

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 November 18, 2013 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 right knee arthroscopy for medial meniscectomy for the compensable injury of (Date of Injury)?

PARTIES PRESENT

Petitioner/Provider appeared by telephone and represented himself. Claimant appeared and was assisted by FA, ombudsman. Respondent/Carrier appeared and was represented by JL, attorney.

EVIDENCE PRESENTED

The following witnesses testified:

For Claimant: KB, M.D.

For Carrier: None.

The following exhibits were admitted into evidence:

Hearing Officer's Exhibits HO-1 through HO-3.

Claimant's Exhibits C-1 through C9. (pages 1-17 of C-3 were not admitted).

Carrier's Exhibits CR-A through CR-F.

BACKGROUND INFORMATION

The evidence presented in the hearing revealed that Claimant injured her bilateral knees when she tripped and fell over debris while in the course and scope of her employment on (Date of Injury). Claimant underwent bilateral knee arthroscopic surgeries including a right knee medial meniscal repair and chondroplasty on July 20, 2010, along with a left knee arthroscopic procedure. Claimant continued to have bilateral knee pain and underwent an additional left knee arthroscopic surgery on November 7, 2012. The medical reports reflect she continued to suffer

from persistent right knee pain. Claimant had physical therapy and injections. An MRI of the right knee, dated January 18, 2012, revealed a small to moderate joint effusion with evidence of Grade II injury/partial tear of the anterior cruciate ligament (ACL) and posterior horn medial meniscal tear in the right knee. Claimant contended a right knee revision arthroscopy for medial meniscectomy is medically necessary.

Dr. B's request for a right knee arthroscopy for medial meniscectomy underwent utilization review on May 15, 2013 and was denied. Dr. B sought reconsideration and such denial was upheld on June 6, 2013. On June 21, 2013, Petitioner appealed the denial to an Independent Review Organization (hereinafter "IRO") and the IRO reviewer, who was board certified in orthopedic surgery, upheld the previous adverse determinations based on the following sources: medical judgment, clinical experience, expertise in accordance with accepted medical standards, and *ODG - Official Disability Guidelines & Treatment Guidelines* (hereinafter "ODG"). The IRO reviewer noted that the denial letters discussed the lack of specific meniscal signs, imaging findings and/or trial and failure of recent comprehensive non-operative treatment. Consequently, Petitioner appealed the IRO decision.

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. Health care reasonably required is further defined in Texas Labor Code Section 401.011 (22a) 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 evidence based medicine or, if evidence based medicine is not available, then generally accepted standards of medical practice recognized in the medical community. Health care under the Texas Workers' Compensation system must be consistent with evidence based medicine if that evidence is available. Evidence based medicine is further defined in Texas Labor Code Section 401.011 (18a) to be 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. The Commissioner of the Division of Workers' Compensation is required to adopt treatment guidelines that are evidence-based, scientifically valid, outcome-focused and designed to reduce excessive or inappropriate medical care while safeguarding necessary medical care. Texas Labor Code Section 413.011(e). Medical services consistent with the medical policies and fee guidelines adopted by the commissioner are presumed reasonable in accordance with Texas Labor Code Section 413.017(1).

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. Also, in

accordance with Division Rule 133.308 (s), "A decision issued by an IRO is not considered an agency decision and neither the Department nor the Division is considered parties to an appeal. In a Contested Case Hearing (CCH), the party appealing the IRO decision has the burden of overcoming the decision issued by an IRO by a preponderance of evidence-based medical evidence."

The pertinent provisions of the ODG applicable to this case are as follows, to wit:

Recommended as indicated below for symptomatic meniscal tears. Not recommended for osteoarthritis (OA) in the absence of meniscal findings. (Kirkley, 2008) Meniscectomy is a surgical procedure associated with a high risk of knee osteoarthritis (OA).

Arthroscopy and meniscus surgery will not be as beneficial for older patients who are exhibiting signs of degenerative changes, possibly indicating osteoarthritis, and meniscectomy will not improve the OA. Meniscal repair is much more complicated than meniscal excision (meniscectomy). Some surgeons state in an operative report that they performed a meniscal repair when they may really mean a meniscectomy. A meniscus repair is a surgical procedure done to repair the damaged meniscus. This procedure can restore the normal anatomy of the knee, and has a better long-term prognosis when successful. However, the meniscus repair is a more significant surgery, the recovery is longer, and, because of limited blood supply to the meniscus, it is not always possible. A meniscectomy is a procedure to remove the torn portion of the meniscus. This procedure is far more commonly performed than a meniscus repair. Most meniscus tears cannot be treated by a repair. See also Meniscal allograft transplantation. (Harner, 2004) (Graf, 2004) (Wong, 2004) (Solomon-JAMA, 2001) (Chatain, 2003) (Chatain-Robinson, 2001) (Englund, 2004) (Englund, 2003) (Menetrey, 2002) (Pearse, 2003) (Roos, 2000) (Roos, 2001) Whether or not meniscal surgery is performed, meniscal tears in the knee increase the risk of developing osteoarthritis in middle age and elderly patients, and individuals with meniscal tear were 5.7 times more likely to develop knee osteoarthritis. (Englund, 2009) AHRQ Comparative Effectiveness Research concluded that arthroscopic lavage for osteoarthritis, with or without debridement, does not improve pain and function for people with OA of the knee. (AHRQ, 2011) The repair of meniscal tears is significantly improved when performed in conjunction with ACL reconstruction. (Wasserstein, 2011)

ODG Indications for Surgery -- Meniscectomy:

Criteria for meniscectomy surgery:

1. Conservative Care: (Not required for locked/blocked knee.) Exercise/Physical therapy AND Medication OR Activity modification. PLUS

2. Subjective Clinical Findings (at least two) Joint pain OR Swelling OR Feeling of give way OR Locking, clicking, or popping. PLUS
3. Objective Clinical Findings (at least two): Positive McMurray's sign OR Joint line tenderness OR Effusion OR Limited range of motion OR Locking, clicking or popping or Crepitus. PLUS
4. Imaging Clinical Findings: (Not required for locked/blocked knee.) Meniscal tear on MRI (Washington, 2003)

The medical records indicated the Claimant did not have recent imaging or plain films and did not have recent conservative treatment with injections or therapy to the knee prior to considering surgical intervention. The URA reviewers both noted the medical records failed to document the patient having physical therapy provided for the right knee to address the recent complaints. Further, the URA reviewers concluded the clinical information provided failed to establish the medical necessity of a right knee arthroscopy for medial meniscectomy based on support of the ODG.

In this case, the IRO reviewer, who is board certified in orthopedic surgery, noted there was a positive McMurray sign with tenderness across the bilateral medial aspects of the knees. Knee flexion was from 0 to 75° of flexion. The IRO reviewer stated the aggregate of prior clinical notes from the treating and other providers were reviewed and the IRO reviewer mentioned that the denial letters discussed the lack of specific meniscal signs, imaging findings and/or trial and failure of recent comprehensive non-operative treatment.

Petitioner/Provider and Claimant, as the parties challenging the IRO decision, have the burden of proof to overcome that decision by a preponderance of evidence-based medical evidence. Evidence-based medical evidence entails the opinion of a qualified expert that has some basis in evidence-based medicine. Expert evidence is required in all medical necessity disputes and Claimant's lay testimony is not probative on questions requiring expert evidence, such as the inquiry into the medical necessity of the procedure at issue.

Dr. B provided expert testimony in the hearing in support of the medical necessity of the proposed right knee arthroscopy for medial meniscectomy. He opined, the MRI dated January 18, 2012 demonstrated a tear and there is sufficient imaging findings and/or trial and failure of recent comprehensive non-operative treatment and therefore, she should be entitled to the surgery. However, there was insufficient evidence-based medical evidence explaining how the ODG criteria for the requested treatment was met and failed to establish that the requested treatment was medically necessary. Therefore, Petitioner/Provider has failed to meet his burden that the decision of the IRO should be reversed and Claimant is not entitled to a right knee arthroscopy for medial meniscectomy for the compensable injury of (Date of Injury).

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

5. 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 (Date of Injury), Claimant was the employee of (Employer), Employer.
 - C. On (Date of Injury), Employer provided workers compensation with Liberty Insurance Corp., as Carrier.
 - D. MedRX Review, Inc. was appointed by the Texas Department of Insurance (TDI) to act as an Independent Review Organization (IRO) in Claimant's appeal of Carrier's denial of the requested right knee arthroscopy for medial meniscectomy.
6. 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.
7. The Independent Review Organization (IRO) determined that the health care at issue is not reasonably required for the compensable injury of (Date of Injury).
8. A right knee arthroscopy for medial meniscectomy is not health care reasonably required for the compensable injury of (Date of Injury).

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 a right knee arthroscopy for medial meniscectomy is not health care reasonably required for the for the compensable injury of (Date of Injury).

DECISION

Claimant is not entitled to a right knee arthroscopy for medial meniscectomy for the compensable injury of (Date of Injury).

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 **LIBERTY INSURANCE CORPORATION** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY
211 EAST 7TH STREET, SUITE 620
AUSTIN, TX 78701-3218**

Signed this 2nd day of December, 2013

Marilyn J. Allen
Hearing Officer