

**SOAH DOCKET NO. 453-04-2221.M2
TWCC MR NO. M2-04-0434-01**

TRAVELERS INDEMNITY COMPANY, Petitioner	§ § § §	BEFORE THE STATE OFFICE
VS.	§ §	OF
IHSAN F. SHANTI, M.D., Respondent	§ §	ADMINISTRATIVE HEARINGS

DECISION AND ORDER

Travelers Indemnity Company (Carrier) appealed the decision by an Independent Review Organization (IRO) to grant Ihsan F. Shanti, M.D. (Provider) preauthorization to provide a spinal cord stimulator trial. TIC disputes the IRO's conclusion that these services are medically necessary. This decision finds that the requested procedure is medically reasonable and necessary and should have been preauthorized. Therefore, the Administrative Law Judge (ALJ) orders the requested procedure preauthorized.

I. JURISDICTION, NOTICE, & HEARING

There were no challenges to notice or jurisdiction, and those matters are set forth in the findings of fact and conclusions of law without further discussion here.

ALJ Penny A. Wilkov convened a hearing in this case on February 11, 2004, at the State Office of Administrative Hearings (SOAH), William P. Clements State Office Building, 300 West 15th Street, Austin, Texas. Company Representative Daniel J. Flanagan appeared on behalf of TIC. Respondent, Ihsan F. Shanti, M.D., appeared by telephone.

II. DISCUSSION

A. Background

Claimant sustained a compensable injury on ____, when, at his job, he stepped on a board with a large protruding nail that penetrated his left foot. Claimant has not returned to work since the date

of the accident.

Claimant has been generally diagnosed with residual tenderness from a healed left foot plantar surface puncture wound, and left great toe and plantar surface dysethesia dorsum.¹ The medical records indicate that he has been under the care of Ihsan F. Shanti, M.D., and Robert Zuniga, D.C. Claimant has complained of persistent pain to the center of the left foot, he describes as sharp and stabbing that becomes worse with walking. He estimates the level of pain at seven to ten on a scale of one to ten.² Claimant also experiences pain when standing, lying down, elevating his foot, getting out of bed, and during cold weather. He states that the pain is alleviated when resting, under medication, or after a hot bath. He also reports that he has lost sensation at his left great toe.³

B. Medical Necessity of the Spinal Cord Stimulator Trial

1. Carrier

Carrier did not call any witnesses to testify but instead introduced into evidence a compilation of medical evaluations, assessments, follow-ups, reviews, and test results, all of which were considered as part of the IRO'S decision process.

Carrier argues that an incorrect diagnosis was made concerning Claimant's source of pain. Carrier contends that the diagnosis of reflex sympathetic dystrophy (RSD) as indicated by Respondent is not supported by medical literature, various consulting physicians, or peer review.

Carrier first points to a medical article that describes the symptoms of RSD as pain, stiffness, swelling, and abnormal skin sensations and color.⁴ The article describes how a traumatic injury can have repercussions in certain individuals far beyond the original injury due to the over-activity of the sympathetic nervous system. The sympathetic nervous system is an innate reflexive response

1 Petitioner's Exhibit 1, page 7, (Donald Nowlin, M.D., dated May 22, 2003).

2 Petitioner's Exhibit 1, page 4, (Donald Nowlin, M.D., dated May 22, 2003).

3 Petitioner's Exhibit 1, page 33 (February 2, 2003 examination and assessment by Robert Zuniga, D.C.).

4 The record consists of one medical article: <www.musclepainrelief.ca/html/reflex.html>.

mechanism to trauma which causes the blood vessels of an injured limb to constrict to minimize blood loss and the muscles to withdraw from the source of the injury. In certain individuals, however, the sympathetic nervous system does not deactivate upon healing, but instead, persists as the blood supply to the injured limb either constricts resulting in muscle aches or overcompensates leading to swelling. Carrier professes that while a spinal cord stimulator trial is an appropriate treatment for RSD, he does not concede that Claimant has this condition.

As the basis for this argument, Carrier points to several medical evaluations performed on Claimant. The first was a neurological consultation at the request of Carrier, conducted on April 4, 2003, by Ruy Mireles, M.D., who did not diagnose Claimant's source of pain as RSD, although the doctor did describe Claimant's weakness, pain, and decreased sensation in his left foot.⁵ The second, an orthopedic surgeon evaluation at the request of Carrier, was conducted on May 22, 2003 by Donald Nowlin, M.D. Dr. Nowlin's diagnosis was not RSD.⁶ Instead, after noting the residual tenderness of the puncture wound, Dr. Nowlin reported that Claimant could attain maximum medical improvement with increased strengthening exercise. The last evaluation was conducted on July 28, 2003, by Jose F. Lopez, M.D., the Texas Worker's Compensation Commission's designated doctor.⁷ Dr. Lopez reported that, based on the results of an MRI and a Functional Capacity Evaluation, the plantar aspect of the foot at the site of the puncture wound had mild inflammatory changes. He did not diagnose RSD, however.⁸

Lastly, Carrier contends that a peer review performed by two physicians in May 2003 at the request of Carrier, has failed to produce a diagnosis of RSD and a concurrence on the medical necessity of a spinal cord stimulator.⁹

⁵ Petitioner's Exhibit 1, page 46, (Dr. Mireles's examination revealed weakness on left foot dorsi and plantar flexion and weakness on left foot extension as well as pain with left foot movement. He noted the possibility of peripheral nerve injury which needed further testing. RSD was not addressed).

⁶ Petitioner's Exhibit 1, page 7, (Dr. Nowlin's diagnosis was residual tenderness from a healed left foot plantar surface puncture wound, and left great toe and plantar surface dysethesia dorsum. He did not discuss RSD).

⁷ Petitioner's Exhibit 1, page 93.

⁸ Petitioner's Exhibit 1, page 93 (Dr. Lopez's diagnosis was a mild alteration of the soft tissue in the plantar aspect of the foot consistent with mild inflammatory changes secondary to the wound in the plantar aspect of the foot. RSD was not addressed).

2. Respondent, Dr. Ishan Shanti

Dr. Shanti testified by telephone. He is a medical doctor in McAllen, Texas and a Clinical Assistant Professor of Anesthesiology and Pain Management at Baylor College of Medicine.¹⁰ Dr. Shanti testified that Claimant exhibits the classic signs and symptoms of RSD: changes in color, edema, abnormal pain reactions, and increased sensations related to a traumatic injury. In order to confirm his diagnosis, Dr. Shanti administered a series of diagnostic blocks using local anaesthesia to deaden particular sympathetic nerve regions. Claimant responded to these tests positively, reporting one-hundred percent pain relief from the lumbar sympathetic block.¹¹

Dr. Shanti points out that RSD is very difficult to diagnose with a single consultation unless the physician has both a familiarity with the particular patient and an insight into the symptoms and treatment of RSD. He contends that all three consulting physicians who did not diagnose or address RSD failed to meet this criterion in that they had no established relationship with Claimant and all had unrelated specialties-neurology, orthopedics, and family medicine. Further, since none of the consulting physicians had the benefit of the diagnostic block tests results administered by Dr. Shanti, they were not fully accorded information which ultimately would have impacted their diagnosis.

As further argument, Dr. Shanti points out that RSD presents itself in stages, ranging from Stage I, with duration of three months, to Stage III, with duration of more than six months. Therefore, any consultations or evaluations conducted close to the date of the traumatic injury would have little probative value on the diagnosis of RSD since RSD does not clearly manifest itself until later stages of the injury. Moreover, in the early stages, the condition may coexist with other pathologies which complicates the diagnosis.¹² As the injury occurred in _____, a

9 Petitioner's Exhibit 1, page 13 (peer review conducted by Michael McHenry, M.D., on May 21, 2003, who concluded that the documentation furnished did not support the medical appropriateness of a spinal cord stimulator trial), page 15 (peer review conducted by Dr. John Yatsu, M.D. on May 13, 1003 concluded that the requested spinal cord stimulator trial was not supported by the findings and not medically necessary).

10 Petitioner's Exhibit 1, page 79.

11 Petitioner's Exhibit 1, page 106.

12 Petitioner's Exhibit 1, page 58, contains a general discussion of the stages of RSD and the difficulty of diagnosis.

consultation conducted in April, May, and July 2003 would have occurred either before the onset of or during an early stage of RSD and therefore, difficult to diagnose.

Concerning the peer review, Dr. Shanti does not think that the two physicians who examined Claimant's medical records were qualified to make the diagnosis of RSD. He states that it is a difficult diagnosis without seeing the patient and looking at the limb movement, the discoloration, swelling and other obvious symptoms.

In Dr. Shanti's view, the requested services are medically reasonable and necessary and should be approved.

3. Analysis

Claimant sustained an injury over a year ago that has been a source of persistent pain, which the Claimant describes as shooting from the foot to the hip with a burning sensation, and which causes him to experience extreme sensitivity to touch and pain when exposed to air conditioning.¹³

Under the workers' compensation system, an employee who sustains a compensable injury is entitled to all health care reasonably required by the nature of the injury. The employee is specifically entitled to health care that: (1) cures or relieves the effects naturally resulting from the injury; (2) promotes recovery; or (3) enhances the ability to return to or retain employment. TEX. LABOR CODE ANN. § 408.021. "Health care" includes "all reasonable and necessary medical . . . services." TEX. LABOR CODE § 401.011(19). Under this standard, Claimant is entitled to treatment for his physical problems, if it will promote recovery.

Based on the evidence and testimony, and particularly the concurrence of a pain management specialist and the IRO doctor that a spinal cord stimulator trial is reasonable and necessary for Claimant, it is reasonable to conclude that the requested spinal cord stimulator trial could promote Claimant's recovery. Provider testified, and the medical article presented by Carrier corroborated, that RSD is very difficult to diagnose because of both the delayed onset and the complexity of the

¹³ Petitioner's Exhibit 1, page 59.

symptoms. Given the Claimant's 100 percent pain relief experienced from the lumbar sympathetic block, combined with the observable symptoms of RSD as relayed by Dr. Shanti, an appropriate diagnosis and treatment by the consulting physicians should have addressed these factors. The ALJ agrees with Dr. Shanti's argument that had the consulting physicians had access to later test results, and had the consultations been undertaken at a later date, the physicians likely would have considered RSD as a potential diagnosis.

Moreover, Carrier conceded that a spinal cord stimulator trial is an appropriate treatment where RSD is correctly diagnosed. Therefore, the ALJ concludes that RSD was correctly diagnosed, the proposed a spinal cord stimulator trial is a reasonable treatment for RSD, and the stimulator should be preauthorized.

III. FINDINGS OF FACT

1. Claimant sustained a compensable injury on ____, when he stepped on a board with a large protruding nail which penetrated his left foot. Claimant has not returned to work since the date of the accident.
2. Claimant has been generally diagnosed with residual tenderness from a healed left foot plantar surface puncture wound, and left great toe and plantar surface dysethesia dorsum.
3. Ihsan F. Shanti, M.D., requested preauthorization for Claimant to undergo a spinal cord stimulator trial.
4. Travelers Indemnity Company, the Carrier, denied Dr. Shanti's request.
5. Dr. Shanti requested medical dispute resolution.
6. The Independent Review Organization (IRO) granted Dr. Shanti's request for preauthorization.
7. Carrier requested a hearing before the State Office of Administrative Hearings and requested denial of preauthorization for a spinal cord stimulator trial.
8. Both parties received not less than 10 days notice of the time, place, and nature of the hearing; 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.

9. Both parties were allowed to respond and present evidence and argument on each issue involved in the case.
10. Claimants' symptoms from his injury include persistent pain to the center of the left foot described as sharp and stabbing that becomes worse with walking. The reported subjective level of pain ranges from seven to ten on a scale of one to ten.
11. Claimants' injury has resulted in pain when walking, standing, lying down, elevating his foot, getting out of bed, and during cold weather. There is lost sensation at his left great toe.
12. Dr. Shanti administered a series of diagnostic blocks using local anaesthesia to deaden particular sympathetic nerve regions. The Claimant responded to these tests positively, with one-hundred percent pain relief from the lumbar sympathetic block.
13. A spinal cord stimulator trial is medically reasonable and necessary.

IV. CONCLUSIONS OF LAW

1. The State Office of Administrative Hearings has jurisdiction over matters related to the hearing, including the authority to issue a decision and order. TEX. LABOR CODE ANN. §413.031(k).
2. Both parties received proper and timely notice of the hearing. TEX. GOV'T CODE ANN. §§2001.051 and 2001.052.
3. Carrier has the burden of proof by a preponderance of the evidence.
4. Carrier did not establish by a preponderance of the evidence that a spinal cord stimulator trial is not medically reasonable or necessary for the proper treatment of Claimant TEX. LABOR CODE ANN. §§ 401.011(19) and 408.021.
5. A spinal cord stimulator trial is medically necessary and should be preauthorized.

ORDER

IT IS, THEREFORE, ORDERED that preauthorization is hereby GRANTED for a spinal cord stimulator trial as requested by Ihsan F. Shanti, M.D., on behalf of Claimant.

SIGNED March 9, 2004.

**PENNY A. WILKOV
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS**