

—,	§	BEFORE THE STATE OFFICE
Petitioner	§	
	§	
V.	§	OF
	§	
ACE AMERICAN INSURANCE	§	
COMPANY,	§	ADMINISTRATIVE HEARINGS
Respondent	§	

DECISION AND ORDER

Workers' compensation claimant ___ (the Claimant) seeks preauthorization for CPT code 27446, left knee arthroplasty and unicondylar replacement. The Administrative Law Judge (ALJ) concludes the Claimant proved the procedure was medically necessary and orders preauthorization.

I. DISCUSSION

The Claimant suffered a compensable injury to his left knee on ____. He had injured the knee previously, in ____, and has had two previous surgeries. His treating physician, Gregorio Pechero, M.D., requested preauthorization for the knee surgery. The Carrier, Ace American Insurance Company, denied preauthorization because it deemed the procedure not to be medically necessary.¹ The Claimant filed a Medical Dispute Resolution Request with the Texas Workers' Compensation Commission (the Commission). An Independent Review Organization (IRO), acting on the Commission's behalf, also denied the preauthorization request, whereupon the Claimant filed a timely request for a hearing before the State Office of Administrative Hearings (SOAH).

The SOAH hearing was convened March 2, 2005. The Claimant appeared, assisted by the Commission's Ombudsman's office. The Carrier did not appear. The Claimant testified and presented documentary evidence, and the hearing was adjourned the same day.

After the hearing, upon reviewing the pleadings file, the ALJ determined the Carrier's representative might not have received notice of the hearing, which had been rescheduled from its

¹ Despite the Claimant's previous injury, the Carrier did not dispute the compensability of the injury.

initial date. Therefore, in Order No. 4, issued March 7, 2005, the ALJ allowed the Carrier to request that the hearing be reopened or that additional documents and argument be admitted, if it had not received notice of the hearing. The Carrier responded that its representative had not received notice. It filed a written argument, with attached documentation, on March 17, 2005.² It did not request that the hearing be reopened.

Under 28 TAC §148.21(h), the Petitioner has the burden of proof in hearings, such as this one, conducted pursuant to TEX. LAB. CODE ANN. § 413.031. Therefore, the Claimant has the burden of proving the procedure should be preauthorized.

Dr. Pechero's records indicate the Claimant suffers from moderate osteoarthritis in his left knee with Grade III to Grade IV chondromalacia.³ An MRI conducted December 18, 2003, also showed the medial meniscus was degenerated and torn and the ACL partially torn. The Claimant has limited range of motion and significant pain and inflammation. Dr. Pechero stated the surgery at issue here was necessary to improve the Claimant's condition.

The Carrier's reviewers and the IRO reviewer advanced several reasons the procedure was not medically necessary. One reason for the Carrier's denial was the Claimant's age and weight. He is approximately 40 years old and five feet seven inches tall. He weighs approximately 185 pounds. One of the reviewers stated the Claimant should be required to lose to his ideal weight before surgery should be considered. He also observed that additional surgery might be needed in the future. That reviewer further suggested that Dr. Pechero had not fully discussed with the Claimant the risks of the unicondylar replacement surgery. The other Carrier reviewer indicated the Claimant appeared to be a "reasonable" candidate for the surgery, but described the Claimant's weight as one adverse factor. That reviewer denied preauthorization based on that factor and the perceived availability of alternative modes of treatment. The IRO reviewer denied the procedure because of the Claimant's age and the high likelihood that the procedure would need to be redone at some time.

The ALJ found Dr. Pechero's records to be more convincing and to have addressed the issues raised by the Carrier and IRO reviews. The records showed Dr. Pechero has attempted or requested several forms of more conservative care, including bracing, medication, physical therapy, injections,

² Those attached documents are admitted into evidence as Carrier Exhibits A-H.

³ Chondromalacia is defined as abnormal softness of cartilage. Merriam Webster's Medical Dictionary (1995).

and arthroscopy.⁴ Those have been unsuccessful. The ALJ is not certain whether a purported failure to inform a patient of the risks of a procedure falls under the heading of "medical necessity," but in any event, the records reflect that Dr. Pechero did inform the Claimant of potential complications.⁵

Dr. Pechero stated the Claimant is not obese or overweight. The ALJ is not sure about the latter, but one of the Carrier's own reviewers described the Claimant's weight only as an adverse factor, not a disqualifying one. The ALJ is not aware of any Commission rule that requires patients to be at their ideal weights before surgery. Finally, the ALJ finds that the Claimant's age, and the concomitant possibility that the surgery will have to be redone in the future, does not disqualify him from a procedure that would otherwise relieve his medical condition.

Under TEX. LAB. CODE ANN. § 408.021,

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. The employee is specifically entitled to health care that: (1) cures or relieves the effects naturally resulting from the injury; (2) promotes recovery; or (3) enhances the ability to return to or retain employment.

"Health care" includes "all reasonable and necessary medical . . . services." TEX. LAB. CODE ANN. §401.011(19).

Dr. Pechero's records provided persuasive evidence that the proposed procedure is likely to cure or relieve the effects of the Claimant's injury. Dr. Pechero has unsuccessfully tried conservative alternatives to remedy the Claimant's condition. The ALJ concludes the proposed procedure is medically necessary and should be preauthorized.

II. FINDINGS OF FACT

1. Workers' compensation claimant ____ (the Claimant) suffered a compensable injury to his left knee on ____.
2. The Claimant had injured the knee previously, in____, and has had two previous surgeries.
3. The Claimant's treating physician, Gregorio Pechero, M.D., requested preauthorization for

⁴ Claimant's Ex. 1, pages 12-14, 17, 21, and 27.

⁵ Claimant's Ex. 1, p. 14; Carrier's Ex. H, p. 14.

CPT code 27446, left knee arthroplasty and unicondylar replacement.

4. The Carrier, Ace American Insurance Company, denied preauthorization because it deemed the procedure not to be medically necessary.
5. The Claimant filed a Medical Dispute Resolution Request with the Texas Workers' Compensation Commission (the Commission).
6. An Independent Review Organization (IRO), acting on the Commission's behalf, also denied the preauthorization request, whereupon the Claimant filed a timely request for a hearing before the State Office of Administrative Hearings (SOAH).
7. The SOAH hearing was convened March 2, 2005. The Claimant appeared, assisted by the Commission's Ombudsman's office. The Carrier did not appear. The Claimant testified and presented documentary evidence, and the hearing was adjourned the same day.
8. After the hearing, upon reviewing the pleadings file, the ALJ determined the Carrier's representative might not have received notice of the hearing, which had been rescheduled from its initial date. Therefore, in Order No. 4, issued March 7, 2005, the ALJ allowed the Carrier to request that the hearing be reopened or that additional documents and argument be admitted, if it had not received notice of the hearing. The Carrier responded that its representative had not received notice. It filed a written argument, with attached documentation, on March 17, 2005. It did not request that the hearing be reopened.
9. The Claimant suffers from moderate osteoarthritis in his left knee with Grade III to Grade IV chondromalacia. An MRI conducted December 18, 2003, also showed the medial meniscus was degenerated and torn and the ACL partially torn.
10. The Claimant has limited range of motion and significant pain and inflammation.
11. Dr. Pechero has attempted or requested several forms of more conservative care, including bracing, medication, physical therapy, injections, and arthroscopy. Those have been unsuccessful.
12. Dr. Pechero informed the Claimant of potential complications from the requested surgery.
13. The Claimant is approximately 40 years old and five feet seven inches tall. He weighs approximately 185 pounds.
14. The Claimant's weight is an adverse factor regarding the proposed surgery, not a disqualifying one.
15. The Claimant's age, and the concomitant possibility that the surgery will have to be redone in the future, does not disqualify him from a procedure that would otherwise relieve his medical condition.
16. The proposed procedure is likely to cure or relieve the effects of the Claimant's injury.

III. CONCLUSIONS OF LAW

1. SOAH has jurisdiction over this proceeding, including the authority to issue a decision and

order, pursuant to TEX. LAB. CODE ANN. § 413.031(k) and TEX. GOV'T CODE ANN. ch. 2003.

2. The proposed procedure is medically necessary under TEX. LAB. CODE ANN. §§ 408.021 and 401.011(19).
3. The Carrier should be required to preauthorize the requested procedure.

ORDER

IT IS THEREFORE, ORDERED THAT ACE American Insurance Company shall preauthorize CPT code 27446, left knee arthroplasty and unicondylar replacement, for workers' compensation claimant ____

SIGNED May 13, 2005.

**HENRY D. CARD
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS**