

**SOAH DOCKET NO. 453-04-1156.M2
MDR NO. M2-03-1454-01**

_____,	§	BEFORE THE STATE OFFICE
Petitioner	§	
	§	
V.	§	OF
	§	
TPCIGA FOR RELIANCE NATIONAL	§	
DEMUNITY COMPANY, AN IMPAIRED	§	
COMPANY,	§	
Respondent	§	ADMINISTRATIVE HEARINGS

DECISION AND ORDER

_____, Petitioner, seeks preauthorization for purchase of an RS4i sequential 4-channel combination interferential and muscle stimulator (RS4i stimulator). The Administrative Law Judge (ALJ) concludes the purchase of the RS4i stimulator should not be preauthorized.

I. DISCUSSION

Petitioner injured his neck and shoulder _____, while hauling coal for his employer. He received several forms of treatment, including a six-month trial use of the RS4i stimulator. He found it relieved his chronic pain, and sought preauthorization for its purchase. The workers' compensation carrier (Carrier) refused preauthorization. Petitioner sought medical dispute resolution from the Texas Worker's Compensation Commission (TWCC or the Commission). The Commission's Medical Review Division referred the dispute to an Independent Review Organization (IRO), which upheld the Carrier's decision.

Petitioner timely requested a hearing. After proper notice was given, the hearing was held March 18, 2004, before ALJ Henry D. Card. Petitioner and the Carrier participated in the hearing, which was adjourned the same day.

Petitioner testified that the RS4i stimulator significantly relieved his pain. In fact, he has refused to return the machine, although he does not have the pads that allow it to work. He testified that he previously used a TENS unit, which had also relieved his pain, although not as effectively as the RS4i stimulator. However, according to Petitioner, the company that made the TENS unit accessories had gone out of business, so he could no longer use it.

Charles Crane, M.D., and Leonard Hershkowitz, M.D. testified for the Carrier. They testified that the RS4i stimulator combines interferential electrical current with muscular stimulation. While the interferential electrical current can be useful in treating pain, the muscular stimulation is used for treatment of disuse atrophy. Petitioner does not have disuse atrophy. Therefore, a TENS unit, which is considerably cheaper and provides interferential electrical current, should be adequate to treat his pain. Both Dr. Crane and Dr. Hershkowitz stated there was no medical evidence to support the use of the RS4i stimulator for Petitioner's condition. Dr. Crane also testified that there are many suppliers of TENS units and accessories.

TEX. LAB. CODE ANN. §408.021(a) states:

(a) 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. The employee is specifically entitled to health care that:

- (1) cures or relieves the effects naturally resulting from the compensable injury;
- (2) promotes recovery; or
- (3) enhances the ability of the employee to return to or retain employment.

"Health care," under TEX. LAB. CODE ANN. §401.011(19),

includes all reasonable and necessary medical aid, medical examinations, medical treatment, medical diagnoses, medical evaluations, and medical services.

Under 28 TEX. ADMIN. CODE (TAC) §148.21(h), the Petitioner has the burden of proof in hearings, such as this one, conducted pursuant to §413.031 of the Texas Labor Code.

The evidence shows that a TENS unit has relieved Petitioner's pain and would do so at considerably less cost. It also shows that the RS4i stimulator is designed to meet medical conditions from which Petitioner does not suffer. Therefore, the ALJ concludes Petitioner has not met his burden of showing that the RS4i stimulator is reasonable and necessary medical treatment. The ALJ concludes it should not be preauthorized.

Some evidence was presented at the hearing to suggest that a TENS unit is not appropriate for the treatment of chronic pain. Because the Carrier's case was based largely on the contention that a TENS unit offers more cost effective relief, the Carrier should be considered to have waived any future argument that a TENS unit is not medically necessary for Petitioner, if such a dispute should arise in the future.

II. FINDINGS OF FACT

1. Petitioner _____ injured his neck and shoulder _____, while hauling coal for his employer.
2. Petitioner received several forms of treatment, including a six-month trial use of an RS4i sequential 4-channel combination interferential and muscle stimulator (RS4i stimulator).
3. Petitioner found the RS4i stimulator relieved his chronic pain, and sought preauthorization for its purchase.
4. The workers' compensation carrier (Carrier) refused preauthorization.

5. Petitioner sought medical dispute resolution from the Texas Worker's Compensation Commission (TWCC or the Commission).
6. The Commission's Medical Review Division referred the dispute to an Independent Review Organization (IRO), which upheld the Carrier's decision.
7. Petitioner timely requested a hearing.
8. Notice of the hearing was sent November 14, 2003.
9. 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.
10. The hearing was held March 18, 2004, before ALJ Henry D. Card. Petitioner and the Carrier participated in the hearing, which was adjourned the same day.
11. A TENS unit has relieved Petitioner's pain and would do so at considerably less cost than the RS4i stimulator.
12. The RS4i stimulator is designed to meet medical conditions from which Petitioner does not suffer.

III. CONCLUSIONS OF LAW

1. The State Office of Administrative Hearings has jurisdiction over this proceeding, including the authority to issue a decision and order, pursuant to TEX. LAB. CODE ANN. §413.031(d) and TEX. GOV'T CODE ANN. ch. 2003.
2. Adequate and timely notice of the hearing was provided in accordance with 28 TAC §148.4.
3. Under 28 TAC §148.21(h), the Petitioner has the burden of proof in hearings, such as this one, conducted pursuant to §413.031 of the Act.
4. Petitioner has not met his burden of showing that the RS4i stimulator is reasonable and necessary medical treatment under TEX. LAB. CODE ANN. §§408.021(a) and 401.011(19).
5. The purchase of the RS4i stimulator should not be preauthorized.

ORDER

The Carrier, TPCIGA for Reliance National Indemnity Company, an impaired company, should not be required to preauthorize the purchase of an RS4i sequential 4-channel combination interferential and muscle stimulator for Petitioner _____

SIGNED April 12, 2004.

**HENRY D. CARD
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS**