

BRIAN RANDALL, D.C.,	§	BEFORE THE STATE OFFICE
PETITIONER	§	
	§	
V.	§	OF
	§	
TEXAS WORKERS' COMPENSATION	§	
COMMISSION AND _____	§	
_____,	§	
RESPONDENTS	§	ADMINISTRATIVE HEARINGS

DECISION AND ORDER

Brian Randall, D.C. (Provider) appealed the decision of the Texas Workers' Compensation Commission's (Commission) designee, an independent review organization (IRO), which denied Provider's preauthorization request to perform a revision right total knee arthroplasty with a placement filter prior to the knee replacement for a workers' compensation claimant (Claimant).¹ _____ (Carrier) denied preauthorization on the basis that the surgery was not medically necessary healthcare. This decision finds preauthorization for the surgery should be granted.

I. JURISDICTION, NOTICE, AND PROCEDURAL HISTORY

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

The hearing in this matter convened April 30, 2003, at the State Office of Administrative Hearings, 300 W. 15th Street, Austin, Texas, with Administrative Law Judge (ALJ) Catherine Egan presiding. Carrier was represented by its attorney, Steven Tipton. Dr. Randall represented himself. The Claimant appeared and testified. The Commission chose not to participate in the hearing. To allow Provider to file evidence, the record remained opened. On May 15, 2003, Respondent filed the additional evidence for the Provider, which was marked as Exhibit 2, and the record was closed.

II. DISCUSSION

A. Background

In ____, Claimant injured her right knee while at work, an injury which was compensable under the Texas Workers' Compensation Act (Act). At the time of the compensable injury, Carrier was responsible for Claimant's workers' compensation insurance coverage. Claimant has not returned to work since the injury. Because of her compensable injury, Claimant has undergone several surgeries to her right knee starting in March 1999. These include arthroscopy, osteochondral graft, lateral retinacular release and placement of a pain pump followed by open knee surgery, and a total knee replacement followed by manipulation under anesthesia (MUA).² The total knee replacement was performed on May 13, 2002. The MUA was performed on September 2,

¹The MDR docket number was M2-03-0617-01.

²Ex. 2 at 16.

2002, with minimal improvement noted.³ Despite all medical intervention, Claimant continues to experience severe pain and stiffness in her right knee and requires crutches to walk.

Provider referred Claimant to Samer N. Tawakkol, M.D., an orthopedic surgeon.⁴ Dr. Tawakkol physically examined Claimant on November 21, 2002. After reviewing her medical history, conducting the physical examination, and running various test, Dr. Tawakkol recommended she undergo another total knee replacement in an attempt to reduce her pain and the stiffness. On December 16, 2002, Carrier received a request to preauthorize the procedure. Carrier declined to preauthorize the surgery as medically unnecessary, and argued that further surgery was contraindicated.⁵ On December 20, 2002, Dr. Tawakkol filed a request for reconsideration noting that Claimant was not getting any better even with physical therapy. Carrier again denied the request.⁶

Provider requested medical dispute resolution from the Commission. Pursuant to 28 TEX. ADMIN. CODE (TAC) §133.308, the request was handled by an IRO selected by the Commission. The IRO reviewer found the surgery was not medically necessary and should not be preauthorized, stating:

No information was provided for this review to support that a revision of the right knee replacement will result in improved motion and diminished pain for this patient. The patient has been through multiple operations on her right knee resulting in arthrofibrosis with loss of knee motion. A knee manipulation was performed four months after her knee replacement. The fibrosis adhesions which developed after the knee replacement had four months to mature prior to the manipulation. The patient's loss of motion in the right knee is likely due to the soft tissue contractures, therefore replacing the total joint would not likely improve the range of motion. If the knee components are in a "poor" position, there is no documentation to state how the components are malaligned and how they are limiting the patient's knee motion.

Provider timely appealed the IRO decision. The parties presented copies of Claimant's medical records that each side had submitted to the IRO reviewer. These records were admitted as Exhibits 1 and 2. Other than the IRO records, Carrier presented no evidence. Provider, Dr. Tawakkol, and Claimant testified at the hearing.

B. Legal Standards

Provider has the burden of proof in this proceeding. 28 TAC §§ 148.21(h) and (i); 1 TAC § 155.41. Pursuant to the Act, an employee who has sustained a compensable injury is entitled to all

³Ex. 1 at 12.

⁴Dr. Tawakkol was Fellowship trained in joint replacement surgery after completing five years in orthopedic residency. He has been in practice for five years and has performed over 200 surgeries.

⁵Ex. 1 at 22.

⁶Ex. 1 at 27.

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). Health care includes all reasonable and necessary medical services. TEX. LAB. CODE ANN. § 401.011(19)(A). A medical benefit is a payment for health care reasonably required by the nature of the compensable injury. TEX. LAB. CODE ANN. § 401.011(31). The decision of an IRO is to be given presumptive weight. 28 TAC 133.3080(v). Certain types of healthcare, including inpatient surgery require preauthorization from the carrier. 28 TAC §134.600(h).

C. Provider's Position

Claimant testified that she suffers with excruciating pain most of the time and has swelling and stiffness in her right knee. The pain goes down into her leg and into her foot. She has trouble putting on and taking off her right shoes and socks and cannot walk or drive for long distances due to the pain and stiffness. She must use crutches to walk.⁷ She has undergone physical therapy since the knee replacement surgery with little relief of her symptoms.

Dr. Tawakkol evaluated Claimant and determined that she suffers with a failed right total knee arthroplasty. According to Dr. Tawakkol, Claimant's knee X-ray showed "evidence of a cemented patellar component with a proximal part that is fragmented at the proximal tip."⁸ Dr. Tawakkol opined that Claimant need a replacement (revision) of the knee prosthesis. During the surgery, while the knee is exposed Dr. Tawakkol would lengthen the quadricep tendonCa VY quadraplasty to lengthen the scarred muscle. By lengthening the tendon, removing the adhesions, and replacing the knee prosthesis with a properly fitting knee prosthesis, Dr. Tawakkol asserted, Claimant has an 85 percent chance to improve her condition. Both Provider and Dr. Tawakkol stressed that if Claimant does not undergo this second knee replacement her condition will continue to deteriorate until she is totally disabled.⁹ Provider urged that Dr. Tawakkol be preauthorized to do a "Revision of her right total knee arthroplasty to include a placement filter prior to the knee replacement."¹⁰

Claimant has also been treated by a Viet Nguyen, M.D., for pain management. From June 2002 through November 2002, Dr. Nguyen's notes indicate that Claimant's complaints of pain and stiffness have increased,¹¹ supporting Provider and Dr. Tawakkol's concerns that left untreated Claimant's condition will continue to deteriorate.

⁷Ex. 2 at 16.

⁸Ex. 2 at 17.

⁹Ex. 2 at 2-4.

¹⁰Ex. 2 at 3.

¹¹Ex. 2 at 24-33.

In addition to Provider's and Dr. Tawakkol's medical opinions that this is a necessary procedure, on February 13, 2003, B. T. Wright, Jr., M.D. examined Claimant to assess her medical impairment rating. Dr. Wright conducted a physical examination of Claimant and reviewed her medical records. According to Dr. Wright's report the "[t]otal knee joint replacement arthroplasty in (sic) poor position."¹² Dr. Wright noted that Claimant required two crutches to walk and assigned her a 30 percent whole person impairment rating because of the residual effects of the poorly positioned knee replacement. In conclusion, Dr. Wright reported "[t]he likelihood is that the patient will require removal of implants, debridement of the knee, treatment for any residual infection if any is found, and then finally reimplantation of implants and rehabilitation."¹³

Provider objected to the Carrier's experts' medical opinions because Carrier did not provide the doctors with documentation regarding the MUA and the post operative rehabilitation records to review prior to asking them to render a medical opinion as to the medical necessity of the second knee replacement. Dr. Limpert stated "documentation of this (the MUA) and post operative rehab not provided for review."¹⁴ According to the surgeon who performed the first knee replacement and the MUA, Jeffrey Reuben, M.D., the knee was so scarred that he could not achieve additional flexion. Dr. Reuben documented that he felt "that any attempt to increase the flexion might result in damage to the knee joint or fracture."¹⁵

D. Carrier's Position

Carrier had the request for preauthorization evaluated by two physician advisors, Richard Shirley, M.D. and Scott Limpert, M.D. Both doctors found that the medical records did not support the medical necessity of the surgery. According to Dr. Limpert, one attempt at MUA after the development of post arthrofibrosis was not sufficient. He maintains that "[a]dequate attempts at improving knee range of motion should be attempted prior to considering knee arthroplasty of 6/02 with unacceptable outcome and need for surgical revision."¹⁶ Carrier maintains that Claimant suffers with arthrofibrosis, a stiffness of the knee, caused by the total knee replacement. According to the Carrier, it is the surrounding structure that is causing Claimant's problems, not the knee prosthesis.

E. Analysis

The overwhelming medical evidence established the medical necessity of a revision of Claimant's right total knee replacement with the placement of a filter prior to doing the surgery. The three different doctors who physically examined Claimant determined that the first knee replacement failed and is causing most of Claimant's complaints. One of these doctors was retained to evaluate Claimant's condition for an impairment rating. Nothing suggests he is biased or uninformed. While

¹²Ex. 2 at 6.

¹³Ex. 2 at 7.

¹⁴Ex. 1 at 10. The parenthetical explanation provided by ALJ.

¹⁵Ex. 2 at 39.

¹⁶Ex. 1 at 10.

the IRO doctor disagreed that the procedure will relieve Claimant's condition, the IRO doctor did not have the benefit of conducting a physical examination of the Claimant. Moreover, he provided little support for his position.

At present, Claimant is in constant pain, cannot walk without crutches, cannot perform simple tasks that require the flexibility of her right knee, and has no hope for any effective relief from her symptoms without this surgery. Claimant's right knee continues to deteriorate and the pain has increased over time. Carrier's assertion that the proposed surgery has risks greater than benefits is not persuasive. It is clear from the Dr. Limbert's report that he had not seen all the medical records, particularly those concerning the MUA. Otherwise, he would have known why further MUAs were not performed. Claimant is crippled without the surgery and lives in constant pain. To deny her the only treatment that may relieve her pain and improve her flexibility is unjustified under these circumstances.

Provider meet its burden of proof to show that the IRO decision was incorrect. The record contained sufficient evidence to establish that the proposed surgery will benefit Claimant by, if nothing else, relieving the problems created by the failed first knee implant.

The revision right total knee arthroplasty with a placement filter prior to the knee replacement for Claimant is medically necessary and should be preauthorized.

III. FINDINGS OF FACT

1. On ____, Claimant sustained an injury to her right knee that was compensable under the Texas Workers' Compensation Act (Act).
2. At the time of the compensable injury, ____ (Carrier) was responsible for Claimant's workers' compensation insurance coverage.
3. Claimant has undergone several surgeries including arthroscopy, osteochondral graft, lateral retinacular release and placement of a pain pump followed by open knee surgery, and a total knee replacement followed by manipulation under anesthesia.
4. A total right knee replacement was performed on May 13, 2002.
5. On September 2, 2002, Claimant underwent a right knee manipulation under anesthesia with little improvement.
6. The knee could not be flexed further when Claimant was undergoing the manipulation under anesthesia because the knee was too scarred, and any attempt to increase the flexion might have damaged or fractured the knee.
7. Despite all medical intervention, Claimant continues to experience severe pain and stiffness in her right knee.

8. Claimant's condition continues to deteriorate even though she has participated in physical therapy and takes medications for the pain and swelling.
9. Claimant requires crutches to walk, cannot walk or drive for long distances, cannot engage in simple tasks that require flexibility of her right knee due to the pain and stiffness in her right knee.
10. Providers referred Claimant to Samer N. Tawakkol, M.D., an orthopedic surgeon.
11. B.T. Wright, Jr., M.D. examined Claimant to assess her impairment rating for the Commission and found Claimant would likely need to have the knee implant replaced.
12. Dr. Tawakkol began treating Claimant on November 21, 2002, and after reviewing her medical history, conducting a physical examination, and running various tests, recommended she undergo another total right knee replacement (the procedure) to reduce her pain and the stiffness.
13. On December 16, 2002, Carrier received a request to preauthorize the procedure, which was denied as not medically reasonable or necessary.
14. On December 20, 2002, Dr. Tawakkol asked the Carrier to reconsider noting that Claimant was not getting any better with physical therapy.
15. Carrier again denied the request based on the lack of medical necessity.
16. An orthopedic surgeon employed as a reviewer by an Independent Review Organization (IRO) designated by the Texas Worker's Compensation Commission found that the revision right total knee arthroplasty was not medically necessary healthcare for Claimant.
17. Provider timely appealed the IRO decision.
18. Carrier and Provider appeared and were represented at the hearing in this matter held April 30, 2003. The Commission chose not to participate in the hearing.
19. Claimant's right knee replacement performed on May 13, 2002, failed leaving her with a stiff, swollen knee which is debilitating and painful. It has gotten worse over time forcing her to walk with crutches and unable to perform many daily living tasks.
20. Claimant has an 85 percent chance of improving the function of, and reduce the stiffness and pain in her right knee with a revision of her right total knee arthroplasty with a placement filter to be used prior to the knee replacement.

IV. CONCLUSIONS OF LAW

21. The Texas Workers' Compensation Commission (Commission) has jurisdiction related to this matter pursuant to the Texas Workers' Compensation Act (Act), TEX. LABOR CODE ANN. § 413.031.
22. 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 § 413.031(d) of the Act and TEX. GOV'T CODE ANN. ch. 2003.
23. The hearing was conducted pursuant to the Administrative Procedure Act, TEX. GOV'T CODE ANN. ch. 2001 and the Commission's rules, 28 TEX. ADMIN. CODE (TAC) § 133.305(g).
24. Adequate and timely notice of the hearing was provided in accordance with TEX. GOV'T CODE ANN. §§2001.051 and 2001.052.
25. Provider had the burden of proof in this proceeding. 28 TAC §§148.21(h) and (i); 1 TAC § 155.41.
26. 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. 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).
27. Health care includes all reasonable and necessary medical services, including a medical appliance or supply. TEX. LAB. CODE ANN. §401.011(19)(A). A medical benefit is a payment for health care reasonably required by the nature of the compensable injury. TEX. LAB. CODE ANN. § 401.011(31).
28. The IRO decision in this matter has presumptive weight. 28 TAC § 133.308(v).
29. For a carrier to be liable for reimbursement, it must preauthorize inpatient surgery. 28 TAC § 134.600(h).
30. Provider met its burden of proof to show that a right total knee arthroplasty including a placement filter prior to the knee replacement was reasonable and medically necessary healthcare for Claimant.
31. Provider's request for preauthorization for Claimant to have a revision right total knee replacement with a placement filter should be preauthorized.

ORDER

It is ORDERED that Dr. Brian Randall's request for preauthorization of a revision of Claimant's right total knee arthroplasty including a placement filter prior to the knee replacement for Claimant is granted and _____ is liable to pay reimbursement for that procedure.

SIGNED this 13 day of June, 2003.

**CATHERINE C. EGAN
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS**