

SOAH DOCKET NO. 453-04-1641.M2R

TRAVELERS INDEMNITY CO	§	BEFORE THE STATE OFFICE
Petitioner	§	
	§	
Vs.	§	OF
	§	
TEXAS WORKERS' COMPENSATION	§	
COMMISSION AND ____.	§	
Respondents	§	ADMINISTRATIVE HEARINGS

DECISION AND ORDER

Travelers Indemnity Company (Carrier) challenges the decision of an Independent Review Organization (IRO) granting the request of ____ (Claimant) for a home whirlpool hot tub. Carrier had denied the claim as medically unnecessary; however, the IRO disagreed, finding that the use of the whirlpool hot tub is clinically indicated for Claimant ' s medical care. 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 29, 2004. Claimant appeared and represented herself, with the assistance of Commission Ombudsman Luz Loza. Carrier was represented by Dan Flanagan. 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 Carrier and Claimant submitted exhibits containing medical records. Carrier presented the testimony of Nicolas F. Tsourmas, M.D., in support of its case. Claimant and her treating doctor, Dennis R. Beck, M.D., testified in support of her case.

On ____, Claimant suffered a compensable injury in a fall at work that crushed her left peroneal nerve at the knee. Post injury, she presents with severe pain and disability of the left lower extremity, secondary to the initial crush injury. On or about December 12, 2003, Dr. Beck recommended admission to the hospital because Claimant was in severe pain. Dr. Beck diagnosed complex regional pain syndrome, Type II, with shortening of the Achilles tendon and deformity of the left lower extremity. After Claimant ' s hospitalization, Dr. Beck prescribed lumbar sympathetic ganglion rhizotomy with whirlpool therapy. Respondents Ex. 1 at 19, 38. Dr. Beck wrote a letter of medical necessity on December 26, 2002, requesting an in-home whirlpool device to allow Claimant access to whirlpool treatment four times a day. Respondent ' s Ex. 1 at 37.

Carrier denied the request based on a lack of objective findings to justify the hot tub. Carrier also determined that a hot bath tub or shower could provide moist heat to treat the regional pain. Petitioner ' s Ex. 1 at 5-7.

Dr. Tsourmas testified that whirlpool and aqua therapy three years post injury is reasonable; however, Claimant could equally benefit from dry heat (using heating pads or gels that can be microwaved). Moreover, the purchase and use of heating pads is more cost-effective than the purchase and use of an in-home whirlpool hot tub. Dr. Tsourmas stated that Claimant should continue seeing her doctor, use medication, and participate in active rehabilitation to treat her chronic regional pain. He further stated his concern that, over time, patients fail to use a hot tub and that a hot tub is more recreational than therapeutic. He reiterated that there are other more cost-effective treatments available.

Dr. Beck testified that Claimant's crush injury creates a severe over-stimulation of the sympathetic nerve. For instance, even light touch causes Claimant pain. Claimant now suffers from a foot deformity due to the shorting of the Achilles tendon. She also has decreased circulation; the skin on her injured leg is discolored and she has lost hair from the decreased blood flow. Dr. Beck stated that the warmth of the water plus the circulation of the whirlpool jets will help Claimant's tissues. He further stated that this is his first request for a hot tub but finds a hot tub ideal for Claimant's progressive symptoms. He opined that a hot shower or heating pad is inadequate because Claimant needs heat plus the motion of the water for a massage of the tissues.

Claimant testified that she goes to physical therapy three times a week, where she undergoes water therapy, exercises, rides a bike, and lifts weights. However, the physical therapy facility is 50 miles away. She wants to walk and believes a whirlpool will give her that chance, plus ease the daily pain and muscle spasms. She affirmed that she will use the hot tub daily. Moreover, she indicated that the use of the hot tub will allow her to cut back on the physical therapy (possibly reducing her visits to one or two per week) and reduce the mileage incurred traveling the distance. Using her own initiative, Claimant sought information for the hot tub recommended by her physical therapist, a 2004 Hot Spot Tobago, which sells for approximately \$3,000. A smaller hot tub at the store cost even more. The 2004 Hot Spot Tobago will allow Claimant to move her lower leg while standing. *See* Petitioner's Ex. 2; Respondent's Ex. 2 and 3.

The ALJ finds that Carrier has failed to meet its burden to prove that the requested whirlpool hot tub is not medically necessary. Carrier witness Dr. Tsourmas' testimony was controverted by the testimony of Claimant's treating doctor, who is more familiar with Claimant's medical history, and by the IRO doctor. Both noted that Claimant responded well to hot whirlpool treatments, finding that the hot tub is clinically indicated for her. The in-home whirlpool hot tub will massage Claimant's lower leg, increase circulation, ease muscle spasms, and reduce the weekly number of physical therapy sessions that take place 50 miles away from Claimant's residence.

Based upon the record in this matter, the ALJ finds that the whirlpool hot tub referenced in Respondent's Exs. 2 and 3 should be preauthorized.

III. FINDINGS OF FACT

1. On ____, ____ (Claimant) suffered a compensable injury to her left peroneal nerve at the knee.
2. Travelers Indemnity Company (Carrier) provided workers' compensation insurance to Claimant's employer on the date of the injury.

3. Carrier declined to preauthorize a whirlpool hot tub, and Claimant filed a request with the Texas Workers' Compensation Commission (Commission) for medical dispute resolution.
4. On November 12, 2003, an Independent Review Organization (IRO) found that the purchase of a home whirlpool hot tub clinically indicated for Claimant.
5. Carrier timely requested a hearing before the State Office of Administrative Hearings (SOAH).
6. Notice of the hearing was sent December 18, 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 29, 2004, with Administrative Law Judge Lilo D. Pomerleau presiding. Carrier appeared at the hearing, represented by Dan Flanagan (not an attorney). Claimant appeared, assisted by an Ombudsman from the Commission. The hearing adjourned and the record closed April 5, 2004.
8. On or about December 26, 2002, Claimant's treating physician, Dr. Dennis R. Beck prescribed the use of an in-home whirlpool hot tub.
9. Claimant suffers from severe over-stimulation of the sympathetic nerve, a shorting of her Achilles tendon, and decreased circulation.
10. Claimant has received a number of aqua therapy sessions including whirlpool therapy to alleviate Claimant's spasms and pain and to increase circulation.
11. Use of an in-home whirlpool hot tub will help to relieve Claimant's pain, increase the circulation in her injured leg, and reduce the number of weekly physical therapy visits.

IV. CONCLUSIONS OF LAW

1. 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, Carrier has the burden of proof in this matter. 28 TEX. ADMIN. CODE ' 148.21(h).
4. 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. TEX. LAB. CODE ANN. ' 408.021(a).

5. Based upon Findings of Fact Nos. 1-4 and 8-11, the whirlpool hot tub requested by Claimant is reasonably required by Claimant ' s injury and is intended to cure or relieve the effects naturally resulting from a compensable injury and promote recovery. TEX. LAB. CODE ANN. ' 408.021(a).
6. Based on Findings of Fact Nos. 8-11, the durable medical equipment requested by Claimant, the whirlpool hot tub 2004 Hot Spot Tobago, is medically necessary under TEX. LAB. CODE ANN. 401.011 and 408.021.
7. The whirlpool hot tub 2004 Hot Spot Tobago should be preauthorized.

ORDER

IT IS, THEREFORE, ORDERED that preauthorization for a 2004 Hot Spot Tobago is granted and Carrier shall pay the cost for this whirlpool hot tub.

SIGNED April 26, 2004.

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