

**DOCKET NO. 453-03-4246.M2**  
**MDR No. M2-03-1007-01**

_____, <b>Petitioner</b>	§	<b>BEFORE THE STATE OFFICE</b>
	§	
<b>V.</b>	§	<b>OF</b>
	§	
<b>LUBBOCK ISD,</b>	§	
<b>Respondent</b>	§	<b>ADMINISTRATIVE HEARINGS</b>

**DECISION AND ORDER**

\_\_\_\_\_ (Petitioner) appealed the Independent Review Organization’s (IRO’s) decision denying preauthorization for a right shoulder arthroscopy and acromioplasty. 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 November 4, 2003, at the State Office of Administrative Hearings (SOAH) before Administrative Law Judge (ALJ) John H. Beeler. Lubbock ISD (Respondent) appeared through its attorney, Steven M. Tipton. Petitioner appeared by telephone and was assisted by Juan Mireles, Ombudsman for Texas Workers’ Compensation Commission. After receipt of evidence and argument, the record closed that same day.

**II. DISCUSSION**

**A. Background Facts and Evidence**

Petitioner suffered a compensable injury on \_\_\_\_\_, resulting in an impingement syndrome along with bicipital tenosynovitis. Owen C. Dewitt, M.D. has been treating Petitioner since his injury. Dr. Dewitt began with conservative treatments that offered minimal relief and then determined that surgery was necessary. Respondent denied preauthorization for the surgery.

Petitioner offered the testimony of Dr. Dewitt who described Claimant’s condition and the need for the surgery. He testified that Petitioner is in severe pain and the surgery would relieve the pain and allow Petitioner to perform his employment duties. Petitioner testified describing his condition. Petitioner teaches physical education at the elementary school level and is having to use his left arm to demonstrate skills to his students. He must keep his right arm at his side in order to avoid severe pain.

Respondent offered no testimony or evidence of any kind.

## **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. ALJ's Analysis**

The ALJ finds that the preauthorization is warranted. The only evidence presented at the hearing demonstrated that the surgery is medically necessary and should be preauthorized. Respondent argues that other types of care are available and that Petitioner should make lifestyle changes, such as using his left arm, even though he is right handed. Respondent, however, presented no evidence to support his position.<sup>1</sup>

## **III. FINDINGS OF FACT**

1. On \_\_\_\_\_, \_\_\_\_\_ (Petitioner) suffered a compensable injury to his right shoulder.
2. At the time of Petitioner's compensable injury Lubbock ISD (Respondent) was the workers' compensation insurer.
3. Petitioner suffers from severe pain caused by the injury.
4. Owen C. Dewitt, M.D. is Petitioner's treating doctor and requested preauthorization to perform a right shoulder arthroscopy and acromioplasty on Petitioner.
5. Respondent denied the request for preauthorization, stating that it was not medically necessary.
6. The Independent Review Organization (IRO) denied preauthorization.
7. Petitioner timely appealed the IRO's decision and requested a hearing before the State Office of Administrative Hearings (SOAH).
10. On August 8, 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

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<sup>1</sup>No documentation or other evidence of any sort was presented to the IRO by either party.

particular sections of the statutes and rules involved; and a short, plain statement of the matters asserted.

12. On November 4, 2003, Administrative Law Judge (ALJ) John H. Beeler convened the hearing. Respondent appeared through its attorney, Steven M. Tipton. Petitioner appeared at the hearing by telephone and was assisted by Juan Mireles, Ombudsman for the Commission.
13. The right shoulder arthroscopy and acroioplasty will relieve Petitioner's pain and allow him to perform his employment duties.

#### **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 right shoulder arthroscopy and acroioplasty are 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. He is specifically entitled to health care that cures or relieves the effects naturally resulting from the compensable injury, promotes recovery, or enhances his ability to return to or retain employment. The Act § 408.021(a).
8. Petitioner's request for preauthorization for the right shoulder arthroscopy and acroioplasty should be approved.

**ORDER**

**IT IS ORDERED** that preauthorization for the right shoulder arthroscopy and acroioplasty, requested by Petitioner, is granted.

**SIGNED December 4, 2003.**

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**JOHN H. BEELER  
ADMINISTRATIVE LAW JUDGE  
STATE OFFICE OF ADMINISTRATIVE HEARINGS**