

**SOAH DOCKET NO. 453-03-0343.M2  
MDR TRACKING NO. M2-02-0833**

<b>AMERICAN HOME ASSURANCE COMPANY, PETITIONER</b>	‘	<b>BEFORE THE STATE OFFICE</b>
	‘	
	‘	
<b>V.</b>	‘	
	‘	<b>OF</b>
<b>TEXAS WORKERS’ COMPENSATION COMMISSION AND NATHAN BREAZEALE, M.D., RESPONDENTS</b>	‘	
	‘	
	‘	<b>ADMINISTRATIVE HEARINGS</b>

**DECISION AND ORDER**

American Home Assurance Company (Carrier) appealed the decision of the Texas Workers’ Compensation Commission’s (Commission) designee, an independent review organization (IRO), which granted Dr. Nathan Breazeale’s (Provider) preauthorization request for shoulder surgery for a workers’ compensation claimant (Claimant).<sup>1</sup> Carrier denied preauthorization on the basis the surgery was not medically necessary healthcare. This decision finds preauthorization for the surgery should be granted.

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

There were no contested issues of jurisdiction, notice or venue. Therefore, those issues are addressed in the findings of fact and conclusions of law without further discussion here.

The hearing in this matter convened October 24, 2002, at the State Office of Administrative Hearings, 300 W. 15<sup>th</sup> Street, Austin, Texas, with Administrative Law Judge (ALJ) Ann Landeros presiding. Carrier was represented by its attorney, Dan Kelley. Dr. Breazeale represented himself. The Commission chose not to participate in the hearing. The record closed that same date.

**II. DISCUSSION**

**A. Background Facts**

In \_\_\_\_\_, Claimant fell and injured her left shoulder, an injury which was compensable under the Texas Workers’ Compensation Act (Act). At the time of the compensable injury, Carrier was responsible for Claimant’s workers’ compensation insurance coverage. Claimant has not returned to work since the injury.

In May 2002, Provider, Claimant's treating doctor and an orthopedic surgeon, recommended she undergo a surgical procedure called a left pectoralis major transfer in an attempt to stabilize her

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<sup>1</sup> The MDR docket number was M2-02-0833-01.

left scapula, which was “winging” (moving abnormally outward from her body) and impeding her use of her left arm. After Carrier declined to preauthorize the surgery as medically unnecessary, Provider requested medical dispute resolution from the Commission. Pursuant to 28 TEX. ADMIN. CODE (TAC) § 133.308, the request was handled by an IRO selected by the Commission. The IRO reviewer, an orthopedic surgeon, found the surgery was medically necessary and should be preauthorized, stating:

The medical record documentation substantiates that the patient is suffering from winging of the scapula. Symptoms are present and the patient’s range of motion is diminished. The proposed pectoralis major transfer is medically indicated as treatment for the patients symptoms and physical findings. The procedure will provide improvement in shoulder function and provide pain relief. Stabilizing the scapula will provided [sic] a base upon which additional range of motion can be developed. Therefore, the pectoralis major transfer is medically necessary.

Carrier timely appealed the IRO decision.

## **B. Legal Standards**

Carrier has the burden of proof in this proceeding. 28 TAC § 148.21(h) and (i); 1 TAC § 155.41. Pursuant to the Act, an employee who has sustained 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 cures or relieves the effects naturally resulting from the compensable injury, promotes recovery, or enhances the ability of the employee to return to or retain employment. TEX. LAB. CODE ANN. § 408.021(a). Health care includes all reasonable and necessary medical services including a medical appliance or supply. TEX. LAB. CODE ANN. '§401.011(19)(A). A medical benefit is a payment for health care reasonably required by the nature of the compensable injury. TEX. LAB. CODE ANN. § 401.011(31). The decision of an IRO is to be given presumptive weight. 28 TAC § 133.3080(v). Certain types of healthcare, including inpatient surgery require preauthorization from the carrier. 28 TAC § 134.600(h).

## **C. Evidence**

The parties presented copies of Claimant’s medical records that each side had submitted to the IRO reviewer. These records were admitted as Exhibits 1 and 2. Other than the IRO records, Carrier presented no evidence. Provider and Claimant testified.

Prior to this preauthorization request, Claimant had three shoulder surgeries. As a result of these surgeries, she had prolonged periods of immobilization of her left arm and shoulder. She has carried her left arm in a sling off and on since her injury. Her medical records showed prolonged physical therapy and use of pain medications. Her last surgery occurred in November 2001. After that surgery healed, she developed a “winging” of her left scapula that has gotten progressively worse. At the hearing, Provider had Claimant show how her scapula “wings” by having her attempt to lift her left arm straight out in front of her. Instead of moving forward with her arm, the left scapula moved back away from her arm and slightly inward. This was clearly an abnormal

movement, as shown by the contrasting movement of her right scapula, which moved forward as she raised that arm.

Claimant testified she is in pain, especially when she attempts to move her left arm. She cannot bathe or dress herself, drive a car, or perform many activities of daily living. In addition to Provider, she was examined by orthopedist Dr. Steven Pearce in March 2002. Her condition has gotten worse since Dr. Pearce examined her.

Provider stated that diagnostic tests have ruled out all but prolonged immobility and atrophy resulting from limited use of the shoulder as the cause of the winging. Nerve conduction velocity tests ruled out nerve damage and blood-work ruled out a genetic cause. Provider referred to his June 14, 2002, report for an explanation of the medical necessity of the requested procedure. In that report, he wrote:

[Claimant] underwent a third shoulder arthroscopy on November 19, 2001, which included further debridement of the shoulder joint along with repair of a displaced anterior labral tear, debridement of the subacromial space, and open revision of the anterior acromioplasty with repair of the dehisced anterior deltoid. During the remainder of the fall, this appeared to solve her anterior shoulder pain, but during the course of her rehab, she developed spontaneous winging of the left scapula. This was resistant to physical therapy and has progressed through out the spring. EPG and nerve conduction study did not show significant abnormalities of the long thoracic nerve and it was felt that her scapular dysfunction was likely acquired due to the prolonged treatment and multiple surgeries to the left shoulder. There was no new acute intervening trauma to the shoulder to suggest a separate injury was responsible for the scapular winging and the winging did not appear to be voluntary. The winging has steadily worsened over the course of the spring to the point where the left shoulder is dysfunctional at both rest and with use. She has limited, if any forward elevation, abduction, or active rotation of the shoulder secondary to the unstable scapula. . . .

. . . As there has been no new neurologic lesion or underlying genetic abnormality to account for her scapular wining, this, in all medical likelihood represents a complication form her original shoulder injury and subsequent treatments. . . .

. . . We are now over three months into this process during which her pain has become intractable and her scapula winging has progressively worsened. Independent evaluation of the solder has confirmed her scapular winging and, while her prognosis is guarded for successful surgical outcome, I don't believe she will have restoration of significant shoulder function or mediation of her pain without surgery . . . . (Exh. 2, pp.34-35).

After examining Claimant in April 2002, Dr. Pearce wrote:

The patient has developed scapular winging over the course of her treatment for a traumatic injury to the left shoulder. . . . According to the patient, Dr. Breazeale has recommended a reconstructive procedure to stabilize the scapula. I have explained to her that I am not sure this will do her a lot of good. . . . However, it may marginally improve her function and possibly reduce some of her pain by stabilizing the scapula so that her shoulder can be in a more functional position. (Exh. 1, p. 45).

Provider testified he discussed the surgery with Carrier's utilization reviewer and disagreed with her conclusion that Claimant's prognosis was poor. Provider stated that, based on his review of the literature concerning this procedure and his own experience with it, he believes the operation will benefit Claimant by stabilizing her scapula and reducing her pain.

#### **D. Carrier's Position**

Carrier relied on the opinion of its utilization reviewer who wrote:

Requested procedure likely not to impact functionality of subjective complaints. Risks are greater than benefits. This review is based on generally accepted medical practice. (Exh. 1, p. 5).

#### **E. Analysis**

The overwhelming medical evidence established the medical necessity of a left pectoralis major transfer. Claimant's scapular winging is severe, debilitating, and painful. It has gotten worse over time until her left arm and shoulder are essentially useless, leaving her unable to perform daily living tasks. Carrier's assertion that the proposed surgery has risks greater than benefits was not supported by anything other than a general, conclusory statement by its utilization reviewer, whose qualifications are unknown. Even Dr. Pearce, who expressed his reservations about the prognosis, concluded that the surgery had a chance to improve functioning in Claimant's shoulder and reduce her pain.

Carrier failed to meet its burden of proof to show that the IRO decision was incorrect. The record contained sufficient evidence to establish that the proposed surgery will benefit Claimant by, if nothing else, stabilizing the scapula so the winging does not continue to get worse.

The left pectoralis major transfer for Claimant is medically necessary and should be preauthorized.

### **III. FINDINGS OF FACT**

1. In \_\_\_\_\_, Claimant fell and sustained an injury to her left shoulder an injury compensable under the Texas Workers' Compensation Act (Act).

2. At the time of the compensable injury, American Home Assurance Company (Carrier) was responsible for Claimant's workers' compensation insurance coverage.
3. After three surgeries on her shoulder, Claimant developed a "winging" left scapula caused by prolonged immobilization and other disuse. The scapula no longer moved properly in relation to her body and moved back instead of forward when Claimant moved her arm, depriving her of the support needed to lift her arm.
4. As a result of the winging, Claimant suffers constant pain and has lost the use of her left arm and shoulder.
5. Claimant cannot dress or bathe herself or drive.
6. In May 2002, orthopedic surgeon Nathan Breazeale (Provider), Claimant's treating doctor, requested preauthorization from Carrier for a left pectoralis major transfer to stabilize her left scapula and relieve her pain.
7. Carrier denied the requested preauthorization based on the lack of medical necessity.
8. An orthopedic surgeon employed as a reviewer by an Independent Review Organization (IRO) designated by the Texas Worker's Compensation Commission found that the left pectoralis major transfer surgery was medically necessary healthcare for Claimant.
9. Carrier timely appealed the IRO decision.
10. Carrier and Provider appeared and were represented at the hearing in this matter held October 24, 2002. The Commission chose not to participate in the hearing.
11. Claimant's scapular winging is severe, debilitating, and painful. It has gotten worse over time until her left arm and shoulder are essentially useless, leaving her unable to perform daily living tasks.
12. The left pectoralis major transfer surgery will benefit Claimant by stabilizing the scapula so the winging does not continue to get worse.
13. The left pectoralis major transfer surgery can improve functioning in Claimant's shoulder and reduce her pain.

#### IV. CONCLUSIONS OF LAW

1. The Texas Workers' Compensation Commission (Commission) has jurisdiction related to this matter pursuant to the Texas Workers' Compensation Act (Act), TEX. LABOR 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 ' 413.031(d) of the Act and TEX. GOV'T CODE ANN. ch. 2003.
3. The hearing was conducted pursuant to the Administrative Procedure Act, TEX. GOV'T CODE ANN. ch. 2001 and the Commission's rules, 28 TEX. ADMIN. CODE (TAC) ' §133.305(g).
4. Adequate and timely notice of the hearing was provided in accordance with TEX. GOV'T CODE ANN. §§ 2001.051 and 2001.052.
5. Carrier had the burden of proof in this proceeding. 28 TAC § 148.21(h) and (i); 1 TAC' §155.41.
6. Pursuant to the Act, an employee who has sustained 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 cures or relieves the effects naturally resulting from the compensable injury, promotes recovery, or enhances the ability of the employee to return to or retain employment. TEX. LAB. CODE ANN. §408.021(a).
7. Health care includes all reasonable and necessary medical services, including a medical appliance or supply. TEX. LAB. CODE ANN. §401.011(19)(A). A medical benefit is a payment for health care reasonably required by the nature of the compensable injury. TEX. LAB. CODE ANN. § 401.011(31).
8. The IRO decision in this matter has presumptive weight. 28 TAC § 133.308(v).
9. For a carrier to be liable for reimbursement, it must preauthorize inpatient surgery. 28 TAC ' §134.600(h).
10. Carrier did not meet its burden of proof to show that a left pectoralis major transfer surgery was not reasonable and medically necessary healthcare for Claimant.
11. Provider's request for preauthorization for Claimant to have a left pectoralis major transfer surgery should be preauthorized.

**ORDER**

It is ORDERED that Dr. Nathan Breazeale's request for preauthorization of left pectoralis major transfer surgery for Claimant is granted and American Home Assurance Company is liable to pay reimbursement for that procedure.

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

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**ANN LANDEROS  
ADMINISTRATIVE LAW JUDGE  
STATE OFFICE OF ADMINISTRATIVE HEARINGS**