

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 opened on February 13, 2014 with the record closing on February 18, 2014 to decide the following disputed issue:

1. Is the preponderance of the evidence contrary to the decision of the Independent Review Organization (IRO) that the claimant is not entitled to left knee diagnostic arthroscopy with possible chondroplasty and synovectomy as an outpatient between August 23, 2013 and October 22, 2013 for the compensable injury of (Date of Injury)?

The record was held open for the submission of pertinent authorities.

PARTIES PRESENT

Petitioner/Provider appeared by telephone to provide testimony. Claimant appeared by telephone and was represented by BR, attorney. Respondent/Carrier appeared and was represented by DK, attorney.

BACKGROUND INFORMATION

It was undisputed that the Claimant, who is 22 years old, sustained a compensable left knee lateral meniscus tear injury on (Date of Injury) while working for (Employer). On November 9, 2012, she underwent a left knee arthroscopic partial lateral meniscectomy performed by Dr. M for the treatment of the (Date of Injury) injury. In addition, the Claimant underwent at least 11 sessions of post-operative physical therapy beginning on November 12, 2012.

Because of the Claimant's continued left knee complaints after she received the post-operative physical therapy, she was referred to the Petitioner, Dr. VS, who is a board-certified orthopedic surgeon. Dr. S first saw the Claimant on April 22, 2013. According to Dr. S's testimony, which was credible and persuasive, he ordered the surgery that is in dispute herein for the Claimant for both diagnostic and therapeutic purposes for her left knee because she received no relief of her post-operative left knee symptoms from conservative treatment. He testified that she received conservative treatment in the form of anti-inflammatory medication, physical therapy, a knee brace, TENS unit and a steroid injection, but still had significant complaints. He testified that he

diagnosed the Claimant with left knee effusion and a chondral injury of the patella. He also testified that an MRI performed on the Claimant's left knee on May 16, 2013 shows a chondral lesion in the patellofemoral compartment. In August 2013, Dr. S requested pre-authorization to have the Claimant undergo the surgery in question. This request was denied by two of the Carrier's utilization review agents (URAs) on the basis that there was a lack of documentation presented that showed that conservative treatment had failed, and that in their opinions, the Claimant had no MRI evidence of chondral pathology. The denials were upheld by an IRO. The IRO physician reviewer, who is a board-certified orthopedic surgeon, opined that a diagnostic arthroscopy would be indicated if there was documentation showing that the Claimant had completed all conservative measures, but the IRO noted that there was no documentation showing that such had been completed. For this reason, and based upon medical judgment and the *Official Disability Guidelines* (ODG), the IRO opined that the requested surgery was not medically necessary.

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 in making decisions about the care of individual patients. 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 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 are 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 ODG addresses the medical necessity of a knee arthroscopy as follows:

Arthroscopy

Definition: An arthroscope is a tool like a camera that allows the physician to see the inside of a joint, and the surgeon is sometimes able to perform surgery through an arthroscope, which makes recovery faster and easier. For the Knee, See Arthroscopic surgery for osteoarthritis; Meniscectomy; & Diagnostic arthroscopy.

This passage above refers the reader to the information pertaining to diagnostic arthroscopy, which is addressed as follows:

Diagnostic arthroscopy

Recommended as indicated below. Second look arthroscopy is only recommended in case of complications from OATS or ACI procedures, to assess how the repair is healing, or in individual cases that are ethically defensible for scientific reasons, only after a thorough and full informed consent procedure. (Vanlauwe, 2007) In patients with osteoarthritis, the value of MRI for a precise grading of the cartilage is limited, compared to diagnostic arthroplasty. When the assessment of the cartilage is crucial for a definitive decision regarding therapeutic options in patients with osteoarthritis, arthroscopy should not be generally replaced by MRI. The diagnostic values of MRI grading, using arthroscopy as reference standard, were calculated for each grade of cartilage damage. For grade 1, 2 and 3 lesions, sensitivities were relatively poor, whereas relatively better values were noted for grade 4 disorders. (von Engelhardt, 2010)

ODG Indications for Surgery™ -- Diagnostic arthroscopy:

Criteria for diagnostic arthroscopy:

- (1) **Conservative Care:** Medications. OR Physical therapy. PLUS
- (2) **Subjective Clinical Findings:** Pain and functional limitations continue despite conservative care. PLUS
- (3) **Imaging Clinical Findings:** Imaging is inconclusive.
(Washington, 2003) (Lee, 2004)

For average hospital LOS if criteria are met, see Hospital length of stay (LOS).

The ODG addresses the medical necessity of chondroplasty as follows:

Recommended as indicated below. Not recommended as a primary treatment for osteoarthritis, since arthroscopic surgery for knee osteoarthritis offers no added benefit to optimized physical therapy and medical treatment. (Kirkley, 2008) See also Meniscectomy.

ODG Indications for Surgery™ -- Chondroplasty:

Criteria for chondroplasty (shaving or debridement of an articular surface), requiring ALL of the following:

- (1) **Conservative Care:** Medication. OR Physical therapy. PLUS
- (2) Subjective Clinical Findings: Joint pain. AND Swelling. PLUS
- (3) **Objective Clinical Findings:** Effusion. OR Crepitus. OR Limited range of motion. PLUS
- (4) Imaging Clinical Findings: Chondral defect on MRI
(Washington, 2003) (Hunt, 2002) (Janecki, 1998)

For average hospital LOS if criteria are met, see Hospital length of stay (LOS).

It is clear from the URAs' reports and the IRO decision that those doctors did not have documentation, which existed, that shows the conservative treatment that the Claimant underwent after her November 9, 2012 surgery to address her left knee symptoms. Dr. S's testimony along with other evidence in the record shows that the Claimant did have conservative treatment of her knee after the surgery that did not provide any long-term relief of her symptoms. Dr. S testified that it is for this reason that he requested the surgery in question. In addition, while the IRO does not address the May 16, 2013 MRI, Dr. S's opinion is that the May 16, 2013 MRI of the Claimant's left knee does show a chondral defect, while both URAs are of the opinion that the MRI does not show such a lesion. This reflects a difference of opinion, and after reviewing the MRI, it is determined that Dr. S's testimony is persuasive on this point. Dr. S testified about the treatment that the Claimant has had, and his opinion is that the Claimant meets the ODG requirements under both the diagnostic arthroscopy and chondroplasty sections. After a careful review of the entire record, it is determined that the record establishes that the preponderance of the evidence-based medicine is contrary to the IRO decision. It is, therefore, determined that the left knee diagnostic arthroscopy with possible chondroplasty and synovectomy as an outpatient is health care reasonably required for the compensable injury of (Date of Injury).

The Hearing Officer considered all of the evidence admitted. The Findings of Fact and Conclusions of Law are based on an assessment of all of the evidence whether or not the evidence is specifically discussed in this Decision and Order.

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 (Date of Injury), Claimant was the employee of (Employer), Employer.
 - C. On (Date of Injury), Employer had workers' compensation insurance coverage with Travelers Property Casualty Co., Carrier.
 - D. On (Date of Injury), the Claimant sustained a compensable left knee lateral meniscus tear injury while in the course and scope of her employment with (Employer).
 - E. In a report dated October 17, 2013, the IRO upheld the Carrier's denials of the service in dispute.
2. The left knee diagnostic arthroscopy with possible chondroplasty and synovectomy as an outpatient is health care reasonably required for the Claimant's compensable (Date of Injury) injury.
3. The Carrier delivered to Claimant a single document stating the true corporate name of the Carrier, and the name and street address of the Carrier's registered agent, which was admitted into evidence as Hearing Officer's Exhibit Number 1.

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 contrary to the decision of the IRO that the Claimant is not entitled to a left knee diagnostic arthroscopy with possible chondroplasty and synovectomy as an outpatient for the compensable injury of (Date of Injury).

DECISION

The Claimant is entitled to a left knee diagnostic arthroscopy with possible chondroplasty and synovectomy as an outpatient for the compensable injury of (Date of Injury).

ORDER

The Carrier is **ORDERED** to pay medical benefits in accordance with this decision, the Act and the implementing Rules.

The true corporate name of the insurance carrier is **TRAVELERS PROPERTY CASUALTY COMPANY**, and the name and address of its registered agent for service of process is

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

Signed this 5th day of March, 2014.

Patrice Fleming-Squirewell
Hearing Officer