

STATE OFFICE OF ADMINISTRATIVE HEARINGS  
300 West 15th Street, Suite 502  
Austin, Texas 78701

DOCKET NO. 453-02-3487.M2  
[TWCC Docket No. M2-02-0490-01]

<i>Petitioner</i>	§	BEFORE THE STATE OFFICE
	§	
	§	
	§	
	§	OF
	§	
LIBERTY MUTUAL FIRE INSURANCE COMPANY, <i>Respondent</i>	§	ADMINISTRATIVE HEARINGS

**DECISION AND ORDER**

(Petitioner) is appealing the decision of the Texas Medical Foundation, an independent review organization (IRO) certified by the Texas Department of Insurance, in Texas Workers' Compensation Commission (Commission) Medical Review Division tracking number M2-02-0490-01 denying preauthorization for a surgical exploration of the abdominal wall with mesh placement. The IRO determined from the medical documentation submitted for review that the requested medical procedure was not medically necessary to treat the Petitioner's condition due to the absence of either a physical examination or CT scan. The Administrative Law Judge (ALJ) finds the request for preauthorization should be denied because the requested treatment has been provided.<sup>1</sup>

**I. PROCEDURAL HISTORY, JURISDICTION, AND NOTICE**

On August 7, 2002, ALJ Michael J. Borkland convened the hearing at the William P. Clements Building, 300 West 15<sup>th</sup> Street, Austin, Texas. Petitioner appeared *pro se* via telephone and was assisted by Commission Ombudsman Anthony Walker. Liberty Mutual Insurance Company (Respondent) was represented by Shannon Butterworth, attorney. Notice and jurisdiction were not contested and will be addressed in the findings of fact and conclusions of law. Following the presentation of evidence, the hearing was closed on the same day.

**II. DISCUSSION**

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<sup>1</sup> The surgery was performed on June 14, 2002.

Petitioner, who is a 47-year old female, suffered a lower back injury on \_\_\_\_\_, while working as an appliance salesperson at \_\_\_\_\_. In addition to sales, her job duties included moving refrigerators and freezers for display purposes. She was injured while helping a customer move a unit for transport to Mexico. Petitioner experienced a burning pain in her stomach, and was diagnosed with incarcerated, recurrent umbilical hernia.<sup>2</sup>

The evidence presented consisted of seven exhibits, and the testimony of the Petitioner and Dr. Alfredo Longoria, M.D., Petitioner's treating physician.<sup>3</sup> The facts are not in dispute. Petitioner was first treated for her injury with surgery on December 2, 2000, which repaired the hernia. A CT scan of the abdominal region was performed on February 2, 2001, because the Petitioner continued to experience pain. There was no significant abnormality or hernia found.

A second surgery was performed on February 16, 2001, to repair a hernia and to place Prolene mesh for additional abdominal wall support. A second CT scan of the abdominal region was performed on June 1, 2001, to investigate for the presence of an umbilical hernia. The scan revealed no abnormality of the abdomen, and no abdominal hernia was defined. A third surgery was performed on June 25, 2001, to investigate persistent abdominal pain, and an epigastric hernia was repaired.<sup>4</sup>

The Petitioner continued to have persistent pain and she requested preauthorization for a fourth surgery, which was denied by the Respondent on December 11, 2001, December 14, 2001, and January 4, 2002, because medical necessity was not established. The Petitioner did not provide evidence of recurrent hernia or objective findings to support the request.

A CT scan is the diagnostic tool of choice for diagnosing hernias, but Dr. Longoria testified that an additional CT scan was not requested because the two previous scans did not reveal the presence of existing hernias. He believed that a scan would not show a hernia, but that one would be found based on the Petitioner's medical history. Even though preauthorization was denied, the surgery was performed on June 14, 2002.<sup>5</sup> A hard cystic formation was found and removed. The Petitioner did not have another hernia. The Petitioner has been released to return to work without restriction.

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<sup>2</sup> A restricted, but not strangulated, protrusion through connective tissue of the central abdominal region. See Merriam Webster's Medical Dictionary (1995), at pages 286, 322, and 727.

<sup>3</sup> There was not a certified record because this appeal resulted from an IRO proceeding.

<sup>4</sup> The abdominal region lying above the umbilical region (navel). See Merriam Webster's Medical Dictionary (1995), at page 210.

<sup>5</sup> The surgery was paid for by the Petitioner's health insurance. The Petitioner would like her deductible covered by workers' compensation.

The issue of preauthorizing a medical procedure after it has already been performed was recently addressed in SOAH Docket No. 453-02-0959.M2 by ALJ Georgie Cunningham. She aptly stated:

Petitioner had the burden of proving the requested treatment should be preauthorized; however, it is not necessary to reach that determination. After the hearing began, it became apparent that Petitioner had already provided the requested treatment. As specified in TEX. LAB. CODE ANN. § 413.014, the Commission shall adopt rules to specify which treatments and services require preauthorization by a carrier. This section further provides that a carrier is not liable for treatments and services unless preauthorization is sought and obtained from a carrier or ordered by the Commission with the exception of treatment provided in a medical emergency.

It is clear that the Legislature intended the preauthorization process to occur prior to the provision of the service. The Commission has made its position on preauthorization abundantly clear in a rule adopted effective January 1, 2002. Preauthorization is defined as the *prospective* approval obtained from the carrier by the provider or claimant prior to providing the health care treatment or services.<sup>6</sup> Although the rule was not in effect at the time the treatment at issue was provided by Petitioner, the rule leaves no doubt as to the Commission's interpretation of the statutory provision. Neither the Act nor the rules provide for retroactive preauthorization. Accordingly, Petitioner's request for preauthorization of treatment which has already been provided is hereby denied.

In this case, the Commission's rule was in effect when the surgery was performed on June 14, 2002. Accordingly, the request for preauthorization of surgery which has already been performed is denied.

### III. FINDINGS OF FACT

1. On \_\_\_\_\_, \_\_\_\_\_ (Petitioner) sustained an on-the-job injury to her back when moving a refrigerator.
2. At the time of the Petitioner's injury, Liberty Mutual Fire Insurance Company (the Respondent) provided workers' compensation insurance to the Petitioner's employer.

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<sup>6</sup> 28 TAC § 134.600(a)(5).

3. The Respondent preauthorized three surgeries for the repair of hernias that occurred during the injury referred to in Finding of Fact No. 1.
4. On December 11, 2001, December 14, 2001, and January 4, 2002, the Respondent denied Petitioner's request for preauthorization of a fourth surgery because clinical data and objective findings did not establish medical necessity.
5. The Petitioner requested dispute resolution services from the Texas Workers' Compensation Commission's Medical Review Division.
6. On May 22, 2002, Texas Medical Foundation, an independent review organization certified by the Texas Department of Insurance, issued its decision denying preauthorization because the absence of either physical examination or CT scan made the procedure unlikely to be productive.
7. On May 29, 2002, Petitioner filed a request for a hearing on the preauthorization denial.
8. The Commission sent notice of the hearing to the parties on July 9, 2002. The hearing notice informed the parties of the matter to be determined, the right to appear and be represented by counsel, the time and place of the hearing, and the statutes and rules involved.
9. On June 14, 2002, prior to the hearing, Petitioner had the requested fourth surgical procedure referred to in Finding of Fact No. 4.
10. The treatment was not emergency treatment.

#### **IV. CONCLUSIONS OF LAW**

1. The Texas Workers' Compensation Commission has jurisdiction to decide the issue presented, pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 413.031.
2. The State Office of Administrative Hearings has jurisdiction over matters related to the hearing in this proceeding, including the authority to issue a decision and order, pursuant to TEX. LAB. CODE ANN. §§ 402.073 and 413.031(d) and TEX. GOV'T CODE ANN. ch. 2003.
3. Petitioner timely filed notice of appeal, as specified in 28 TEX. ADMIN. CODE (TAC) § 148.3.
4. Proper and timely notice of the hearing was effected upon the parties according to TEX. GOV'T CODE ANN. ch. 2001 and 28 TAC § 148.4(b).
5. Petitioner had the burden of proving the case by a preponderance of the evidence, pursuant to 28 TAC § 148.21(h) and (i).
6. A treating physician is responsible for maintaining efficient utilization of health care for a claimant, pursuant to TEX. LAB. CODE ANN. § 408.025(c).
7. As provided by TEX. LAB. CODE ANN. § 413.014 and 28 TAC § 134.600(h)(1), preauthorization is required for all non-emergency hospitalizations.

8. The Carrier is not liable for the treatment and services, which were neither authorized by the Carrier nor ordered by the Commission, as specified in TEX. LAB. CODE ANN. § 413.014(b).

**ORDER**

It is hereby ordered that preauthorization of the treatment and services requested by \_\_\_\_\_ are denied because the treatment and services have already been provided.

**SIGNED this 30<sup>th</sup> day of August, 2002.**

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**MICHAEL J. BORKLAND**  
**ADMINISTRATIVE LAW JUDGE**  
**STATE OFFICE OF ADMINISTRATIVE HEARING**