

____,
Petitioner

§ **BEFORE THE STATE OFFICE**

§

§

v. § **OF**

§

CITY OF SAN ANTONIO,
Respondent

§ **ADMINISTRATIVE HEARINGS**

§

DECISION AND ORDER

I. INTRODUCTION

____ (Claimant) has appealed a decision of the Texas Workers' Compensation Commission (TWCC) Medical Review Division (MRD) based on an independent review organization (IRO) review. The IRO agreed with the City of San Antonio (Carrier) that the Claimant did not reasonably medically need a left knee arthroscopy and meniscectomy to treat her compensable injury. Accordingly, the Carrier denied the Claimant's request for preauthorization of that service.

The only issue is whether the requested services are reasonably medically necessitated by the Claimant's compensable injury. The Administrative Law Judge (ALJ) finds that they are not and denies the Claimant's request for pre-authorization.

II. FINDINGS OF FACT

1. ____ (Claimant) sustained a work-related injury on ____, while her employer was the City of San Antonio (Carrier), which was self-insured for workers' compensation claims.
2. The Claimant was injured when she twisted her left knee when she fell at work.
3. Since the compensable injury, the Claimant has had pain in her left knee.
4. Prior to her compensable injury, the Claimant had, and still has, severe osteoarthritic degenerative joint disease in her left knee.
1. The Claimant is five feet four inches tall and weighs 225 pounds.
2. On January 25, 2002, Keith L. Markey, M.D., performed arthroscopy and chondroplasty on the Claimant's left knee (First Surgery).
3. Arthroscopy is joint surgery using an arthroscope.
4. Chondroplasty is the reparative or plastic surgery of cartilage.
5. The First Surgery included a medial meniscectomy, removal of a portion of the medial meniscus cartilage, in the Claimant's left knee.

6. The Carrier agreed that the First Surgery was medically necessitated by the compensable injury and paid for the First Surgery.
7. After the First Surgery, the Claimant continued to have pain in her left knee.
8. On August 23, 2002, a magnetic resonance image (MRI) revealed fluid collection within the medial meniscus of the Claimant's left knee but not a tear in either the medial or lateral meniscus of that knee.
9. The August 23, 2002, MRI also showed severe osteoarthritic changes in the Claimant's left knee that were not caused by the compensable injury.
10. On October 7, 2002, and several times thereafter, Linden Dillin, M.D., an arthroscopic knee surgery specialist, requested preauthorization from the Carrier to perform arthroscopy and a meniscectomy on the Claimant's left knee (Second Surgery).
11. The Carrier denied the requests for preauthorization for the Second Surgery and claimed it was not reasonably medically necessitated by the compensable injury given her degenerative joint disease.
12. The Provider timely filed a request for medical dispute resolution with the Texas Workers' Compensation Commission (TWCC), which referred that dispute to an independent review organization (IRO).
13. The IRO reviewed the medical dispute and found that Second Surgery was not reasonably medically necessary to treat the compensable injury because it would have no significant value given the Claimant's degenerative joint disease.
14. After the IRO decision was issued, the Provider asked for a contested-case hearing by a State Office of Administrative Hearings Administrative Law Judge (ALJ) concerning the medical dispute.
15. Notice of a December 1, 2003, hearing in this case was faxed to the Claimant and the Carrier on September 18, 2003.
16. On December 1, 2003, ALJ William G. Newchurch held and concluded a hearing on this case at the William P. Clements, Jr. Building, 300 W. 15th Street, 4th Floor, Austin, Texas.
17. The record closed on December 8, 2003, when the parties jointly moved for the admission into evidence of Claimant's exhibits one through 17 and Carrier's exhibit two, which the ALJ admits by way of this decision.
18. The Carrier appeared at the hearing through its attorney, Mark H. Sickles.
19. The Provider telephonically appeared at the hearing through her attorney, Norman Darwin.

III. CONCLUSIONS OF LAW

1. 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 TEX. LABOR CODE ANN. (Labor Code) §§ 402.073(b) and 413.031(k) (West 2003) and TEX. GOV'T CODE ANN. (Gov't Code) ch. 2003 (West 2004).
2. Adequate and timely notice of the hearing was provided in accordance with Gov't Code §§ 2001.051 and 2001.052.
3. Based on the above Findings of Fact and Gov't Code § 2003.050 (a) and (b), 1 TEX. ADMIN. CODE (TAC) § 155.41(b) (2003), and 28 TAC §§ 133.308(v) and 148.21(h) (2003), the Claimant has the burden of proof in this case.
4. An employee who sustains a compensable injury is entitled to all health care reasonably required by the nature of the injury as and when needed 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).
5. Because the First Surgery did not relieve the Claimant's left knee pain, the August 23, 2002, MRI did not show tears in either the medial or lateral meniscus of that knee, and the Claimant has severe osteoarthritic degenerative joint disease in that knee; the Claimant's current pain is mostly likely due to her osteoarthritic degenerative joint disease.
6. Because the Claimant has severe osteoarthritic degenerative joint disease in her left knee, the Second Surgery most likely would not significantly relieve the Claimant's left knee pain.
7. TWCC must specify by rule which health care treatments and services require express pre-authorization by a carrier. A carrier is not liable for those specified treatments and services unless pre-authorization is sought by the claimant or a health care provider and either obtained from the carrier or ordered by TWCC. Labor Code §413.014.
8. Pre-authorization is required for the Second Surgery. 28 TAC § 134.600.
9. Because the Claimant's current left knee pain is most likely due to another cause and the Second Surgery most likely would not significantly relieve that pain, the Second Surgery is not reasonably medically necessitated by the compensable injury.
10. Because the Second Surgery is not reasonably medically necessitated by the compensable injury, the Claimant's request for pre-authorization for the Second Surgery should be denied.

ORDER

IT IS ORDERED THAT the Claimant's request for pre-authorization for the Second Surgery is denied.

SIGNED January 15, 2004.

**WILLIAM G. NEWCHURCH
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS**