

STATE OFFICE OF ADMINISTRATIVE HEARINGS  
300 WEST 15TH STREET, SUITE 502  
AUSTIN, TEXAS 78701

DOCKET NO. 453-03-1178.M2  
[MDR TRACKING NO. M2-03-0045-01]

JOHN A. SAZY, M.D.,  
Petitioner

V.

\_\_\_\_\_,  
Respondent

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BEFORE THE STATE OFFICE

OF

ADMINISTRATIVE HEARINGS

**DECISION AND ORDER**

John A. Sazy, M.D. (Provider) has appealed the decision of an Independent Review Organization (IRO)<sup>1</sup> denying authorization for knee replacement surgery for\_\_\_\_\_, a workers' compensation claimant (Claimant). In this decision, the Administrative Law Judge (ALJ) finds that knee replacement surgery is reasonable and necessary medical care for Claimant. Therefore, \_\_\_\_\_ (Carrier) is ordered to authorize and reimburse the reasonable and necessary costs associated with total knee replacement surgery for Claimant's left knee.

**I. BACKGROUND FACTS**

On\_\_\_\_\_, Claimant suffered a compensable, work-related injury when she injured her knee getting off of a bus. After her injury, Claimant received extensive medical care for her left knee, including physical therapy, prescription medications, and minor surgery performed by Provider. When Claimant continued to suffer pain and limited functioning of her knee, she underwent additional physical therapy. On February 22, 2002, Provider saw Claimant again and discussed the possibility of total knee replacement surgery with her, concluding that it was necessary treatment for her injury. Claimant agreed with the surgery and Provider sought authorization from Carrier to perform the surgery.

Carrier refused to authorize the surgery, asserting that more conservative treatment should be attempted first. In reaching this decision, Carrier relied on a precertification evaluation conducted by Intracorp, a utilization review organization that determined that not all conservative care had been exhausted. After Provider requested reconsideration, Carrier also obtained a peer review opinion by Dr. William Watters, a board-certified orthopedic surgeon. Dr. Watters reviewed the records of Claimant's medical care and concluded that her care, up to the time knee replacement surgery was

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<sup>1</sup> The IRO is the designee of the Medical Review Division (MRD) of the Texas Workers' Compensation Commission (Commission) for purposes of resolving certain disputes arising under the workers' compensation system.

requested, had been reasonable and necessary. However, he also concluded that knee replacement surgery should be postponed and more conservative care—such as a weight reduction program, chronic NSAID therapy, an exercise program, steroid injections, or possible arthroscopic treatment—should be attempted first.

Provider requested medical dispute resolution through the Commission, which referred the matter to the IRO. After conducting dispute resolution, the IRO issued a decision agreeing with the Carrier and finding that more conservative care would be appropriate. Therefore, the IRO denied preauthorization for the requested knee replacement surgery. Provider then requested a hearing before the State Office of Administrative Hearings, resulting in this proceeding.

## II. DISCUSSION AND ANALYSIS

After reviewing the evidentiary record, the ALJ finds that Provider has met his burden of proving that total knee replacement surgery is medically reasonable and necessary treatment for Claimant. Provider offered his own expert testimony as Claimant's treating physician. He explained that Claimant's knee is so damaged that it is virtually bone rubbing against bone because the cartilage has been damaged and torn away. He testified that significant conservative care (such as steroid injections and physical therapy) has already been attempted with little success. He testified that more conservative care will do little to help Claimant under these circumstances because the only thing that can truly resolve the problem is a total knee replacement. He acknowledged that, because of her relatively young age (52 years), she will likely need another total knee replacement within the next 15 years. But he testified that Claimant is aware of this and has chosen to move forward with surgery anyway. The ALJ finds Provider to be a credible and knowledgeable witness and his testimony to be persuasive.

The ALJ notes that the other physicians whose opinions have been offered in this case agree that total knee replacement surgery may be necessary for Claimant at some point. But, they disagree on the extent of conservative care to be attempted first and the length of time to wait before performing the surgery. Dr. Larry Kjeldgaard examined Claimant on July 24, 2002, and agreed with Provider that total knee replacement surgery was appropriate for Claimant without additional conservative treatment or less intensive surgical intervention being attempted first.<sup>2</sup> In contrast with the opinion of Provider and Dr. Kjeldgaard, Dr. Watters determined that “[total knee replacement surgery] should be postponed for as many years as possible” noting that Claimant “is young and will

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<sup>2</sup> Ex. 1, at 13.

no doubt need one, or more, revisions in a normal lifetime, each becoming more difficult and incapacitating, if she has [total knee replacement surgery] now.”<sup>3</sup> Similarly, the IRO physician concluded that “[a]t some future point the patient may require knee replacement. At this point, all conservative treatment options have not been exhausted.”<sup>4</sup> Clearly, then, even those doctors who do not believe that knee replacement surgery is necessary now agree that it may be necessary at some point given Claimant’s condition. Thus, the ALJ is left with contrasting medical opinions from four different doctors, two supporting the surgery now and two opposing the surgery at this time, but acknowledging it may be needed in the future.

After considering the varying physician opinions and the other evidence on file, the ALJ is more persuaded with the opinions of Provider and Dr. Kjeldgaard. Of the doctors offering an opinion in this proceeding, they were the only two who actually examined Claimant. Both the IRO physician and Dr. Watters merely reviewed the records. And, in his report, Dr. Watters noted that his opinion was limited because, in his words, “it is difficult to estimate how serious the claimant’s knee condition is based on the information in the record.”<sup>5</sup> Given Dr. Watters’ admitted inability to fully gauge Claimant’s condition, the ALJ finds his opinion to be less persuasive than the opinions of Provider and Dr. Kjeldgaard. Moreover, only Provider has seen the internal extent of Claimant’s knee injury—when he performed her earlier surgery in 2001. Finally, the ALJ finds Provider’s reasons for not attempting additional conservative care to be credible and persuasive. The record reveals that extensive conservative care has been provided to Claimant in the two years since her injury, including a lesser surgery, extensive physical therapy, steroid injections, and numerous prescription medications. But, despite this treatment, Claimant’s condition and functioning remain poor. At this point, total knee replacement surgery seems the most viable and beneficial option for resolving Claimant’s condition, which involves bone rubbing against bone. Based on the record, therefore, the ALJ finds that the preponderance of the evidence supports the conclusion that total knee replacement surgery is medically necessary treatment for Claimant’s compensable injury and should be authorized.

### III. FINDINGS OF FACT

1. \_\_\_\_\_ (Claimant) sustained a compensable, work-related injury on \_\_\_\_\_, at which time her workers’ compensation insurance coverage was provided by her employer, \_\_\_\_\_
2. As a result of her injury, Claimant suffered pain and limited functioning in her left knee.
3. Claimant received extensive medical care for her knee injury, including physical therapy, prescription medications, and minor surgery performed by John A. Sazy, M.D. (Provider).
4. Despite the treatment, Claimant continued to suffer pain and limited functioning of her knee.
5. On February 22, 2002, Provider saw Claimant again and discussed the possibility of total

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<sup>3</sup> *Id.* at 12.

<sup>4</sup> *Id.* at 2.

<sup>5</sup> Ex. 1, at 12.

knee replacement surgery with her, concluding that it was necessary treatment for her injury. Claimant agreed with the surgery and Provider sought preauthorization from Carrier to perform the surgery.

6. Carrier denied preauthorization, maintaining that the requested treatment was not medically necessary and reasonable and that more conservative care should first be attempted.
7. On August 28, 2002, Provider requested medical dispute resolution and the Commission's MRD referred the matter to an Independent Review Organization (IRO) for determination.
8. The IRO reviewed the dispute and issued a decision on October 24, 2002, finding that the requested treatment was not medically necessary and denying authorization for the surgery.
9. On October 28, 2002, Provider requested a hearing before the State Office of Administrative Hearings (SOAH) regarding the IRO decision.
10. Notice of the hearing in this case was mailed to the parties on November 25, 2002. The notice contained a statement of the time, place, and nature of the hearing; a statement of the legal authority and jurisdiction under which the hearing was to be held; a reference to the particular sections of the statutes and rules involved; and a short, plain statement of the matters asserted. In the notice, the Commission's staff indicated that it would not participate in the hearing.
11. The hearing on the merits convened on December 17, 2002, with Administrative Law Judge Craig R. Bennett presiding. Provider appeared via telephone and represented himself. Carrier appeared through its representative, Beverly Vaughn. The hearing was adjourned and the record closed the same day.
12. Currently, Claimant's knee is injured to such a degree that she suffers exposed bone and bone-on-bone contact, causing her to have severe pain and limited functioning.
13. Conservative care has been attempted on Claimant, and she has undergone physical therapy and had steroid injections in the year since her first surgery, with such treatments providing only limited relief but no resolution of her pain or limited functioning.
14. Additional conservative care such as a weight-loss program, use of anti-inflammatory medications or steroids, or physical therapy is not likely to significantly benefit Claimant.
15. Total knee replacement surgery is the treatment most likely to significantly benefit Claimant and restore the greatest functioning to Claimant.
16. The requested total knee replacement surgery is medically necessary and reasonably required by the nature of Claimant's compensable injury.

#### IV. CONCLUSIONS OF LAW

1. The Commission has jurisdiction over this matter pursuant to TEX. LAB. CODE § 413.031.
2. SOAH has jurisdiction over this proceeding, including the authority to issue a decision and order, pursuant to TEX. LAB. CODE ANN. §413.031 and TEX. GOV'T CODE ANN. ch. 2003.
3. Provider timely filed his request for a hearing, as specified in 28 TEX. ADMIN. CODE § 148.3.
4. Proper and timely notice of the hearing was effected upon the parties according to TEX. GOV'T CODE § 2001.052 and 28 TEX. ADMIN. CODE § 148.4.
5. Provider has the burden of proof in this matter by a preponderance of the evidence, pursuant to TEX. LAB. CODE ANN. § 413.031 and 28 TEX. ADMIN. CODE §148.21(h).
17. Under TEX. LABOR CODE § 408.021(a), 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.
18. Under 28 TEX. ADMIN. CODE § 134.600(h)(1) and (2), inpatient hospital admissions and outpatient surgical or ambulatory surgical services must be preauthorized, dependent on a showing of medical necessity.
19. Provider proved by a preponderance of the evidence that total knee replacement surgery is medically necessary for treating Claimant's compensable injury.
20. Based on the above Findings of Fact and Conclusions of Law, the request for preauthorization should be granted.

#### ORDER

IT IS ORDERED THAT the request for preauthorization for the total knee replacement surgery for Claimant is granted, and Carrier is ordered to reimburse all reasonable and necessary covered expenses associated with such surgery.

**Signed January 6, 2003.**

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**CRAIG R. BENNETT**  
**ADMINISTRATIVE LAW JUDGE**  
**STATE OFFICE OF ADMINISTRATIVE HEARINGS**