

**SOAH DOCKET NO. 453-03-1756.M2
[MDR TRACKING NO. M2-03-0316-01]**

**AMERICAN HOME ASSURANCE
COMPANY,
Petitioner**

V.

_____,
Respondent

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**BEFORE THE STATE OFFICE
OF
ADMINISTRATIVE HEARINGS**

DECISION AND ORDER

I. Introduction

American Home Assurance Company (Carrier) has appealed a decision of an independent review organization (IRO) regarding preauthorization of medical services for ____ (Claimant). The IRO found it is medically necessary for the Claimant to have surgery to release her right ulnar nerve. The only disputed issue is whether adequate documentation was submitted to show that the surgery is reasonably medically necessary.

As set out below, the Administrative Law Judge (ALJ) finds that adequate documentation was submitted to show that the surgery is reasonably medically necessary to treat the Claimant's symptoms stemming from her compensable injury and preauthorizes it.

II. Documentation of the Need for Surgery

Even the Carrier-chosen peer review doctor agrees that the Claimant's right ulnar nerve is entrapped. Moreover, on May 14, 2002, a Texas Workers' Compensation Commission (TWCC) hearings officer found that the Claimant's compensable injury extended to and included her ulnar nerve entrapment at her right elbow. In accordance with the split of jurisdiction between the TWCC staff and SOAH, that determination is not within the scope of this case, and the ALJ must assume it to be correct.

However, the Carrier argues that the documentation does not show that the proposed surgery is necessary to treat that entrapped right ulnar nerve. The Carrier agrees that it has the burden of proof. The Carrier's expert doctor reviewed the file and found that the documentation was inadequate. The ALJ disagrees with her. The documented and uncontroverted evidence shows that the Claimant suffers pain and discomfort as a result of the ulnar nerve entrapment. Moreover, it shows that other measures have been tried, with little long term success, to ease her pain and

discomfort. In addition to the IRO, the Claimant's treating doctor and the TWCC designated doctor all found and documented their opinions that surgery was required. There is no evidence that surgery is not required.

The ALJ concludes that the documentation shows that the Claimant reasonably needs surgery to release her right ulnar nerve and that surgery should be preauthorized.

III. Findings of Fact

1. On _____, _____. (Claimant) sustained a work-related, repetitive-motion trauma injury to her bilateral wrists and elbows as a result of her work activities (Compensable Injury).
2. The Compensable Injury extends to and includes bilateral ulnar nerve entrapment at the elbows.
3. As a result of the Compensable Injury, the Claimant suffers pain and discomfort in her right arm.
4. On the date of injury, the Claimant's employer was _____, and its workers' compensation insurance carrier was American Home Assurance Company (Carrier).
5. Alvaro A. Hernandez, M.D. (Treating Physician) prescribed surgical release of the Claimant's right ulnar nerve to relieve the Claimant's pain and discomfort and sought preauthorization of that surgery from the Carrier.
6. A release of the Claimant's right ulnar nerve likely will ease her arm pain and discomfort.
7. The Carrier denied the requested preauthorization.
8. The Provider filed a request for medical dispute resolution with the Texas Workers' Compensation Commission (TWCC).
9. An independent review organization (IRO) reviewed the medical dispute and found that it was medically necessary to treat the Claimant's compensably injured right ulnar nerve.
10. After the IRO decision was issued, the Claimant asked for a contested-case hearing by a State Office of Administrative Hearings (SOAH) Administrative Law Judge (ALJ).
11. Notice of a February 13, 2003, contested-case hearing concerning the dispute was mailed to the Carrier, and the Claimant on January 16, 2003.
12. On February 13, 2003, SOAH ALJ William G. Newchurch held a contested-case hearing on

the dispute at the William P. Clements Office Building, Fourth Floor, 300 West 15th Street, Austin, Texas. The hearing concluded and the record closed on that same day.

13. The Claimant telephonically appeared at the hearing and was assisted by TWCC Ombudsman Luz Loza.
14. The Carrier appeared at the hearing through its attorney, Dan C. Kelly.
15. The Provider did not appear at the hearing.

IV. Conclusions of Law

1. 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 TEX. LABOR CODE ANN. (Labor Code) §§ 402.073(b) and 413.031(k) (West 2002) and TEX. GOV'T CODE ANN. (Gov't Code) ch. 2003 (West 2001).
2. Adequate and timely notice of the hearing was provided in accordance with Gov't Code §§ 2001.051 and 2001.052.
3. SOAH's Chief ALJ has jurisdiction to adopt procedural rules for SOAH hearings, and a referring agency's procedural rules govern a hearing only to the extent that SOAH's rules adopt them by reference. Gov't Code § 2003.050 (a) and (b).
4. Under TWCC's rules, the party seeking relief has the burden of proof. 28 TEX. ADMIN. CODE (TAC) §148.21(h) (2002).
5. Under TWCC's rules, the IRO's decision has presumptive weight in all appeals from reviews of medical necessity disputes. 28 TAC § 133.308(v).
6. The Chief ALJ has not adopted TWCC's burden-of-proof or IRO-decision-presumptive-weight rules, and no statute requires the use of those rules.
7. In determining the burden of proof, the referring agency's documented policy is to be considered, but it must be modified to consider the parties' access to and control over pertinent information and so that no party is required to prove a negative. 1 TAC § 155.41(b).
8. Based on the above Findings of Fact, Conclusions of Law, and TWCC's documented policy set out in its rules, the Carrier should have the burden of proof in this matter.
9. 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. Labor Code § 408.021 (a).

10. TWCC must specify by rule which health care treatments and services require express pre-authorization by a carrier. A carrier is not liable for those specified treatments and services unless pre-authorization is sought by the claimant or a health care provider and either obtained from the carrier or ordered by TWCC. Labor Code §413.014
11. Pre-authorization is required for the disputed ulnar-nerve-release surgery. 28 TAC § 134.600(h)(2).
12. Based on the above Findings of Fact and Conclusions of Law, adequate documentation exists to show that it is reasonably necessary for the Claimant to have surgery to release her entrapped right ulnar nerve.
13. Based on the above Findings of Fact and Conclusions of Law, surgery to release the Claimant's right ulnar nerve should be preauthorized.

ORDER

IT IS ORDERED THAT surgery to release the Claimant's right ulnar nerve is preauthorized.

Signed February 27, 2003.

**WILLIAM G. NEWCHURCH
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS**