

SOAH DOCKET NO. 453-03-2171.M2
[MDR TRACKING NO. M2-02-0687-01]

_____, PETITIONER	§ § § § § § § §	BEFORE THE STATE OFFICE OF ADMINISTRATIVE HEARINGS
V. TPS JOINT SELF INSURANCE FUNDS RESPONDENT		

DECISION AND ORDER

I. DISCUSSION

____ (Petitioner) appealed the Findings and Decision of the Texas Workers' Compensation Commission (Commission) acting through Independent Review Incorporated, an Independent Review Organization (IRO). The Commission's Order denied the preauthorization request of Petitioner for an open right carpal tunnel release. The Commission determined that an open right carpal tunnel release was not medically necessary within the meaning of Sections 408.021 and 401.011(19) of the Texas Workers' Compensation Act, TEX. LABOR CODE ANN. § 401 *et. seq.* (the Act).

This decision grants the relief sought by Petitioner and preauthorizes the requested open right carpal tunnel release.

A one-day hearing convened June 26, 2003, before Administrative Law Judge (ALJ) Carol Wood. Petitioner appeared by telephone and was assisted by Commission Ombudsman Luz Loza. William Weldon represented TPS Joint Self Insurance Funds (Carrier). Tomas Leon, a licensed court interpreter translated for Petitioner. There were no contested issues of notice or jurisdiction. The record closed following adjournment of the hearing on June 26, 2003.

Petitioner, a 46-year-old female, sustained a compensable injury on _____, when she slipped in a puddle of water, fell, and landed on her outstretched right hand and wrist. Petitioner tried conservative treatment and medication. She underwent a De Quervain's release in September 2000, but continued to experience a tingling sensation and weakness in her right hand. An EMG/nerve conduction study was performed, and the results were consistent with right carpal tunnel syndrome.¹ She underwent an endoscopic right carpal tunnel release on February 22, 2001.² The

¹ Two "walls" compose the carpal tunnel or canal. The bones of the wrist compose the deep wall while the thick ligament located just under the skin on the wrist's palm side composes the superficial wall. The median nerve and certain tendons travel through this tunnel or canal. The walls are rigid and, when swelling occurs, pressure is supplied to the median nerve causing muscles it supplies to become weak. Pain, tingling and numbness may result. Cutting the carpal ligament longitudinally releases the pressure on the nerve.

² An endoscopic procedure involves the insertion of a probe into the wrist and, using a camera to view the carpal canal, the tendon is cut.

numbness and tingling sensation continued. A second EMG/nerve study in October 15, 2001, demonstrated compressive median neuropathy at the right wrist. Petitioner did not benefit from the minimally invasive endoscopic carpal tunnel surgery.

Petitioner now seeks an open right carpal tunnel release.^{3, 4} One of her treating physicians, Emile Mathurin, M.D., testified in support of the medical necessity of the open right carpal tunnel release. His testimony is discussed below.

Carrier denies the open right carpal tunnel release is medically necessary. Carrier contends the long-term results of endoscopic surgery are similar to the outcome of the open procedures and that endoscopic carpal tunnel release does not have a higher rate of unsuccessful results or a higher rate of recurrence compared to open carpal tunnel release.

By letter dated January 14, 2003, the IRO concluded that an open right carpal tunnel release was not medically necessary for the diagnosis and treatment of Petitioner's condition. The IRO decision stated that (1) clinical experience and the MedLine literature failed to show that endoscopic carpal tunnel release has a higher rate of unsuccessful results and recurrence compared to open carpal tunnel release; (2) the long-term results of endoscopic surgery are similar to the outcome from open procedures; and (3) electrophysiologic tests have "not always demonstrated a relationship with the patient's complaints or symptoms."

The articles and documents relied upon by the IRO are not identified in the IRO decision. The evidentiary record does not contain the documents, if any, utilized by the IRO. The IRO did not identify the clinical experience referenced in its medical necessity determination. For these reasons, the IRO decision is given no weight.

Petitioner had the burden of proof in this proceeding. Pursuant to the Act, an employee who has sustained a compensable injury is entitled to all health care reasonably required by the nature of the injury, as and when needed. Under the Act, the employee is specifically entitled to 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.

Dr. Mathurin was not notified of the IRO review and was given no opportunity to provide information to the IRO. According to Dr. Mathurin, the medical literature and clinical experience do show that, in a small population of patients, endoscopic carpal tunnel release surgery has a higher failure rate than an open right carpal tunnel release. A November 15, 2001, letter from Alain E. Elbaz, M.D., another of Petitioner's treating physicians, to Burkley Risk Administrators also asserts

³ While Petitioner is also diagnosed with carpal tunnel syndrome of the left wrist, she seeks only a procedure for the right wrist.

⁴ In an open procedure, an incision opens the wrist and creates an open field where the tendon, nerves and canal structure are visible. The tendon is surgically cut, and the field can be cleaned.

that the endoscopic procedure has a higher rate of unsuccessful results and recurrence than the open procedure. The ALJ finds Dr. Emile Mathurin's medical analysis the most credible.

Carrier presented no physician testimony, but did enter into evidence two (2) MedLine documents and two (2) other documents from the National Institutes of Health. The four documents total 14 pages. No one asserts that these 14 pages represent the totality of the medical literature regarding carpal tunnel syndrome or the effectiveness of endoscopic and open release surgery.

The requested procedure is not experimental. There are studies supporting the performance of an open carpal tunnel release following an endoscopic carpal tunnel release. While there may be a debate regarding these studies about the extent to which an open release following an endoscopic release resolves carpal tunnel syndrome, the credible medical evidence in the record shows that, for some individuals, an open release following an unsuccessful endoscopic release can be successful in relieving the pain and other symptoms associated with carpal tunnel syndrome.

Some individuals may get no relief from either procedure. According to the evidence tendered by Carrier, treatments for carpal tunnel syndrome should begin as early as possible. The longer an individual has symptoms present, the more variable the extent of recovery from either procedure. Petitioner has undergone all other possible treatments without relief. She has sought preauthorization from Carrier for the open release since September 2001. Carrier relies upon the possibility that Petitioner may not achieve relief from an open release as a basis for its position that the procedure is not medically necessary. Petitioner has exhausted all other possibilities. The medical evidence establishes that Petitioner may well achieve relief from the procedure and that the open right carpal tunnel release is reasonably required by the nature of Petitioner's injury. Petitioner is entitled to the procedure under the Act.

The ALJ finds the preponderance of the evidence supports preauthorization for the requested open right carpal tunnel release. The requested open right carpal tunnel release is medically necessary.

II. FINDINGS OF FACT

1. _____ (Petitioner) a 46-year-old female, sustained a work related injury on _____, when she slipped in a puddle of water, fell, and landed on her outstretched right hand and wrist.
2. Petitioner tried conservative treatment and medication.
3. Petitioner underwent a De Quervain's release in September 2000, but continued to experience a tingling sensation and weakness in her right hand.
4. An EMG/nerve conduction study was performed, and the results were consistent with right carpal tunnel syndrome.

5. Petitioner underwent a right endoscopic carpal tunnel release on February 22, 2001. The numbness and tingling sensation continued.
6. A second EMG/nerve study in October 15, 2001, demonstrated compressive median neuropathy at the right wrist.
7. Petitioner did not benefit from the minimally invasive endoscopic carpal tunnel surgery.
8. Petitioner seeks preauthorization for an open right carpal tunnel release.
9. An endoscopic procedure involves the insertion of a probe into the wrist and, using a camera to view the carpal canal, the tendon is cut. In an open procedure, an incision opens the wrist and creates an open field where the tendon, nerves, and canal structure are visible. The tendon is surgically cut and the field can be cleaned.
10. TPS Joint Self Insurance Funds (Carrier) denies the open right carpal tunnel release is medically necessary.
11. Carrier contends the long-term results of endoscopic surgery are similar to the outcome of the open procedures and that endoscopic carpal tunnel release does not have a higher rate of unsuccessful results or a higher rate of recurrence compared to open carpal tunnel release.
12. By letter dated January 14, 2003, Independent Review Incorporated, an Independent Review Organization (IRO), concluded that an open right carpal tunnel release was not medically necessary for the diagnosis and treatment of Petitioner's condition.
13. The IRO determined that (1) clinical experience and the MedLine literature failed to show that endoscopic carpal tunnel release has a higher rate of unsuccessful results and recurrence compared to open carpal tunnel release; (2) the long-term results of endoscopic surgery are similar to the outcome from open procedures; and (3) electrophysiologic tests do not always demonstrate a relationship with the patient's complaints or symptoms.
14. The IRO decision is given no weight because (1) the articles and documents relied upon by the IRO are not identified in the IRO decision; (2) the evidentiary record does not contain the documents, if any, utilized by the IRO; and (3) the IRO did not identify the clinical experience referenced in its medical necessity determination.
15. Carrier presented no physician testimony, but did enter into evidence two (2) Medline documents and two (2) documents from the National Institutes of Health. The four documents total 14 pages.
16. Carrier's exhibits do not constitute the totality of the medical literature regarding carpal tunnel syndrome or the effectiveness of endoscopic and open release surgery.

17. Emile Mathurin, M.D., one of Petitioner's treating physicians, testified in support of the medical necessity of the open right carpal tunnel release.
18. Dr. Emile Mathurin was not notified of the IRO review and was given no opportunity to provide information to the IRO.
19. Dr. Emile Mathurin's medical analysis is the most credible medical evidence.
20. The medical literature and clinical experience show that, in a small population of patients, endoscopic carpal tunnel release surgery has a higher failure rate than an open right carpal tunnel release.
21. The requested open carpal tunnel release procedure is not experimental.
22. Some individuals may get no relief from either an endoscopic carpal tunnel release procedure or from an open carpal tunnel release procedure.
23. Treatments for carpal tunnel syndrome should begin as early as possible because the longer an individual has symptoms present, the more variable the extent of recovery from either procedure.
24. Petitioner has undergone all other possible treatments without relief and has exhausted all other possibilities.
25. The medical evidence establishes that Petitioner may well achieve relief from an open right carpal tunnel release procedure.
26. An open right carpal tunnel release is health care that is reasonably required by the nature of Petitioner's injury.
27. An open right carpal tunnel release procedure is medically necessary.
28. On January 27, 2003, Petitioner timely requested a hearing to contest the IRO decision of March 11, 2003.
29. The IRO decision is deemed a Decision and Order of the Texas Workers' Compensation Commission (Commission).
30. By letter dated February 18, 2003, the Commission issued a notice of hearing.
31. On March 4, 2003, Commission Ombudsman Luz Loza filed a notice of written appearance based upon Petitioner's request for ombudsman assistance.

32. By Order dated April 16, 2003, the April 17, 2003, hearing was continued at Petitioner's request.
33. A one-day hearing was convened by Administrative Law Judge Carol Wood on June 26, 2003, in the hearing rooms of the State Office of Administrative Hearings.
34. Petitioner appeared by telephone. Commission Ombudsman Luz Loza was present and assisted Petitioner. William E. Weldon represented Carrier.

III. CONCLUSIONS OF LAW

1. The Texas Workers' Compensation Commission has jurisdiction to decide the issue presented pursuant to the Texas Workers' Compensation Act, TEX. LABOR CODE ANN.(Labor Code) § 413.031.
2. 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 Labor Code § 413.031(k) and TEX. GOV'T. CODE ANN. (Government Code) ch. 2003.
3. Petitioner timely requested a hearing in this matter pursuant to 28 TEX. ADMIN. CODE (TAC) §§ 102.7 and 148.3.
4. Notice of the hearing was proper and complied with the requirements of Government Code ch. 2001.
5. Petitioner had the burden of proof in this matter, which was the preponderance of evidence standard. 28 TAC §§ 148.21(h) and (i); 1 TAC § 155.41(b).
6. An employee who has sustained a compensable injury is entitled to all health care reasonably required by the nature of the injury as and when needed. The employee is specifically entitled to 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. Labor Code § 408.021(a).
7. Pursuant to Labor Code § 413.014, for a carrier to be liable for certain services and supplies, the service must be preauthorized by the carrier or by order of the Commission.
8. Based upon the foregoing Findings of Fact and Conclusions of Law, the requested open right carpal tunnel release procedure is medically necessary.

ORDER

THEREFORE IT IS ORDERED that the relief sought by Petitioner ____ is **GRANTED** and the open right carpal tunnel release procedure is preauthorized.

SIGNED this 11th day of July 2003.

CAROL WOOD
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS