

SOCORRO I.S.D.
Petitioner

V.

—,
Respondent

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BEFORE THE STATE OFFICE

OF

ADMINISTRATIVE HEARINGS

DECISION AND ORDER

Socorro I.S.D. (Carrier) challenged the decision of the Texas Workers' Compensation Commission (the Commission) Medical Review Division (MRD) granting preauthorization for arthroscopic decompression of right shoulder (shoulder surgery) for ___ (Claimant), an injured worker. In this decision, the Administrative Law Judge (ALJ) finds that Carrier met its burden of proving the requested shoulder surgery is not reasonable and necessary medical care that should be preauthorized. Therefore, the ALJ does not order preauthorization of the requested shoulder surgery.

The hearing convened and closed on February 7, 2005, before ALJ Steven M. Rivas. Carrier appeared and was represented by Robert F. Josey, attorney. Claimant did not appear and was not represented at the hearing.¹

I. DISCUSSION

1. Background Facts

Claimant sustained a compensable shoulder injury on ____. After her injury, Claimant initially sought treatment from Jacob S. Heydermann, M.D., who released Claimant after one or two treatments. Claimant returned to work for three years with no further pain complaints. In 2001, Claimant again sought treatment for shoulder pain and was diagnosed with a rotator cuff tear, which required shoulder surgery. Claimant requested preauthorization for shoulder surgery, which Carrier denied as not medically necessary. The dispute was referred to the Commission's MRD, which held the shoulder surgery was medically necessary in its Order dated January 24, 2002. Carrier appealed the MRD's decision to the State Office of Administrative Hearings (SOAH).

¹ A Request for Ombudsman Assistance was filed on April 12, 2002. The Request indicated Luz Loza was the assigned Ombudsman; however, no further documentation was filed by Claimant or the Ombudsman.

During the pendency of this matter either at the Commission's MRD or SOAH, Carrier filed a dispute with the Commission regarding the extent of the injury. On April 25, 2002, Carrier filed a Motion for Indefinite Continuance so that the issue of extent of injury could be resolved with the Commission. On April 29, 2002, ALJ Rivas continued this matter indefinitely until the issue of extent of the injury could be resolved.

On July 8, 2003, the Commission's Hearing Division held that Claimant's current diagnosis of torn rotator cuff was not related to her compensable injury.² On September 11, 2003, the Commission's Appeals Panel affirmed the Hearings Division decision.³

2. Applicable Law

Pursuant to the Texas Workers' Compensation Act ("the Act"), TEX. LAB. CODE ANN. § 408.021 *et seq.*, an employee who sustains a compensable injury is entitled to all 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.

Under TEX. LAB. CODE ANN. § 401.011(19), health care includes all reasonable and necessary medical aid, medical examinations, medical treatment, medical diagnoses, medical evaluations, and medical services.

Certain categories of health care identified by the Commission require preauthorization, which is dependent upon a prospective showing of medical necessity under § 413.014 of the Act and 28 TEX. ADMIN. CODE (TAC) § 134.600. In this instance, under 28 TAC § 134.600(h) preauthorization is required for Claimant's shoulder surgery.

3. Evidence and Analysis

The requested shoulder surgery should not be preauthorized because Claimant's diagnosis of torn rotator cuff is not related to her compensable injury of _____. Claimant failed to appear or submit any evidence for review. Carrier submitted the Commission's decisions regarding the extent of injury dispute, and a report of an Independent Medical Evaluation performed by Charles F. Xeller, M.D., dated January 17, 2002. Based on the results of an MRI examination from August 24, 2001,

² The Commission's Hearing Division, El Paso, Texas. Docket No. EP-97098703-04-CC-EP46, Teresa G. Hartley, Hearing Officer.

³ The Commission's Appeals Panel No. 486, Appeal No. 032023, Robert Potts, presiding Appeals Judge. Appeals Judges Chris Cowan and Gary L. Kilgore concurred.

Dr. Xeller confirmed that Claimant had a torn rotator cuff, but that it was due to aging and not work-related. From the fact that Claimant required minimal treatment following her compensable injury and sought no treatment for the following three years, it is likely that her current condition is not related to her compensable injury. Having no evidence to dispute the Commission's findings or Dr. Xeller's opinion, the ALJ is unable to preauthorize the requested shoulder surgery as it appears to have been requested to treat a condition not related to her compensable injury. Therefore, the requested shoulder surgery is not preauthorized.

II. FINDINGS OF FACT

1. ____ (Claimant) sustained a compensable right shoulder injury on ____.
2. Claimant was treated for her injury by Jacob S. Heydermann and released after one or two treatments.
3. Claimant returned to work for three years with no further complaints of pain.
4. In 2001, Claimant again sought treatment for her right shoulder, and was diagnosed with a torn rotator cuff.
5. Claimant sought preauthorization for arthroscopic decompression of right shoulder (shoulder surgery), which was denied by Socorro I.S.D. (Carrier) as not medically necessary.
6. Claimant sought medical dispute resolution with the Texas Workers' Compensation Commission's (the Commission) Medical Review Division, which ordered Carrier to preauthorize the shoulder surgery.
7. Carrier timely requested a hearing before the State Office of Administrative Hearings (SOAH).
8. Notice of the hearing in this case was mailed to the parties on March 28, 2002. 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 to be held; a reference to the particular sections of the statutes and rules involved; and a short, plain statement of the matters asserted.
9. Carrier filed a dispute with the Commission regarding the extent of Claimant's injury. On April 25, 2002, Carrier filed a Motion for Indefinite Continuance so that the extent of injury issue could be resolved with the Commission.
10. On April 29, 2002, Steven M. Rivas, Administrative Law Judge (ALJ) continued this matter indefinitely until the issue of the extent of injury could be resolved.
11. The hearing convened and closed on February 7, 2005, before ALJ Rivas. Carrier appeared and was represented by Robert F. Josey, attorney. Claimant did not appear. The hearing was adjourned and the record closed the same day.
12. Claimant's right rotator cuff tear is not related to her compensable injury.

III. CONCLUSIONS OF LAW

1. The Commission has jurisdiction over this matter pursuant to Section 413.031 of the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* ("the Act").
2. SOAH has jurisdiction over this proceeding, including the authority to issue a decision and order, pursuant to § 413.031(k) of the Act 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. The Carrier, as Petitioner, had the burden of proof on appeal by a preponderance of the evidence under § 413.031 of the Act, and 28 TEX. ADMIN. CODE §148.21(h).
5. Carrier has proven by a preponderance of the evidence that the requested shoulder surgery will not cure or relieve the effects of Claimant's compensable injury under TEX. LAB. CODE ANN. § 408.021, *et seq.*
6. The requested shoulder surgery is not medically necessary for treating Claimant's compensable injury.

ORDER

IT IS, THEREFORE, ORDERED that preauthorization for the shoulder surgery is denied.

SIGNED February 10, 2005.

**STEVEN M. RIVAS
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS**