

DOCKET NO. 453-03-1241.M2
[MDR TRACKING NO. M2-02-0600-01]

_____, <i>Petitioner</i>	§	BEFORE THE STATE OFFICE
	§	
	§	
VS.	§	
	§	
TEXAS WORKERS' COMPENSATION	§	OF
COMMISSION AND	§	
_____,	§	
<i>Respondents</i>	§	ADMINISTRATIVE HEARINGS

DECISION AND ORDER

This case is a request for preauthorization for surgery to repair a left rotator cuff tear. The Administrative Law Judge (ALJ) concludes the surgery should be preauthorized.

I. Discussion

_____, the Petitioner, sustained compensable injuries _____, from lifting a cooler. The Petitioner was employed by _____. On September 29, 2001, he underwent surgery to repair a right rotator cuff tear. That surgery was at least somewhat successful, as his right shoulder pain decreased significantly.

The Petitioner's treating physician, Andrew J. Palafox, M.D., subsequently requested preauthorization for surgery to repair a partial rotator cuff tear of the Petitioner's left shoulder. _____ denied the request and Dr. Palafox's request for reconsideration. The Petitioner filed a request for medical dispute resolution. An Independent Review Organization (IRO) considered that request and denied it June 20, 2002.

The issue in this case is, basically, whether the Petitioner has a left shoulder rotator cuff tear. The Petitioner contends he does; _____ contends he does not. The two sides interpreted differently an MRI conducted on the Petitioner's left shoulder September 6, 2001.

According to Dr. Palafox, the MRI showed a partial tear of the rotator cuff, a condition that was identical to the condition that had been surgically repaired in the Petitioner's right rotator cuff. According to the IRO reviewing physician, however, the MRI showed no tear of the left rotator cuff.

The Petitioner underwent a Required Medical Evaluation (RME) on October 25, 2002. The RME involved both an examination of the Petitioner and a review of the medical records, including the MRI. Although the reviewing physician found there were “some behavioral issues involved,” he also concluded the Petitioner was suffering from a left shoulder rotator cuff tear. He recommended surgical repair of that condition. The RME essentially agreed with Dr. Palafox’s interpretation of the Petitioner’s condition.

The preponderance of the evidence supports the Petitioner’s contention that surgery to repair his left rotator cuff is medically necessary. Therefore, the surgery should be preauthorized.

II. Findings of Fact

1. The Petitioner sustained compensable injuries _____, from lifting a cooler.
2. The Petitioner was employed by _____.
3. On September 29, 2001, the Petitioner underwent surgery to repair a right rotator cuff tear.
4. The right rotator cuff surgery was at least somewhat successful, as the Petitioner’s right shoulder pain decreased significantly.
5. The Petitioner’s treating physician, Andrew J. Palafox, M.D., subsequently requested preauthorization for surgery to repair a partial rotator cuff tear of the Petitioner’s left shoulder.
6. _____ denied the preauthorization request and Dr. Palafox’s request for reconsideration.
7. The Petitioner filed a request for medical dispute resolution.
8. An IRO considered the request for medical dispute resolution and denied it June 20, 2002.
9. The Petitioner requested a hearing before the State Office of Administrative Hearings (SOAH).
10. Notice of the hearing was sent to all parties November 27, 2002.
11. 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.

12. The hearing was held January 27, 2003, at SOAH's offices in Austin, Texas. The Petitioner participated by telephone, with assistance from the Ombudsman's Office of the Texas Workers' Compensation Commission. _____ appeared by representative. The hearing was adjourned the same day.
13. The Petitioner underwent an RME on October 25, 2002.
14. The RME involved both an examination of the Petitioner and a review of the medical records, including the MRI conducted on the Petitioner's left shoulder September 6, 2001.
15. The physician who conducted the RME found the Petitioner was suffering from a left shoulder rotator cuff tear and recommended surgical repair of that condition.

III. Conclusions of Law

16. SOAH has jurisdiction over this proceeding, including the authority to issue a decision and order, pursuant to TEX. LAB. CODE ANN. §413.031(d) and TEX. GOV'T CODE ANN. ch. 2003.
17. Adequate and timely notice of the hearing was provided in accordance with TEX. GOV'T CODE ANN. §2001.052.
18. The Petitioner has the burden of proof in this matter. 28 TEX. ADMIN. CODE §148.21(h).
19. The Petitioner proved the requested surgery is reasonably required by the nature of his injury, pursuant to TEX. LAB. CODE ANN. §408.021.
20. The requested surgery should be preauthorized.

ORDER

IT IS, THEREFORE, ORDERED that the Petitioner, _____, is entitled to preauthorization for surgery to repair a left shoulder rotator cuff tear.

Signed this 30th day of January, 2003.

STATE OFFICE OF ADMINISTRATIVE HEARINGS

Henry D. Card
Administrative Law Judge