

**DOCKET NO. 453-03-1634.M2**  
**[MDR TRACKING NO. M2-02-1003-01]**

_____, <i>Petitioner</i>	§	<b>BEFORE THE STATE OFFICE</b>
	§	
	§	
<b>VS.</b>	§	
	§	<b>OF</b>
<b>STATE OFFICE OF RISK MANAGEMENT</b>	§	
<i>Respondent.</i>	§	<b>ADMINISTRATIVE HEARINGS</b>
	§	

**DECISION AND ORDER**

\_\_\_\_\_ (Claimant), challenged the decision of the State Office of Risk Management (Carrier) denying preauthorization for a left knee arthroscopy with debridement, possible patellofemoral realignment, and possible mosaic-plasty. In this decision, the Administrative Law Judge (ALJ) finds that Claimant met her burden of showing that the requested procedures are medically necessary and should have been preauthorized. Therefore, the ALJ orders Carrier to authorize the requested procedures.

The hearing convened and closed on March 28, 2003, before Steven M. Rivas, Administrative Law Judge (ALJ). Claimant appeared and was assisted by Barton Levy, Ombudsman. Carrier appeared and was represented by Jonathan Bowe, attorney.

**I.**  
**DISCUSSION**

1. Background Facts

Claimant worked for the \_\_\_\_\_, and sustained a compensable knee injury on \_\_\_\_\_, as she reached for a food tray to \_\_\_\_\_. Claimant felt pain and heard popping noises in her left knee and was treated for her injuries at the jail infirmary. Later, Claimant came under the care of her family doctor, Grover Hubley, M.D., who subsequently referred Claimant to Mark Riley, M.D., for further treatment. On September 2, 1998, Dr. Riley performed an arthroscopy<sup>1</sup> on Claimant's left knee. The results of the arthroscopy revealed no significant findings and Dr. Riley released Claimant to light duty in October 1998. In December 1998, Claimant was reinstated to full duty and reported no discomfort until August 2001 when her left knee began to swell and cause pain.

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<sup>1</sup> The introduction of a thin fibreoptic scope into a joint space to allow direct visualization of internal structures. On-line Medical Dictionary Published at the Dept. of Medical Oncology, University of Newcastle Upon Tyne.

In 2001, Claimant returned to Dr. Riley for further treatment. Dr. Riley prescribed medication and recommended an MRI exam. On August 30, 2001, Claimant underwent an MRI, which revealed no significant findings. After reviewing the results of the MRI, Dr. Riley recommended Claimant undergo a second arthroscopy, which he performed on January 22, 2002. After the second arthroscopy, Dr. Riley prescribed Claimant home exercises and physical therapy at Madison St. Joseph's. Claimant attended six physical therapy sessions at Madison St. Joseph's and subsequently began treatment at the Back and Joint Clinic with Sam Liscum, D.C. On April 4, 2002, Claimant underwent a pain evaluation by Doris M. Cowley, M.D. Dr. Cowley noted Claimant's chronic knee pain and recommended Claimant alter her medication intake.<sup>2</sup> Claimant then started treatment with David Bailey, D.C., at the Back and Joint Clinic. Dr. Bailey administered various physical therapy procedures on Claimant and subsequently referred Claimant to Rick Seabolt, M.D., for further treatment and diagnosis.

After examining Claimant, Dr. Seabolt recommended Claimant undergo a third arthroscopy with debridement. Dr. Seabolt additionally recommended possible patellofemoral realignment and possible mosaic-plasty at the time of the arthroscopy. Dr. Seabolt submitted a request for preauthorization for these procedures, which was denied by the Carrier as not medically necessary. The dispute was referred to an Independent Review Organization (IRO). The IRO decision agreed with the Carrier that the requested procedures were not medically necessary. Claimant appealed the IRO decision to SOAH.

## 2. Applicable Law

Pursuant to the Texas Workers' Compensation Act ("the Act"), TEX. LAB. CODE ANN. § 408.021 *et seq.*, an employee who sustains a compensable injury is entitled to all 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.

Under TEX. LAB. CODE ANN. §401.011(19), health care includes all reasonable and necessary medical aid, medical examinations, medical treatment, medical diagnoses, medical evaluations, and medical services.

Certain categories of health care identified by the Commission require preauthorization, which is dependent upon a prospective showing of medical necessity under "the Act" § 413.014 and 28 TEX. ADMIN. CODE (TAC) § 134.600. In this instance under 28 TAC § 134.600(h)(2), preauthorization is required for outpatient surgical or ambulatory surgical services.

## 3. Claimant's Evidence

The evidence presented at the hearing by Claimant consisted primarily of records of ongoing treatment including the findings of the Claimant's prior arthroscopies and MRI. The evidence indicates Claimant has undergone many years of treatment for her injuries but has found no relief up

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<sup>2</sup> At the time of the evaluation, Claimant was taking Celebrex, Osteo Bi-Flex, Vicodin, ibuprofen, Triphasil, Talwin, pentazocine, and nalozone. Dr. Cowley recommended Claimant remain on Celebrex and Vicodin, but discontinue ibuprofen and Talwin.

to this point.

There is only one document that addresses the need for Claimant to undergo a third arthroscopy. That document is a progress note from Dr. Seabolt dated June 10, 2002.<sup>3</sup> In that note, Dr. Seabolt acknowledged Claimant's ongoing pain and indicated it was difficult to diagnose Claimant without conducting another arthroscopy. Dr. Seabolt recommended a repeat arthroscopy and "a combination of either patellofemoral realignment (either soft tissue or bony) or mosaic-plasty of the weightbearing portion of her lateral femoral condyle."

A patellofemoral realignment is a surgical procedure where the tight structures to the outer side of the kneecap (patella) are cut to allow the kneecap to take a better position towards the center.<sup>4</sup> A mosaic-plasty involves the transplantation of the patient's own cartilage with underlying bone in the form of punched cylinders from areas in the knee where the articular cartilage is not badly needed.<sup>5</sup> According to Dr. Seabolt, he intends to perform one or both of these procedures depending on the results of the arthroscopy. Claimant's prior physicians considered performing procedures like these in the past, however, they were never prescribed until now.<sup>6</sup>

Claimant also introduced evidence of her commitment to the physical therapy regimen she was doing. On April 29, 2002, Dr. Bailey noted Claimant "is cooperative and diligent in performing her exercises, and appears to want to do well and return to normal activity as soon as possible. Dr. Bailey noted this same "diligence" on several other occasions.

#### 1. Carrier's Evidence

Carrier's main argument in denying preauthorization was that Claimant had already

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<sup>3</sup> There are at least two copies of this document that were submitted as part of the parties' evidence. See page 12 of Claimant's documents that were submitted.

<sup>4</sup> The procedure can be done in different ways - from inside the knee as part of an arthroscopy (keyhole surgery) or from the outside. Dr. Sheila Strover, Bcs (Hons), MB.BCh. ("M.D."), MBA, [www.kneeguru.co.uk](http://www.kneeguru.co.uk).

<sup>5</sup> Part of this procedure calls for the cylinders gained from those areas to be transplanted into the defect, generally in the main weight-bearing zone, to replace the lost articular cartilage together with bone. Alpha Klinik, Munich, German, [www.alphaklinik.com](http://www.alphaklinik.com).

<sup>6</sup> On August 22, 2001, Dr. Riley noted "Some type of cartilage transplant procedure may need to be considered, but the defect is so large, I'm not sure this is practical."

undergone two arthroscopies and an MRI, and both revealed no significant findings that illustrated the cause of Claimant's pain. Carrier also questioned Claimant about what, if any, new findings would be revealed on a third arthroscopy that was not evident on the prior arthroscopies and MRI. Claimant was unable to answer Carrier's inquiry. Carrier agreed Claimant has been subjected to repeated treatment and procedures, and has found no relief. Therefore, Carrier asserted it is attempting to prevent Claimant from being "over treated" and possibly wind up in a state of complete immobility following numerous procedures.

#### **E. Analysis and Conclusion**

Carrier's position is valid. There are certain instances where a claimant may appear to continue treatment in order to forgo employment or obtain medication. However, in this case, Claimant's demeanor and therapy progress notes express her willingness to undergo the requested procedures in the hope she will be able to return to work. Claimant's commitment to returning to full work status was not overlooked by Claimant's treating doctors or this ALJ.

The IRO decision indicates no new findings were evident on Claimant's MRI or prior arthroscopy, therefore, it is "not likely Claimant will improve with a second procedure." The ALJ is not persuaded by the IRO reviewer's rationale because there is no explanation why the specific procedures would not bring relief or allow Claimant to obtain employment.

Conversely, Dr. Seabolt has requested preauthorization for two possible procedures that may bring Claimant some relief from her ongoing pain. One procedure would give Claimant better placement of her kneecap. The other procedure would add cartilage to the "weight bearing" zone of her knee. While she has had two arthroscopies, this one is necessary because it will allow Dr. Seabolt an opportunity to visualize the knee interior and determine which procedure should be performed. Claimant is aware that her pain may not completely subside after the surgery, but she indicates she is willing to try anything to relieve her pain. Furthermore, the requested procedures have not been requested before.

For the foregoing reasons, the ALJ concludes that the requested procedures are reasonable and medically necessary medical care for Claimant's compensable injury, and should be preauthorized.

## **II. FINDINGS OF FACTS**

5. \_\_\_\_\_ (Claimant), was employed by the \_\_\_\_\_ in the \_\_\_\_\_ Division. On \_\_\_\_\_, Claimant sustained a compensable knee injury when she reached for a food tray to \_\_\_\_\_.
6. At the time of Claimant's compensable injury, Claimant's employer was covered by the State Office of Risk Management (Carrier) under the Texas Workers' Compensation Act.
7. Claimant was treated by Mark Riley, M.D., who performed an arthroscopy on Claimant's knee on September 2, 1998. The results of the arthroscopy revealed no significant findings and Claimant returned to work.
8. In August 2001, Claimant's knee began to swell and cause pain. Dr. Riley treated Claimant and performed an MRI on August 30, 2001. The MRI revealed no significant findings and

- Dr. Riley recommended a second arthroscopy.
9. On January 22, 2002, Dr. Riley performed another arthroscopy, which revealed no significant findings. Dr. Riley prescribed home exercises and physical therapy.
  10. In April 2002, Claimant began treatment at the Back and Joint Clinic with Sam Liscum, D.C., and David Bailey, D.C.
  11. Claimant was later referred to Rick Seabolt, M.D., for further treatment and diagnosis. Dr. Seabolt recommended Claimant undergo another arthroscopy and possible patellofemoral realignment and possible mosaic-plasty at the time of the arthroscopy.
  12. Dr. Seabolt submitted a request for preauthorization, which was denied by Carrier.
  13. Claimant requested medical dispute resolution through an Independent Review Organization (IRO). The IRO reviewed the dispute and issued a decision on November 18, 2002, finding that the requested procedures were not medically necessary.
  14. Claimant appealed the IRO decision to the State Office of Administrative Hearings (SOAH).
  15. Notice of the hearing in this case was mailed to the parties on January 10, 2003. 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.
  16. The hearing convened and closed on March 28, 2003, before Steven M. Rivas, Administrative Law Judge (ALJ). Claimant appeared with Barton Levy, Ombudsman. Carrier appeared through Jonathan Bowe, attorney.
  17. Claimant is not seeking the requested procedures as a means to continue her treatment and forbear employment.
  18. Claimant is determined to undergo treatment that will prepare her for employment.
  19. The procedures requested by Dr. Seabolt have not been prescribed before.
  20. The arthroscopy will allow Dr. Seabolt an opportunity to view Claimant's knee interior and determine which procedure should be done.
  21. Dr. Seabolt intends to perform either a patellofemoral realignment or a mosaic-plasty, depending on the results of the arthroscopy.

**III.**  
**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(d) and TEX. GOV'T CODE ANN. ch. 2003.
3. Claimant timely filed its notice of appeal, 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. Under TEX. LABOR CODE § 408.021(a)(1), 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 that cures or relieves the effects naturally resulting from the compensable injury.
6. Claimant met her burden of proof to show that the requested procedures should be preauthorized, because they are medically necessary.
7. Based on the above Findings of Facts and Conclusions of Law, Claimant's request for preauthorization of the requested procedures should be granted.

**ORDER**

IT IS ORDERED THAT the arthroscopy and possible patellofemoral realignment and possible mosaic-plasty requested by Claimant be preauthorized.

**Signed this 24<sup>th</sup> day of April, 2003.**

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**STEVEN M. RIVAS**  
**STATE OFFICE OF ADMINISTRATIVE HEARINGS**  
**ADMINISTRATIVE LAW JUDGE**