, the record remained open for the filing of additional evidence.³ A telephone conference call convened at 9:00 a.m. on May 27, 2004, to discuss the additional evidence. The parties tendered no additional documents and the record closed on May 27, 2004.

Claimant sustained a work-related injury to his left shoulder⁴ on or about ____,⁵ and has been unable to return to work. Claimant has endured four surgeries to his left shoulder, two of which were arthroscopic procedures.⁶

¹ The decision by the IRO is deemed to be a Commission Decision and Order.

² Ms. Keesee did not appear but her testimony, including cross-examination, from SOAH Docket No. 453-04-1159.M2, was adopted and stipulated into the record by the parties.

³ RS Medical was given the opportunity to obtain usage data from the Claimant=s RS 4i=s internal data collection system.

⁴ Claimant is left-handed.

⁵ Claimant previously sustained a separate work-related injury to his right knee in ____.

⁶ Claimant has had some 18 surgeries for his various injures.

On November 21, 2002, Scot J. Frost, M.D., prescribed an RS Medical RS-4i interferential and muscle stimulator for a two-month period to treat pain, muscle spasms and atrophy. On February 25, 2003, Mark D. Barhorst, M.D., prescribed the RS Medical RS-4i interferential and muscle stimulator for indefinite use.⁷

The RS Medical RS-4i interferential and muscle stimulator is a class II medical device approved by the United States Food and Drug Administration (FDA) for specified indications. Some medical professionals question whether, or the mechanism by which, the device works. The ALJ finds that the general efficacy of the device is not an issue so long as the device is prescribed and used for the indications approved by the FDA. Dr. Barhorst prescribed the RS Medical RS-4i for FDA-approved indications. Therefore, the only issue in this proceeding is whether the device is reasonable and medically necessary for Claimant as of the date of the hearing.⁸

Although the RS-4i contains an onboard data collection system, no usage data was available. Claimant testified that he uses the RS-4i for pain relief almost every day, sometimes two or three times per day. The device diminishes the pain and assists the Claimant in participating in the personal activities of daily living (ADL). (claimant's) range of motion for his left arm is limited and he cannot raise it above his shoulder. Use of his left arm in performing ADL causes muscle spasms.

In addition to diminishing the pain, the RS-4i provides relief from the muscle spasms. Claimant takes an anti-inflammatory medication but takes no prescription pain medication. Claimant underwent rehabilitation for addiction to pain medications. There is no expectation that (claimant's) condition will either improve or be cured. The RS-4i treatment sessions are the only treatments that appear to give Claimant relief. The ALJ finds credible (claimant's) testimony that the RS-4i provides relief of his pain and muscle spasms.

Petitioner had the burden of proof in this proceeding. The evidence shows Claimant experienced pain and muscle spasms as a result of his work-related injury and continues to experience pain and muscle spasms. Claimant uses the RS Medical RS-4i interferential and muscle stimulator on a daily basis and it relieves (claimant's) pain and helps reduce muscle spasm.

Petitioner proved that the purchase of an RS Medical RS-4i interferential and muscle stimulator for indefinite use by Claimant is reasonable and medically necessary as of the date of the hearing.

II. FINDINGS OF FACT

1. ____ (Claimant), sustained a work-related injury to his left shoulder on or about ____.
2. Claimant underwent four surgeries to his left shoulder.
3. Claimant is unable to return to work.

⁷ Dr. Frost was Claimant's surgeon. During the latter part of 2002, Dr. Barhorst, a pain specialist, became Claimant's primary treating physician.

⁸ The ALJ adopts the reasoning of ALJ Norman that the issue of medical necessity relates to present need, as of the date of the hearing, and not past need, as of the date of the prescription. SOAH Docket No. 453-03-4229.M2, MDR No. M2-03-1308-01; *RS Medical v. City of El Paso* (January 6, 2004).

4. (claimant's) range of motion for his left arm is limited and he cannot raise it above his shoulder.
5. Claimant is left-handed and use of his left arm in performing activities of daily living causes muscle spasms and pain.
6. Claimant was treated for addiction to prescription pain medications and no longer takes prescription pain medications.
7. Claimant experiences pain and muscle spasms as a result of his work-related injury.
8. Scot J. Frost, M.D., prescribed an RS Medical RS-4i interferential and muscle stimulator on November 21, 2002, for a two-month period for treatment of back pain and muscle spasms.
9. On February 25, 2003, Mark D. Barhorst, M.D., prescribed an RS Medical RS-4i interferential and muscle stimulator for indefinite use for treatment of back pain and muscle spasms.
10. The RS Medical RS-4i interferential and muscle stimulator is a class II medical device approved by the United States Food and Drug Administration (FDA) for specified indications.
11. The RS Medical RS-4i was prescribed for FDA-approved indications.
12. Claimant uses the RS-4i almost every day and frequently uses it for multiple program sessions.
13. The RS Medical RS-4i relieves (claimant's) pain and helps reduce muscle spasm.
14. Liberty Mutual Fire Insurance Company (Respondent) denied (claimant's) February 25, 2003 preauthorization request for purchase of an RS Medical RS-4i as not medically necessary.
15. RS Medical (Petitioner) seeks preauthorization for (claimant's) purchase of an RS Medical RS-4i for indefinite use by Claimant.
16. By letter dated October 16, 2003, Independent Review Incorporated, an Independent Review Organization (IRO), denied the preauthorization request of Petitioner for the purchase of an RS Medical RS-4i for indefinite use by Claimant.
17. The IRO decision is deemed a Decision and Order of the Texas Workers' Compensation Commission (Commission).
18. Petitioner requested a hearing to contest the Commission's decision.
19. By letter dated November 14, 2003, the Commission issued a notice of hearing.

20. Administrative Law Judge Howard S. Seitzman convened a hearing on May 4, 2004, in the hearing rooms of the State Office of Administrative Hearing. The record remained open for the filing of additional evidence. The record closed on May 27, 2004, following adjournment of a conference call.
21. Patrick K. Cougill represented Petitioner. Charlotte Salter represented Respondent.

III. CONCLUSIONS OF LAW

1. The Texas Workers' Compensation Commission has jurisdiction to decide the issue presented pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. ' 413.031.
2. The State Office of Administrative Hearings has jurisdiction over matters related to the hearing in 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.
3. Petitioner timely requested a hearing in this matter pursuant to 28 TEX. ADMIN. CODE (TAC) ' ' 102.7 and 148.3.
4. Notice of the hearing was proper and complied with the requirements of TEX. GOV'T. CODE ANN. ch. 2001.
5. An employee who has sustained a compensable injury is entitled to all health care reasonably required by the nature of the injury as and when needed. The employee is specifically entitled to health care 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. TEX. LAB. CODE ANN. ' 408.021(a).
6. Petitioner had the burden of proof in this matter, which was the preponderance of evidence standard. 28 TAC ' ' 148.21(h) and (i); 1 TAC ' 155.41(b).
7. Petitioner proved by a preponderance of the evidence that the purchase of an RS Medical RS-4i interferential and muscle stimulator for indefinite use by Claimant is medically necessary.

ORDER

THEREFORE IT IS ORDERED that Petitioner RS Medical=s request for relief is **GRANTED** and the preauthorization of the purchase of an RS Medical RS-4i interferential and muscle stimulator for indefinite use by ___ is **GRANTED**.

SIGNED June 8, 2004.

**HOWARD S. SEITZMAN
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS**

