

_____,
PETITIONER

V.

AMERICAN HOME ASSURANCE
COMPANY,
RESPONDENT

§
§
§
§
§
§
§
§
§

BEFORE THE STATE OFFICE

OF

ADMINISTRATIVE HEARINGS

DECISION AND ORDER

____ (“the Claimant”) challenges the decision of an Independent Review Organization (IRO) denying her request to preauthorize total knee replacement surgery. American Home Assurance Company (“the Carrier”) had denied the claim as medically unnecessary and the IRO upheld that decision. This decision finds that the requested procedure should not be preauthorized.

I. JURISDICTION, NOTICE, AND PROCEDURAL HISTORY

Administrative Law Judge (ALJ) Kerry D. Sullivan held the hearing on this matter on May 27, 2003. The Claimant represented herself, with the assistance of Commission Ombudsman Barton Levi. The Carrier was represented by Dan C. Kelley. Commission staff did not participate in the hearing. Proper notice of the hearing was provided as set out in the findings of fact and conclusions of law.

II. BASIS FOR DECISION

a. The Evidence.

On ____, the Claimant suffered a compensable injury to her right knee while employed as a cashier at a ____ store. While turning to attend to her duties, she caught her foot on a floor mat and experienced a painful popping sensation. The Claimant underwent an MRI study which indicated a complex tear to the medial meniscus with some associated degenerative bony changes. On January 19, 2000, the Claimant underwent arthroscopic partial medial meniscectomy and limited chondroplasty. Limited degenerative changes to the joint were noted at the time. On September 24, 2002, after a repeat MRI, the Claimant again underwent a similar surgical procedure and additional degenerative changes were noted at this time.

The record contains the following documentation dated February 14, 2003, from Doctor Dale R. Allen, the Claimant’s treating physician, who also performed the operations:

In spite of continued therapy, limited weight bearing, and wearing of brace, (the Claimant’s) condition has deteriorated and now has come to the point where we are

considering a total joint arthroplasty involving her right knee. It would be my opinion that the initial injury (*i.e.*, ____) particularly involving the medial meniscus, has led to the degenerative arthritic changes involving the medial compartment of (the Claimant's knee). She did not complain of any knee problems prior to her injury and she did not at the time of her initial arthroscopic surgery, have significant arthritic changes in her knee. This has developed since her injury, and I believe her present condition is a direct result of her injury in ____.

Dr. David G. Vanderweide conducted a peer review on March 4, 2003. Contrary to Dr. Allen, he concluded:

In my opinion, the mechanism of injury as described is insufficient to cause a medial meniscal tear as described. In addition, the pre-existing arthritic changes noted both in the preoperative MRI of late 1999 and in the operative report of early 2001 clearly showed pre-existing changes in the right knee, commiserate (*sic*, commensurate?) with (the Claimant's) body habitus.

By "body habitus" Dr. Vanderweide was presumably referring to the Claimant's excess weight. The Claimant is approximately five feet tall and weighs 230 pounds. Dr. Vanderweide made the following additional observation, however:

Certainly, with this degree of degenerative arthritis, a total knee replacement is a reasonable treatment alternative for end stage arthritis. However, as previously noted, in my opinion, this would not be related to the injury event at issue or the subsequent surgeries performed by Dr. Allen.

In addition to the documentary evidence, the Carrier called Dr. Mellisa Tonn as a witness in this proceeding. In Dr. Tonn's view, it was very unclear that what she viewed as an innocuous work injury would lead to the Claimant's current condition. Certainly, she believed the injury was not the sole or proximate cause the Claimant's current problem. Dr. Tonn also testified that knee replacement surgery should be performed only as a last resort on a patient as young as the Claimant (43 years at the time of the hearing). She observed that knee replacements typically last only about ten years in younger patients, that they do not guarantee a reduction in the patient's pain, and that complications, including infection, are possible. In Dr. Tonn's view, the Claimant should focus on a regimen of weight loss, exercise, and anti-inflammatory medications.

The IRO decision was in line with Dr. Tonn's assessment. It noted with concern that the medical records did not document the status of the left knee along with the right knee. Presumably this would have helped in the assessment of whether the potential need for knee replacement surgery resulted from the _____ mishap or a natural degenerative process. In any event, the IRO believed the requested surgery would not be the result of the compensable injury. Moreover, the IRO stated:

The emphasis should be placed on attempts at weight loss, activity modification, better pain management by medication or unloading bracing (not a simple hinged

brace described in the documentation), as well as intra-articular injections such as Synvisc.

The Claimant also testified on her own behalf. She acknowledged the risks of knee replacement surgery and the limited life of a replacement knee. In view of the continuous pain she experiences, she is willing to assume that risk. The Claimant also observed that she has requested approval of the alternative items suggested by the IRO, but that the Carrier has denied approval of them.

b. Analysis.

In the ALJ's view, this proceeding presents a difficult question. Plainly, the Claimant had at least a limited pre-existing degenerative arthritic condition prior to her compensable injury. Based upon the documentation provided by Dr. Allen, however, it appears that this pre-existing condition was significantly aggravated by the compensable injury, which triggered the Claimant's first medical complaints regarding her knee. In the ALJ's view, it appears that this discrete and significant exacerbation of the pre-existing condition is itself a compensable injury.

On the other hand, the Claimant was unable to provide adequate documentation in support of the medical necessity of knee replacement surgery at this point. The documentation from Dr. Allen quoted above states only that they are "considering" knee replacement surgery. The record does not contain an organized assessment of potential less invasive alternatives to the requested procedure. This is of particular concern in view of the significant drawbacks to undertaking such an operation at the Claimant's relatively young age and because other feasible alternatives do appear to exist. In particular, the record indicates that a successful exercise and weight loss program would facilitate the Claimant's recovery.

The Claimant notes, however, that the Carrier has denied approval of requested alternatives such as a special unloading brace that would take some weight of the medial surface. Presumably, the Carrier denied this and, apparently, other procedures on the basis that they stemmed from the Claimant's pre-existing condition rather than her compensable injury. For the reasons discussed above, the appropriateness of those denials is questionable based on the record of this proceeding. The ALJ, however, has no authority to address the other denials in this docket, which relates only to the appeal of the IRO's denial of knee replacement surgery. While those denials appear to place the Claimant in a difficult position, they do not render the far more extreme procedure requested here medically necessary.

Based on the above, the preponderance of the credible evidence indicates the knee problems that form the basis for the request for knee replacement surgery result from the compensable injury. The ALJ further finds, however, that the requested knee replacement surgery has not been shown to be medically necessary at this time. Accordingly, the ALJ finds that preauthorization should be denied.

III. FINDINGS OF FACT

1. On ____, ____ (“the Claimant”) suffered a compensable injury to her right knee as a result of an accident at her employment.
2. At the time of the Claimant’s injury, her employer held workers’ compensation insurance coverage through American Home Assurance Company (“the Carrier”).
3. The Claimant’s treating physician, Dale R. Allen, M.D., seeks preauthorization for complete knee replacement surgery on the Claimant’s right knee.
4. The Carrier denied the request for preauthorization.
5. The Claimant requested medical dispute resolution at the Texas Workers’ Compensation Commission, which referred the matter to an Independent Review Organization (IRO).
6. The IRO found that the requested knee replacement surgery was not medically necessary.
7. The Claimant timely requested a hearing before the State Office of Administrative Hearings (SOAH).
8. Notice of the SOAH hearing was sent to the parties on April 29, 2003. The notice informed the parties of the date, time, and location of the hearing, a statement of the matters to be considered, the legal authority under which the hearing would be held, and the statutory provisions applicable to the matters to be considered.
9. The SOAH hearing convened and closed on May 27, 2003. The Claimant and the Carrier appeared and participated in the hearing.
10. The Claimant has not shown that less invasive alternatives to the requested procedure have been adequately explored. Such potential alternatives include an unloading brace that would take some weight of the medial surface and an exercise and weight loss program.
11. The expected life of a replacement knee is approximately ten years in a patient the age of the Claimant (43 years). Such operations entail risks of infection and other complications and should be undertaken as a last resort for patients under the age of 50.

IV. CONCLUSIONS OF LAW

1. The Commission has jurisdiction over this matter pursuant to Section 413.031 of the Texas Workers’ Compensation Act (the Act), TEX. LAB. CODE ANN. ch. 401 et seq.

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. Adequate and timely notice of the hearing was provided in accordance with TEX. GOV'T CODE ANN. §§2001.051 and 2001.052.
4. As the Petitioner, the Claimant has the burden of proof in this matter. 28 TEX. ADMIN. CODE §148.21(h).
5. The Claimant failed to establish that the requested knee replacement surgery was medically necessary.
6. The requested preauthorization of knee replacement surgery should be denied.

ORDER

IT IS ORDERED that the request submitted by ___ for preauthorization of right knee replacement surgery is denied.

Signed this 23rd day of June 2003.

**KERRY D. SULLIVAN
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS**