

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

DOCKET NO. 453-03-1527.M2
[MDR TRAKING NO. M2-02-0841-01]

_____,
Petitioner

V.

INSURANCE COMPANY OF THE
STATE OF PENNSYLVANIA,
Respondent

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BEFORE THE STATE OFFICE

OF

ADMINISTRATIVE HEARINGS

DECISION AND ORDER

_____ (Claimant) has appealed the decision of an Independent Review Organization (IRO)¹ denying authorization for knee replacement surgery for him. In this decision, the Administrative Law Judge (ALJ) finds that knee replacement surgery is reasonable and necessary medical care for Claimant. Therefore, the Insurance Company of the State of Pennsylvania (Carrier) is ordered to authorize and reimburse the reasonable and necessary costs associated with total knee replacement surgery for Claimant's right knee.

I. BACKGROUND FACTS

On _____, Claimant suffered a compensable, work-related injury when he fell from a ladder on the side of a truck that he drove. After his injury, Claimant received extensive medical care for his right knee, including physical therapy, prescription medications, and minor surgery. When Claimant continued to suffer pain and limited functioning of his knee, his treating physician, Dr. H.A. Reid, recommended total knee replacement surgery for him. The Carrier denied authorization for the surgery. Claimant later began seeing Dr. Ronald Talbert, who also concluded that Claimant needed total knee replacement surgery and requested preauthorization for such.

Carrier again refused to authorize the surgery, asserting that more conservative treatment should be attempted first. In reaching this decision, Carrier relied on a preauthorization evaluation conducted by a Physician Advisor for the Carrier. Claimant requested medical dispute resolution

¹ 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.

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 knee replacement surgery was not warranted.² Therefore, the IRO denied preauthorization for the requested 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 Claimant has met his burden of proving that total knee replacement surgery is medically reasonable and necessary treatment for his compensable injury. Claimant offered documents from his current treating physician, Dr. Talbert, and his prior treating physician, Dr. Reid, which indicate that all conservative treatment has been exhausted for Claimant and that a total knee replacement is the only remaining treatment which may provide some benefit to Claimant. The documentary evidence and Claimant's own testimony also support the conclusion that all reasonable conservative care has been attempted. Claimant has already had one arthroscopic surgery, has undergone physical therapy, uses a cane, takes significant medications for his pain and has waited more than two years for the surgery that was first recommended for him in 2000. Moreover, Claimant has not been working since his injury in 1999. So, virtually all of the conservative treatment options recommended have been utilized by Claimant, without medical benefit. Because of his relatively young age (44 years), Claimant will likely need another total knee replacement within the next 15 years; but, Claimant is aware of this and desires to move forward with surgery anyway.

² Respondent's Ex. 1, at 1-2.

Carrier offered the testimony of Dr. Charles Graham, who reviewed the medical records and concluded that knee replacement surgery should not be attempted at this point. Dr. Graham testified that, because of Claimant's young age and the fact that he still has cartilage on his knee, Claimant should continue with conservative treatment options, including exercise, weight reduction, biofeedback and counseling, and the use of a cane or crutches. Dr. Graham testified that it was not appropriate for Claimant to have knee replacement surgery at this time because of the potential negative side effects, the potential for surgery to provide no benefit but rather to actually reduce Claimant's functioning and/or increase his pain, and the likelihood that Claimant would need additional surgeries later. Similarly, the IRO physician concluded that: [t]here is no substantial or severe deformity in the knee or limitation in mobility to warrant a knee replacement, based on the documented impairment assessments. At such a young age, there is no guarantee that a knee replacement would eliminate the pain experienced by the patient. There is also the risk of infection, continued pain, and repeat knee replacement that figure into the risk versus benefit equation.³

In reviewing all of the evidence, then, the ALJ is faced with contrasting medical opinions from numerous doctors, all of whom have respectable credentials. After considering the varying physician opinions and the other evidence on file, the ALJ is more persuaded with the opinions of Claimant's treating physicians, Drs. Reid and Talbert. Of the doctors offering an opinion in this proceeding, they are the only two who have actually examined Claimant. The Physician Advisor, the IRO physician, and Dr. Graham merely reviewed the records. Moreover, those physicians did not conclusively testify that no benefits would be obtained from total knee replacement surgery. Rather, they focused on the risk factors associated with the surgery, the potential complications, and the likely need for additional surgeries down the road if surgery is performed now. Ultimately, as noted by the IRO Physician, they engaged in a risk-benefit analysis and concluded that the risks did not likely outweigh the benefits. The ALJ believes that it is possible for more than one course of treatment to be medically reasonable and necessary within the meaning of the workers' compensation statute, and that this is one of those situations. And, when two or more procedures exist that may provide medical benefits, it is the province of the patient to make an informed decision as to the course of action to take.

Here, the ALJ finds that total knee replacement surgery is medically reasonable and necessary and that additional conservative care will likely provide no additional benefit to Claimant. The record reveals that extensive conservative care has been provided to Claimant in the three years since his injury. 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. While reasonable medical minds have differed on the risk-benefit analysis and the propriety of the knee replacement surgery at this point, Claimant should have the option of choosing between medically reasonable courses of treatment. He has chosen to undergo surgery, a decision that most people would not voluntarily choose unless they felt it absolutely necessary.

³ Respondent's Ex. 1, at 2.

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 his workers' compensation insurance coverage was provided by the Insurance Company of the State of Pennsylvania (Carrier).
2. As a result of his injury, Claimant suffered pain and limited functioning in his right knee.
3. Claimant received extensive medical care for his knee injury, including physical therapy, prescription medications, and minor surgery.
4. Despite the treatment, Claimant continues to suffer pain and limited functioning of his knee.
5. In 2000, Claimant's treating physician, Dr. H.A. Reid, requested preauthorization from Carrier to perform total knee replacement surgery on Claimant.
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. In 2001 and 2002, Claimant's new treating physician, Dr. Ronald Talbert, requested preauthorization from Carrier to perform total knee replacement surgery on Claimant.
8. Carrier continued to deny preauthorization, maintaining that the requested treatment was not medically necessary and reasonable.
9. Claimant then requested medical dispute resolution and the Commission's MRD referred the matter to an Independent Review Organization (IRO) for determination.
10. The IRO reviewed the dispute and issued a decision on November 15, 2002, finding that the requested treatment was not medically necessary and denying authorization for the surgery.
11. In a letter dated November 21, 2002, Claimant requested a hearing before the State Office of Administrative Hearings (SOAH) regarding the IRO decision.
12. Notice of the hearing in this case was mailed to the parties on December 20, 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.

13. After being continued by agreement of the parties, the hearing on the merits convened on May 14, 2003, with Administrative Law Judge Craig R. Bennett presiding. Claimant appeared via telephone and represented himself with the assistance of Luz Loza, ombudsman. Carrier appeared through Steve Tipton, attorney. The hearing was adjourned and the record closed the same day.
14. Currently, Claimant's right knee is injured to such a degree that he suffers from severe pain and limited functioning.
15. Conservative care has been attempted on Claimant. In particular, he has undergone surgery and physical therapy, and continuously used different pain medications since his injury. Such treatments have provided only limited relief and no resolution of his pain or limited functioning.
16. 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.
17. Total knee replacement surgery is the treatment most likely to significantly benefit Claimant and restore the greatest functioning to Claimant.
18. 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 §413.031 and TEX. GOV'T CODE ANN. ch. 2003.
3. Claimant 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. Claimant 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).
6. 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.
7. 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.

8. Claimant proved by a preponderance of the evidence that total knee replacement surgery is medically necessary for treating his compensable injury.
9. 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 May 15, 2003.

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