

<u>      </u> <b>PETITIONER</b>	§	
	§	<b>BEFORE THE STATE OFFICE</b>
	§	
	§	
<b>V.</b>	§	
	§	<b>OF</b>
<b>TEXAS WORKERS' COMPENSATION COMMISSION, AND TWIN CITY FIRE INSURANCE COMPANY</b>	§	
<b>RESPONDENTS</b>	§	<b>ADMINISTRATIVE HEARINGS</b>

### DECISION AND ORDER

\_\_\_\_ (Petitioner) appealed the Independent Review Organization's (IRO's) decision denying her preauthorization for a total left knee replacement. This decision finds the requested preauthorization should be granted.

#### **I. JURISDICTION, NOTICE, AND PROCEDURAL HISTORY**

There were no contested issues of jurisdiction or notice. Therefore, those matters are addressed in the findings of fact and conclusions of law without further discussion here.

The hearing in this matter was held April 30, 2003, and May 7, 2003, at the State Office of Administrative Hearings (SOAH) before Administrative Law Judge (ALJ) Michael J. O'Malley. Twin City Fire Insurance Company (Respondent) appeared through its attorney, Steven M. Tipton. Petitioner appeared at the hearing and was assisted by Luz Loza, Ombudsman for Texas Workers' Compensation Commission. After receipt of evidence and argument, the record closed on May 7, 2003.

#### **II. DISCUSSION**

##### **A. Background Facts**

On\_\_\_\_, Petitioner suffered a compensable left knee injury while at work. Henry H. Hendrix, M.D. has been treating Petitioner since her injury. Petitioner has had two surgeries and conservative care. The conservative care has failed, and the two surgeries have provided only short-term relief; therefore, Dr. Hendrix seeks preauthorization for a total left knee replacement.

##### **B. Legal Standards**

Pursuant to the Texas Worker's Compensation 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. 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. TEX. LAB. CODE ANN. § 408.021(a).

### 3. Evidence

In this case, Petitioner has the burden of proof because the IRO determined that the total left knee replacement was not medically necessary. Petitioner testified on her own behalf, and the ALJ admitted in evidence the medical reports of Dr. Hendrix. Petitioner testified that she has had two surgeries on her left knee that offered her temporary relief. However, she testified that her knee has become progressively worse, preventing her from returning to work. Petitioner further stated that she has difficulty walking and has had to modify her lifestyle significantly because of her knee. Petitioner takes anti-inflammatory medication regularly and pain medication as needed to function normally.

Dr. Hendrix testified on behalf of Petitioner. He stated that Petitioner has failed all conservative treatment, including anti-inflammatory medications, topicals, knee braces, glucosamine chondroitin, walking aids, physical therapy, and visco type injections. Dr. Hendrix has also performed two surgeries on Petitioner. Although the surgeries provided short-term relief, they did not provide enough relief for Petitioner to return to work. Dr. Hendrix testified that, other than a total knee replacement, no other options remain for Petitioner. He stated that Petitioner could modify her lifestyle but, at her current condition, she could not return to work. He further indicated that her condition will continue to get worse. According to Dr. Hendrix, if the total knee replacement is not done at this time, Petitioner's knee will deteriorate to such a degree that complications could develop when the total knee replacement is finally preauthorized.

Respondent offered and the ALJ admitted in evidence the medical documents it submitted to the IRO. Respondent did not present any witnesses. Respondent argues that the total left knee replacement is not medically necessary. Respondent, however, did not point to any specific documents in the record that it relied on in reaching this conclusion. In reaching its conclusion that the total knee replacement is not medically necessary, Respondent relies on the IRO decision and argues that Petitioner could modify her lifestyle to accommodate her left knee injury.

### 4. ALJ's Analysis

The ALJ finds that the preauthorization is warranted for the following reasons. Petitioner's left knee has become progressively worse, preventing her from returning to her.<sup>1</sup> She has modified her lifestyle to such a degree that she spends a lot of time on the sofa to avoid having to walk or use her knee. If she does become active, her knee begins to swell and, at that point, she takes anti-inflammatory medication. Petitioner's left knee injury occurred on August 3, 2000, almost three years ago. Since that time, Dr. Hendrix has tried conservative treatment as well as performed two surgeries with no success. A total left knee replacement is the only remaining option for Petitioner.

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<sup>1</sup> Dr. Hendrix's reports and x-rays show that Petitioner's knee condition is getting worse.

Although the IRO decision found that the total knee replacement was not medically necessary, it does not appear that the IRO had all the relevant medical documents or did not review all the relevant documents in making its decision. The IRO decision relies mainly on a radiograph performed in August 2000, which was interpreted to be normal. The IRO decision further notes that no documentation exists since the surgery (arthroscopy) that would indicate that a total knee replacement is medically necessary. The medial evidence in the record for this case indicates otherwise. The last surgery was performed on December 6, 2001. After this surgery, Petitioner experienced short-term relief. However, her condition soon began to deteriorate. On September 6, 2002, Dr. Hendrix noted that he saw no alternatives other than a complete knee replacement. He stated that a repeat surgery/arthroscopy would only provide short-term relief and conservative care has proven to be fruitless. On November 18, 2002, Dr. Hendrix noted that Petitioner's left knee showed mild to moderate swelling with medial and lateral joint line pain. He emphasized again that Petitioner had failed all conservative treatment; therefore, she needed a total knee replacement. Her x-rays on November 18, 2002, showed joint space narrowing on the medial side with spur formation in the patella femoral joint. On February 18, 2003, Petitioner's x-rays showed the knee becoming progressively worse. On April 23, 2003, Dr. Hendrix again noted that Petitioner has failed all conservative treatment, and he further indicated that her arthroscopic pictures show areas of full cartilage loss as well as meniscal pathology.

Petitioner is 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 work. TEX. LAB. CODE ANN. § 408.021(a). The ALJ finds that the total left knee replacement is medically necessary and should be preauthorized to enhance Petitioner's ability to return to work.

### **III. FINDINGS OF FACT**

1. On \_\_\_\_, \_\_\_\_ (Petitioner) suffered a compensable left knee injury.
2. At the time of Petitioner's compensable injury, Twin City Fire Insurance Company (Respondent) was the workers' compensation insurer.
3. Petitioner suffers from left knee pain caused by the injury.
4. Henry H. Hendrix, M.D. became Petitioner's treating doctor. He performed two surgeries and provided conservative treatment.
5. Dr. Hendrix seeks preauthorization for a total left knee replacement because all other types of treatment have failed.
6. Without the total left knee replacement, it is unlikely that Petitioner will be able to return to work.
7. The preauthorization request was submitted, and Respondent denied the request, stating that the left knee replacement was not medically necessary.

8. In a decision issued January 16, 2003, the Independent Review Organization (IRO) denied preauthorization for the total left knee replacement.
9. On March 4, 2003, Petitioner appealed the IRO's decision and requested a hearing before the State Office of Administrative Hearings (SOAH).
10. On April 3, 2003, the Texas Worker's Compensation Commission (Commission) issued the notice of hearing.
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 held; a reference to the particular sections of the statutes and rules involved; and a short, plain statement of the matters asserted.
12. On April 30 and May 7, 2003, Administrative Law Judge (ALJ) Michael J. O'Malley convened the hearing. Respondent appeared through its attorney, Steven M. Tipton. Petitioner appeared at the hearing and was assisted by Luz Loza, Ombudsman for the Commission.
13. Because Petitioner has exhausted all conservative treatment and has had two surgeries on her left knee with no success, preauthorization for the total left knee replacement is warranted to allow Petitioner every opportunity to return to work.

#### **IV. CONCLUSIONS OF LAW**

1. The Texas Workers' Compensation Commission (Commission) has jurisdiction related to this matter pursuant to the Texas Workers' Compensation Act (the Act), TEX. LABOR CODE ANN. § 413.031.
2. SOAH has jurisdiction over matters related to the hearing in this proceeding, including the authority to issue a decision and order, pursuant to § 413.031(d) of the Act and TEX. GOV'T CODE ANN. ch. 2003.
3. The hearing was conducted pursuant to the Administrative Procedure Act, TEX. GOV'T CODE ANN. ch. 2001.
4. Adequate and timely notice of the hearing was provided in accordance with TEX. GOV'T CODE ANN. §§ 2001.051 and 2001.052.
5. Petitioner had the burden of proof in this case pursuant to 28 TEX. ADMIN. CODE § 148.21(h).
6. Petitioner proved that the total left knee replacement was medically necessary and should be preauthorized.

7. Petitioner, who sustained a compensable injury, is entitled to all health care reasonably required by the nature of the injury as and when needed. She is specifically entitled to health care that cures or relieves the effects naturally resulting from the compensable injury, promotes recovery, or enhances her ability to return to or retain employment, which would include the total left knee replacement. The Act § 408.021(a).
8. Petitioner's request for preauthorization for the total left knee replacement is medically necessary and should be approved.

**ORDER**

**IT IS ORDERED** that preauthorization for the total left knee replacement, requested by Petitioner, is granted.

**SIGNED this 9<sup>th</sup> day of May 2003.**

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**MICHAEL J. O'MALLEY**  
**Administrative Law Judge**  
**State Office of Administrative Hearings**