

**SOAH DOCKET NO. 453-05-4189.M4  
TWCC MR NO. M4-04-6657-01**

**LIBERTY MUTUAL INSURANCE  
COMPANY,  
Petitioner**

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**BEFORE THE STATE OFFICE  
OF  
ADMINISTRATIVE HEARINGS**

**V.**

**RS MEDICAL,  
Respondent**

**DECISION AND ORDER**

**I. INTRODUCTION**

Liberty Mutual Insurance Company (Carrier) challenges a decision of the Texas Workers' Compensation Commission's (TWCC or Commission) Medical Review Division (MRD) regarding a fee dispute between Carrier and RS Medical (Provider or RS Medical) for medical services furnished to \_\_\_ (Claimant) on April 14 and May 14, 2003. MRD found that Provider's monthly rental rate for the RS-4i Sequential Stimulator (RS4i) is fair and reasonable and ordered Carrier to reimburse Provider an additional \$200 plus all accrued interest.

The disputed issue is whether Provider's list price of \$250 per month for rental of the RS4i is a fair and reasonable rate.

As set out below, the Administrative Law Judge finds that Provider's list price of \$250 per month for rental of the RS4i is a fair and reasonable rate.

**II. DISCUSSION**

Provider asserts that the RS4i is a four-channel (8 leads) sequential device that incorporates both a muscle stimulation modality and an interferential modality. The "D" codes in the 1991 MFG provide a code for a muscle stimulator (D0550) with a reimbursement of \$150 per month but,

Provider contends, no “D” code addresses the interferential modality of the RS4i. The closest “D” code addressing the interferential modality is the code provided for a 4-lead TENS unit (D0372), which is reimbursed at \$95 per month. Thus, Provider argues, \$250 is a fair and reasonable reimbursement rate for the RS4i because the device provides both interferential and muscle stimulation modalities.

Carrier contends it reimbursed Provider a fair and reasonable rate of \$150 per month and relies on explanations of benefits for “the same or similar equipment.” Carrier also argues that an examination of sales of the RS4i device on eBay demonstrates that the amount of \$250 that Provider is requesting for reimbursement for the monthly rental of the device is “well beyond an appropriate rate” under the 1996 MFG “in derogation of the Commission’s mandate to control medical costs.”

Carrier, however, has failed to show that the RS4i is either the same or similar to other DME items. Apparently, Carrier is arguing that the RS4i is nothing more than a muscle stimulator and thus should be reimbursed at the same \$150 monthly rental rate as that device. However, the record shows that the RS4i is indicated for use not only as a muscle stimulator but also to relieve acute and chronic pain.<sup>1</sup> Carrier had the burden of proof, and it failed to demonstrate that the RS4i is only a muscle stimulator.

Additionally, *sales* of used RS4i devices on eBay do not prove that Provider’s list price of \$250 for the monthly *rental* of the device is an unfair and unreasonable rate.

Because the evidence establishes that reimbursement should be at Provider’s list price of \$250 per month for rental of the RS4i, Provider is entitled to be further reimbursed by Carrier in the amount of \$200 plus all accrued interest.

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<sup>1</sup> According to the United States Food and Drug Administration, the RS4i Sequential Stimulator is a Class II medical device that is safe and effective for both muscle stimulation and pain relief. (Exhibit No. 1.)

### III. FINDINGS OF FACT

1. On \_\_\_\_, \_\_\_\_ (Claimant) sustained a work-related injury to her right foot as a result of her work activities.
2. On the date of injury, the Claimant's employer was Coastal Bancorp, Inc., and its workers' compensation insurance carrier was Liberty Mutual Insurance Company (Carrier).
3. RS Medical (Provider) is the manufacturer and distributor of the RS-4i Sequential Stimulator device.
4. The RS-4i Sequential Stimulator is a Class II medical device that the United States Food and Drug Administration has determined is safe and effective for the following specified indicated uses:
  - a. Muscle stimulation:
    - (1) Relax muscle spasms
    - (2) Prevent or retard disuse atrophy
    - (3) Maintain or increase range of motion
    - (4) Increase local blood circulation
    - (5) Re-educate muscle
    - (6) Immediate post-surgical stimulation of calf muscles to prevent venous thrombosis
  - b. Pain relief:
    - (1) Relieve acute pain
    - (2) Relieve and manage chronic pain
5. On April 14, 2003, Claimant's treating physician, Mario A. Sanchez, D.O., prescribed the RS-4i Sequential Stimulator to relieve Claimant's pain and relax her muscle spasms.
6. In response to Dr. Sanchez's prescription, Provider furnished the RS-4i Sequential Stimulator to Claimant, using the Healthcare Common Procedural Coding System (HCPCS) code shown below, on the dates and at the monthly rental rate shown below:

DATES	HCPCS CODE	SERVICE DESCRIPTION AND RENTAL RATE
4/14 - 5/13/2003	E1399	Rental of RS-4i Four Channel Muscle/Interferential Stimulator at the monthly rental rate of \$250
5/14 - 6/13/2003	E1399	Rental of RS-4i Four Channel Muscle/Interferential Stimulator at the monthly rental rate of \$250

7. Provider sought reimbursement in the amount of \$500 from Carrier for the supplied medical service.
8. There is no maximum allowable reimbursement for Durable Medical Equipment (DME) billed under HCPCS code E1399.
9. The 1991 Medical Fee Guideline (MFG) provides a “D” code for a muscle stimulator (D0550) with a reimbursement of \$150 per month.
10. Carrier reimbursed Provider at the monthly rate of \$150, for a total amount of \$300.
11. Carrier denied Provider’s requested remaining reimbursement amount of \$200 and sent Provider explanations of benefits setting forth the following reason for the denial:

DATES	CODE	DENIAL REASON
5/14/03	Z560	The charge for this procedure exceeds the fee schedule or usual and customary values as established by Ingenix
6/04/03	Z560	The charge for this procedure exceeds the fee schedule or usual and customary values as established by Ingenix.

12. On November 18, 2003, Provider filed a request for medical dispute resolution with the Texas Workers’ Compensation Commission (TWCC).
13. TWCC’s Medical Review Division (MRD) determined that Provider’s monthly rental rate of \$250 was fair and reasonable and ordered Carrier to reimburse Provider in the amount of \$200.
14. After the MRD decision was issued, Carrier asked for a contested-case hearing by a State Office of Administrative Hearings (SOAH) Administrative Law Judge (ALJ).
15. Notice of a contested-case hearing concerning the dispute was mailed on February 23, 2005, to Carrier and Provider. The notice informed the parties of the time, place, and nature of the hearing; the legal authority and jurisdiction under which the hearing was to be held; the particular sections of the statutes and rules involved; and the matters to be considered.
16. On May 11, 2005, Carol Wood, a SOAH ALJ, held a contested-case hearing concerning the dispute at the William P. Clements Office Building, Fourth Floor, 300 West 15<sup>th</sup> Street, Austin, Texas. Although the hearing concluded that day, the record remained open until June 13, 2005, for the submission of written arguments.
17. Carrier appeared at the hearing through its attorney, Kevin J. Franta.

18. Provider appeared at the hearing through its representative, Patrick K. Cougill.

#### IV. CONCLUSIONS OF LAW

1. SOAH has jurisdiction over matters related to the hearing in this proceeding, including the authority to issue a decision and order, pursuant to TEX. LABOR CODE ANN. (Labor Code) §§ 402.073(b) and 413.031(k) (Vernon Supp 2004-2005) and TEX. GOV'T CODE ANN. (Gov't Code) ch. 2003 (Vernon 2000).
2. Adequate and timely notice of the hearing was provided in accordance with Gov't Code §§ 2001.051 and 2001.052.
3. Based on the above Findings of Fact and Gov't Code § 2003.050 (a) and (b), 1 TEX. ADMIN. CODE (TAC) § 155.41(b) (2005), and 28 TAC §§ 133.308(v) and 148.21(h) (2005), Carrier has the burden of proof in this case.
4. An employee who sustains a compensable injury is entitled to all health care reasonably required by the nature of the injury as and when needed 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. Labor Code § 408.021(a) (Vernon 1996).
5. The 1996 MFG applies to medical services RS Medical provided Claimant prior to August 1, 2003.
6. If there is no pre-negotiated amount between the provider and insurance carrier, reimbursement shall be the fair and reasonable rate. A fair and reasonable reimbursement shall be the same as the fees set for the "D" codes in the 1991 MFG. *Medical Fee Guideline*, DME Ground Rules, Paragraph IX, Subsection C, effective April 1, 1996.
7. There is no "D" code for the RS-4i Sequential Stimulator in the 1991 MFG.
8. Provider's list price of \$250 per month for rental of the RS-4i Sequential Stimulator is fair and reasonable because, unlike a 4-lead TENS unit (D0372) or a muscle stimulator (D0550), the RS-4i Sequential Stimulator provides both muscle stimulation and pain relief.
9. Based on the above Findings of Fact and Conclusions of Law, Provider is entitled to further reimbursement from Carrier in the amount of \$200.

**ORDER**

**THEREFORE, IT IS ORDERED** that Liberty Mutual Insurance Company reimburse RS Medical in the amount of \$200 plus all accrued interest.

**SIGNED August 12, 2005.**

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**CAROL WOOD  
ADMINISTRATIVE LAW JUDGE  
STATE OFFICE OF ADMINISTRATIVE HEARINGS**