

**DOCKET NO. 453-05-7319.M2
MRD NO. M2-05-1088-01**

____,
Petitioner

v.

**TARRANT COUNTY,
Respondent**

§
§
§
§
§
§
§

BEFORE THE STATE OFFICE

OF

ADMINISTRATIVE HEARINGS

DECISION AND ORDER

____(Claimant) requested a hearing on the decision of the Independent Review Organization (IRO)¹ denying preauthorization for either a capsulotomy or capsulectomy (forms of breast surgery). After considering the evidence and arguments presented, the Administrative Law Judge (ALJ) concludes that Claimant has failed to show by a preponderance of the evidence that the requested surgery is medically necessary to treat her compensable injury. Accordingly, the ALJ finds that the requested surgery should not be preauthorized.

I. Jurisdiction, Notice, and Procedural History

There were no contested issues regarding jurisdiction or notice, and those matters are addressed in the Findings of Fact and Conclusions of Law without further discussion here.

Claimant worked at the ____ and suffered work-related injuries in ____, when she slipped and fell at work. In addition to injuries to her neck, shoulder, hip, hand, and ribs, Claimant suffered an injury to her right breast. In particular, Claimant had pain in her right breast and noticed that her breast was deformed after the injury. Claimant had breast augmentation surgery in 1984 and her treating doctor suspected that her breast implants had perhaps ruptured. Claimant had a mammogram performed which revealed no rupture to Claimant's breast implants. Because there was no rupture, Claimant's treating doctor, P.T. Swamy, M.D., then suspected that her right implant may have moved and lodged into scar tissue, thus causing the visible deformity in Claimant's right breast.

¹ The IRO is the statutory designee of the Medical Review Division of the Texas Workers' Compensation Commission (Commission) for purposes of resolving this preauthorization dispute. Effective September 1, 2005, the functions of the Commission were transferred to the newly-created Division of Workers Compensation of the Texas Department of Insurance.

Dr. Swamy requested preauthorization for a bilateral capsulotomy or capsulectomy to correct the deformity in Claimant's right breast.

Tarrant County denied the preauthorization request. Dr. Swamy requested reconsideration and Tarrant County maintained its denial. Dr. Swamy then requested medical dispute resolution through the Commission. The matter was referred to an IRO designated by the Commission for the review process. The IRO determined that the requested treatment was not medically necessary and should not be authorized. Claimant then requested a hearing on the IRO decision, and the matter was transferred to the State Office of Administrative Hearings (SOAH). The hearing convened at SOAH's hearings facility on September 26, 2005, before ALJ Craig R. Bennett. Tarrant County was represented at the hearing by attorney Robert Josey, and Claimant appeared by telephone and represented herself. The record closed on September 26, 2005, after the parties filed additional evidence.

II. Discussion and Analysis

The issue in this case is whether breast surgery is medically necessary to treat Claimant's work-related injury. After considering the evidence presented, the ALJ concludes that Claimant has not shown, at this point, that the requested surgical treatment is necessary.

At the hearing, Tarrant County did not dispute that Claimant has an apparent deformity to her right breast as a result of the work-related injury. Moreover, Tarrant County did not dispute that some treatment may ultimately be necessary for Claimant's right breast. Rather, Tarrant County argued that surgery was premature at this point, because a magnetic resonance imaging (MRI) or other more detailed diagnostic procedure had not been performed to determine the cause of the deformity to Claimant's right breast. Moreover, Tarrant County disputed that surgery would be necessary bilaterally (*i.e.*, on both breasts) when only Claimant's right breast appeared to be injured from Claimant's fall. In support of its position, Tarrant County cites to a concurrent review determination of Robert Ippolito, M.D., a plastic surgeon who noted that:

Peer to peer contact completed with Dr. Swamy on 12/18/04 10:30 a.m. Does not think that the implants have ruptured which is confirmed with mammograms obtained. Provider feels there has been possible movement on the right side. Confirmation of abnormality would be found by performing an MRI study.²

² Carrier Ex. 1, at 4.

In response, Claimant did not present any expert testimony at the hearing, but rather relied on her own testimony and the medical documents in the record. Claimant acknowledged that she was not aware of whether she ever had an MRI. She did not dispute that an MRI might be appropriate, but she felt frustrated that there has been a delay in resolving the abnormality in her right breast. She also indicated that she has had her implants since 1984 and she felt like she should be entitled to receive new implants if it was determined that her existing implants were damaged as a result of her work-related injury.

Ultimately, the ALJ finds Dr. Ippolito's conclusion to be reasonable and persuasive. From the existing medical records, Dr. Swamy does not have a certainty of Claimant's injury, but rather speculates as to the cause of the abnormality. Instead of seeking additional diagnostic testing to fully determine the cause of Claimant's injury, Dr. Swamy has simply requested authority to do a surgical procedure to explore and hopefully resolve Claimant's condition. Under the circumstances, the ALJ is not persuaded that this is the medically appropriate and necessary course of care. Rather, the ALJ agrees that an MRI should first be performed and a specific diagnosis be made before surgery is undertaken. Therefore, a capsulotomy or capsulectomy would be premature at this point.

Accordingly, the ALJ finds that the evidentiary record does not establish the medical necessity of the requested treatment, and the preauthorization request for such treatment should be denied. In support of this determination, the ALJ makes the following findings of fact and conclusions of law.

III. Findings of Fact

1. Claimant worked at the _____ and suffered work-related injuries in____, when she slipped and fell at work.
2. At the time of Claimant's compensable injury, Tarrant County administered its own workers' compensation insurance for its employees.
3. Claimant had breast augmentation surgery in 1984.
4. In addition to injuries to her neck, shoulder, hip, hand, and ribs, Claimant suffered an injury to her right breast during the fall in____. In particular, Claimant had pain in her right breast and noticed that her breast was deformed after the injury.

5. As a result of her compensable injury, Dr. P.T. Swamy suspected that Claimant's breast implants had ruptured.
6. Claimant had a mammogram performed which revealed no rupture to Claimant's breast implants.
7. Because there was no rupture, Claimant's treating doctor, P.T. Swamy, M.D., then suspected that her right implant may have moved and lodged into scar tissue, thus causing the visible deformity in Claimant's right breast.
8. Dr. Swamy requested preauthorization for a bilateral capsulotomy or capsulectomy to explore and hopefully correct the deformity in Claimant's right breast.
9. Tarrant County denied the preauthorization request.
10. Dr. Swamy requested reconsideration and Tarrant County maintained its denial.
11. Dr. Swamy then requested medical dispute resolution through the Texas Workers' Compensation Commission (Commission). The matter was referred to an Independent Review Organization (IRO) designated by the Commission for the review process. The IRO determined that the requested treatment was not medically necessary and should not be authorized.
12. Claimant then requested a hearing on the IRO decision, and the matter was transferred to the State Office of Administrative Hearings (SOAH).
13. Notice of the hearing was sent on June 24, 2005, and 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.
14. The hearing convened at SOAH's hearings facility on September 26, 2005, before Administrative Law Judge Craig R. Bennett. Tarrant County was represented at the hearing by attorney Robert Josey, and Claimant appeared by telephone and represented herself.
15. The record closed on September 26, 2005, after the parties filed additional evidence.
16. Claimant has not had a magnetic resonance imaging (MRI) or other diagnostic procedure performed to ensure a complete diagnosis of the cause of the abnormality to Claimant's right breast.
17. Dr. Swamy's records do not indicate with reasonable certainty the cause of the abnormality to Claimant's right breast.

18. An MRI or other diagnostic study should first be performed on Claimant and a specific diagnosis be made before surgery is undertaken. A capsulotomy or capsulectomy would be premature at this point.
19. The record evidence in this case does not show sufficient indications for a capsulotomy or a capsulectomy for Claimant's condition.

IV. Conclusions of Law

1. 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(k) of the Act and TEX. GOV'T CODE ANN. ch. 2003.
2. The hearing was conducted pursuant to the Administrative Procedure Act, TEX. GOV'T CODE ANN. ch. 2001.
3. Adequate and timely notice of the hearing was provided in accordance with TEX. GOV'T CODE ANN. §§ 2001.051 and 2001.052.
4. Claimant has the burden of proof. 28 TEX. ADMIN. CODE §§ 148.14(a) and 133.308(w).
5. Claimant failed to prove, by a preponderance of the evidence, that the requested capsulotomy or capsulectomy is medically necessary treatment for Claimant's compensable injury.
6. The request for preauthorization should be denied.

ORDER

IT IS, THEREFORE, ORDERED that preauthorization for a capsulotomy or capsulectomy is denied.

SIGNED October 7, 2005.

**CRAIG R. BENNETT
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS**