

**MEDICAL CONTESTED CASE HEARING NO. 09091
M6-09-17191-01**

DECISION AND ORDER

This case is decided pursuant to Chapter 410 of the Texas Workers' Compensation Act and Rules of the Division of Workers' Compensation adopted thereunder.

ISSUES

A contested case hearing was held on January 22, 2009 to decide the following disputed issue:

Is the preponderance of the evidence contrary to the decision of the IRO that the Claimant is not entitled to a total hip replacement versus total hip resurfacing on the right with a three to four day inpatient length of stay for the compensable injury of _____?

PARTIES PRESENT

Petitioner/Claimant appeared and was assisted by MMC, ombudsman.
Respondent/Carrier appeared and was represented by PM, attorney.

BACKGROUND INFORMATION

Claimant sustained a compensable injury on _____ as a result of a motor vehicle accident. The Claimant testified that the right side of his body received the most of the impact. Claimant sustained injuries to his neck, back and right groin area as a result of this accident. It is the treatment to the right hip that is the subject of this dispute. Claimant underwent an MRI of the right hip on November 16, 2007 which revealed mild osteoarthritic change of the hips *bilaterally* with no evidence of occult fracture or avascular necrosis. Claimant testified that he continues to suffer from right hip pain and loss of motion. Claimant has undergone physical therapy and an injection for treatment of his right hip symptoms. A second MRI was performed on May 1, 2008 which revealed evidence of acetabular labral tear with adjacent paralabral cyst within *both hips*. Dr. S has recommended a total hip replacement versus total hip resurfacing on the right with a three to four day inpatient length of stay which was denied by the Carrier and referred to an IRO who determined that the recommended treatment was not medically necessary.

The IRO reviewer, a board certified orthopedic surgeon, upheld the previous adverse determination concluding that the Claimant did not meet the criteria set forth by the *ODG* for a total hip replacement. The IRO reviewer also noted that a total hip arthroplasty or hip resurfacing is a dramatic treatment for this type of condition, that the Claimant was not 50 years old, the Claimant has a labral tear and that Claimant is not suffering from significant functional deficits.

Pursuant to the *ODG* for total hip replacements (arthroplasty):

Recommended when all reasonable conservative measures have been exhausted and other reasonable surgical options have been seriously considered or implemented. (Colorado, 2001) (Dreinhofer, 2006) (Mears, 2002) One high quality review concluded that in

comparison with internal fixation, arthroplasty for the treatment of a displaced femoral neck fracture significantly reduces the risk of revision surgery, but could cause greater infection rates, blood loss, and operative time and possibly an increase in early mortality rates. (Bhandari, 2003) In terms of surgical methods, one study concluded that no significant difference between posterior and direct lateral surgical approach was found. (Jolles, 2004) Total hip replacement performed through a minimally invasive incision of < or = 10 cm compared with a standard incision of 16 cm offers no significant benefit in terms of the rate or ability of patients to mobilize and perform functional tasks necessary for safe discharge. (Lawlor, 2005) The anterior approach on the orthopedic table is a minimally invasive technique applicable to all primary hip patients. This technique allows accurate and reproducible component positioning and leg-length restoration and does not increase the rate of hip dislocation. (Matta, 2005) Revision total hip arthroplasty is a reasonably safe and effective procedure for failed hip replacement. (Saleh, 2003) This study suggests that intervention programs in search of amendable factors to prevent surgical site infections (SSIs) should focus on timely administration of antibiotic prophylaxis. For patients undergoing elective total hip arthroplasty, the use of antibiotics with long vs short half-lives and broad vs narrow spectrums, timing of antibiotic administration before incision, and duration of antibiotic administration after surgery do not affect the incidence of surgical site infection. Only longer duration of surgery above the 75th percentile is independently associated with increased incidence of surgical site infection after elective total hip arthroplasty. (van Kasteren, 2007) The majority of patients who undergo total joint replacement are able to maintain a moderate level of physical activity, and some maintain very high activity levels. (Bauman, 2007) Patients who undergo total hip replacement for osteoarthritis (OA) report a noticeable long-term improvement in physical functioning, whereas age-matched population controls show a decline in function, according to the results of a recent study. The long-term improvement in the physical functioning of the cases is striking when set against the decline that occurred in controls. These findings add to the accumulating evidence that the benefits for physical functioning are sustained in the long-term and they suggest that those benefits are greatest in the patients who have the most severe radiographic changes of OA before surgery. (Cushnaghan, 2007) Both low back pain and spinal function are improved following total hip replacement surgery. This study demonstrates the clinical benefits of THR on back pain and is the first to clinically validate the hip-spine syndrome. (Ben-Galim, 2007) Accelerated perioperative care and rehabilitation intervention after hip and knee arthroplasty (including intense physical therapy and exercise) reduced mean hospital length of stay (LOS) from 8.8 days before implementation to 4.3 days after implementation. (Larsen, 2008) See also Revision total hip arthroplasty.

ODG Indications for SurgeryTM -- Hip arthroplasty:

Criteria for hip joint replacement:

- 1. Conservative Care:** Medications. OR Steroid injection. PLUS
- 2. Subjective Clinical Findings:** Limited range of motion. OR Night-time joint pain. OR No pain relief with conservative care. PLUS
- 3. Objective Clinical Findings:** Over 50 years of age AND Body Mass Index of less than 35. PLUS
- 4. Imaging Clinical Findings:** Osteoarthritis on: Standing x-ray. OR Arthroscopy.

Pursuant to the *ODG* for total hip resurfacing:

Not recommended in females or in men over 55-years old. Recommended as an option in men under the age of 55 years with osteoarthritis and relatively normal bony morphology. Total hip resurfacing, an alternative to total hip replacement, generally provides the best outcomes in men under the age of 55 years, new research suggests. Women of any age and men over 55 are at greater risk for complications, and when they occur they tend to be more severe. Metal-on-metal total hip resurfacing was first approved for use in the US in May 2006, although the procedure had been performed extensively in other countries for over 10 years. Men under 55 years appeared to be better hip resurfacing candidates than women or older men. Six of the eight dislocations and seven of the nine nerve injuries involved women or older men. The reason for these gender- and age-based differences may relate to differences in bone strength and structure. Patients who are older or who are female tend to have softer bone, and men on average have larger bone structures, with a greater surface area for securing the implant.

Texas Labor Code Section 408.021 provides that 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. Section 401.011(22-a) defines health care reasonably required as “health care that is clinically appropriate and considered effective for the injured employee’s injury and provided in accordance with best practices consistent with: (A) evidence based medicine; or (B) if that evidence is not available, generally accepted standards of medical practice recognized in the medical community.” “Evidence based medicine” is further defined, by Section 401.011(18-a) as the use of the current best quality scientific and medical evidence formulated from credible scientific studies, including peer-reviewed medical literature and other current scientifically based texts, and treatment and practice guidelines in making decisions about the care of individual patients.

In accordance with the above statutory guidance, the Division of Workers' Compensation has adopted treatment guidelines by Division Rule 137.100. This rule directs health care providers to provide treatment in accordance with the current edition of the *ODG*, and such treatment is presumed to be health care reasonably required as defined in the Texas Labor Code. Thus, the focus of any health care dispute starts with the health care set out in the *ODG*. The IRO reviewer clearly addresses why the Claimant does not meet the criteria in the *ODG* for arthroplasty or resurfacing. This was also supported by the testimony of Dr. G, the URA doctor, who also raised the concern that the Claimant's MRI's show identical findings in both hips, not just the right. Dr. S testified that the Claimant would benefit from either the arthroplasty or the resurfacing; however, he failed to provide an adequate explanation of why the Claimant needed this procedure for the right hip when he suffers from the same conditions bilaterally. Dr. S also failed to address the concerns raised by the IRO or the criteria in the *ODG*.

Claimant failed to present an evidence-based medical opinion to overcome the IRO’s decision. Dr. S’s records and conclusory statements, without evidence-based medicine justifying departure from the *ODG*, do not meet the requisite evidentiary standard required to overcome the *ODG*. The preponderance of the evidence is not contrary to the IRO decision and the requested procedures of a total hip replacement versus total resurfacing on the right with a three to four day inpatient length of stay does not meet the criteria set out in the *ODG*.

Even though all the evidence presented was not discussed, it was considered. The Findings of Fact and Conclusions of Law are based on all of the evidence presented.

FINDINGS OF FACT

1. The parties stipulated to the following facts:
 - A. Venue is proper in the (City) Field Office of the Texas Department of Insurance, Division of Workers' Compensation.
 - B. On _____, Claimant was the employee of (Employer).
 - C. Claimant sustained a compensable injury on _____.
2. Carrier delivered to Claimant a single document stating the true corporate name of Carrier, and the name and street address of Carrier's registered agent, which document was admitted into evidence as Hearing Officer's Exhibit Number 2.
3. The requested procedures are not consistent with the recommendations in the *ODG* for a right hip arthroplasty or resurfacing.
4. The requested total hip replacement versus total resurfacing on the right with a three to four day inpatient length of stay is not health care reasonably required for the compensable injury of _____.

CONCLUSIONS OF LAW

1. The Texas Department of Insurance, Division of Workers' Compensation, has jurisdiction to hear this case.
2. Venue is proper in the (City) Field Office.
3. The preponderance of the evidence is not contrary to the decision of the IRO that the Claimant is not entitled to a total hip replacement versus total hip resurfacing on the right with a three to four day inpatient length of stay for the compensable injury of _____.

DECISION

Claimant is not entitled to a total hip replacement versus a total hip resurfacing on the right with a three to four day inpatient length of stay for the compensable injury of _____.

ORDER

Carrier is not liable for the benefits at issue in this hearing. Claimant remains entitled to medical benefits for the compensable injury in accordance with §408.021.

The true corporate name of the insurance carrier is **AMERICAN HOME ASSURANCE COMPANY** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY
701 BRAZOS SUITE 1050
AUSTIN, TX 78701**

Signed this 22nd day of January, 2009.

Carol A. Fougerat
Hearing Officer