

<p>_____, Petitioner</p> <p>v.</p> <p>TEXAS DEPARTMENT OF INSURANCE, DIVISION OF WORKERS' COMPENSATION AND DONALD RENA HEARN, M.D., Respondents</p>	<p>§ § § § § § § § § §</p>	<p>BEFORE THE STATE OFFICE</p> <p>OF</p> <p>ADMINISTRATIVE HEARINGS</p>
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DECISION AND ORDER

_____ (self-insurer, referred to as Carrier) challenges a medical interlocutory order (MIO) issued by the Texas Workers' Compensation Commission, now the Texas Department of Insurance, Division of Workers' Compensation (Division), requiring Carrier to pay for an orthopaedic specialist, a pain management specialist, and three medications (Ambien, Neurontin, and Hydrocodone) over a three-month period (collectively, disputed services). This decision concludes that the disputed services were medically necessary.

I. PROCEDURAL HISTORY, NOTICE, AND JURISDICTION

The MIO was issued on October 31, 2005, pursuant to the Division's Prospective Review of Medical Examination (PRME) rules at 28 TEX. ADMIN. CODE § 134.650. The Carrier filed a timely hearing request. After proper and timely notice, the hearing convened and closed on October 3, 2007, at the State Office of Administrative Hearings (SOAH), with the undersigned Administrative Law Judge (ALJ) presiding. The Carrier and the Division were represented by counsel, who appeared in person.

SOAH has jurisdiction over this proceeding, including the authority to issue a decision and order, pursuant to TEX. LAB. CODE ANN. §§ 402.073(b) and 413.055 and TEX. GOV'T CODE ANN. ch. 2003.

II. DISCUSSION

A. Background

The injured worker (Claimant) worked as a _____. On _____, he was injured when he fell down the stairs while arresting a prisoner. Claimant hurt both knees. He suffered a right knee contusion but suffered a left knee tear (tear of the lateral meniscus), which caused significant pain. Since his injury, Claimant has had three arthroscopies and a total left knee replacement on April 23, 2002. Since his left knee replacement, Claimant has not been able to return to work.

Employees have a right to necessary health care under TEX. LAB. CODE ANN. §§ 408.021 and 401.011. Section 408.021(a) provides: “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 compensable injury; (2) promotes recovery; or (3) enhances the ability of the employee to return to or retain employment.” Section 401.011(19) of the Labor Code provides that health care includes “all reasonable and necessary medical . . . services.”

The Carrier has the burden of proof in this proceeding.¹

B. Evidence and Analysis

At the hearing, both parties offered various medical records in evidence. In addition, the Carrier called Charles F. Xeller, M.D., to testify, and the Division called Donald Rena Hearn, M.D., to testify.

Carrier argues that it should not be responsible for paying for the disputed services because the total left knee replacement was not the result of the compensable injury but the result of Claimant’s degenerative arthritis. On April 22, 2004, Dr. Xeller examined Claimant at the

¹ TEX. LAB. CODE ANN. § 413.055; 28 TEX. ADMIN. CODE § 148.14(a).

request of the Carrier. Dr. Xeller recognized the significant problems Claimant had with his left knee since the injury in _____. After his examination of Claimant, Dr. Xeller realized that Claimant may need additional surgery on his left knee. Dr. Xeller also recognized that Claimant was in significant pain and stated that the medications he was taking seemed to control his pain. He also noted that Claimant had an unstable knee. Because of the condition of his knee, Dr. Xeller determined that Claimant “really cannot work.”² In his follow-up report on September 14, 2004, Dr. Xeller stated that the total knee replacement was not related to the compensable injury but the result of multiple compartmental arthritis. At the hearing, however, Dr. Xeller admitted that the compensable left knee injury was a producing cause of Claimant’s current condition. In other words, the left knee meniscus tear, caused by the compensable injury, likely exacerbated his degenerative arthritis.

Dr. Hearn, who treated Claimant from 2004 through 2006, explained that he prescribed the Neurontin and Hydrocodone for Claimant because of his significant pain. The Ambien³ was prescribed because Claimant’s pain kept him from sleeping. Dr. Hearn further testified that Claimant could not get through a typical day without his medications. To ensure that Claimant’s knee pain did not become worse and to wean him off the medications, Dr. Hearn referred him to a pain management specialist and an orthopaedic specialist to determine if these specialists could treat Claimant’s pain.

Based on the evidence in this case, the ALJ finds that the Carrier did not meet its burden of proof; therefore, the disputed services were medically necessary. Both Dr. Xeller and Dr. Hearn testified that the medications helped Claimant with his pain. Dr. Xeller even testified that Claimant could not return to work because of his pain. The evidence further shows that Claimant could not get through a typical day without his medications. Dr. Hearn’s plan to refer Claimant to specialists was reasonable, given that his knee pain was not likely to improve and would likely get worse.⁴ Dr. Xeller also recognized that, without additional surgery, Claimant’s pain would not improve and he would not be able to return to work. Although Claimant had degenerative arthritis, the total knee replacement surgery, which was a result of the compensable

² Carrier Ex. B.

³ Dr. Hearn testified that the Ambien was not a narcotic.

⁴ At the time, Claimant refused to have any additional surgery.

injury, exacerbated his condition.⁵ And, as stated by Dr. Xeller, the meniscus tear (compensable injury) was a producing cause of the total knee replacement. For the reasons noted above, the ALJ finds that the disputed services were medically necessary.⁶

III. FINDINGS OF FACT

1. The injured worker (Claimant) worked as a _____.
2. On _____, he was injured when he fell down the stairs while arresting a prisoner.
3. Claimant injured both knees. He suffered a right knee contusion but suffered a left knee tear (tear of the lateral meniscus), which caused significant problems for Claimant.
4. Since his injury, Claimant has had three arthroscopies and a total left knee replacement on April 23, 2002.
5. Since his left knee replacement, Claimant has not been able to return to work.
6. Claimant also has degenerative arthritis.
7. Donald Rena Hearn, M.D., treated Claimant from 2004 through 2006.
8. To treat Claimant's knee problems, Dr. Hearn prescribed Ambien, Neurontin, and Hydrocodone (three-month supply for each medication).
9. To ensure that Claimant's knee pain/condition did not become worse and to wean him off the medications, Dr. Hearn referred him to a pain management specialist and an orthopaedic specialist to determine if these specialists could treat Claimant's pain.
10. On April 22, 2004, Dr. Xeller examined Claimant at the request of the Carrier.
11. At the time of Dr. Xeller's examination, Claimant complained of constant and significant pain in his left knee.
12. Claimant will likely need additional surgery on his left knee to help with his pain.
13. The meniscus tear of the left knee, caused by the compensable injury, exacerbated Claimant's degenerative arthritis.

⁵ Carrier paid benefits associated with the total left knee replacement until September 1, 2004 (more than two years after the surgery). Although Carrier is entitled to re-evaluate Claimant's condition, Dr. Xeller's May 6, 2004, report did not indicate that the pain medications were not medically necessary for Claimant. In fact, he noted that it was appropriate at this time for Claimant to be taking Elavil, Vicodin, and Neurontin. Carrier Ex. B.

⁶ At the hearing, the parties stipulated that Claimant never saw an orthopaedic specialist.

14. The left knee meniscus tear along with the degenerative arthritis required the total left knee replacement.
15. The Neurontin and Hydrocodone relieved Claimant's significant pain in his left knee.
16. The Ambien helped Claimant get to sleep.
17. Claimant could not get through a typical day without his medications.
18. Carrier denied the request for the orthopaedic specialist, the pain management specialist, and the three medications – Ambien, Neurontin, and Hydrocodone.
19. Dr. Hearn submitted A Request for Prospective Review of Medical Care Not Requiring Preauthorization, asking that the Texas Workers' Compensation Commission, now the Texas Department of Insurance, Division of Workers' Compensation (Division) order the disputed services to be provided.
20. The Division appointed Edward Brooke Roberts, M.D., as the Prospective Review of Medical Examination (PRME) doctor.
21. On October 21, 2005, Dr. Roberts opined that the disputed services were medically necessary to treat Claimant's condition.
22. On October 31, 2005, the Division issued a medical interlocutory order (MIO) directing the Carrier to pay for the disputed services.
23. The Carrier requested a hearing not more than 20 days after receiving notice of the MIO.
24. All parties received not less than 10 days notice of the hearing that 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.
25. After proper and timely notice, the hearing convened on October 3, 2007, at the State Office of Administrative Hearings (SOAH), with the Administrative Law Judge Michael J. O'Malley presiding. The Carrier was represented by Timothy R. White, and the Division was represented by Terra Colvin Thomas.

IV. CONCLUSIONS OF LAW

1. The State Office of Administrative Hearings has jurisdiction over this proceeding, including the authority to issue a decision and order, pursuant to TEX. LAB. CODE ANN. §§ 402.073(b) and 413.055 and TEX. GOV'T CODE ANN. ch. 2003.
2. Adequate and timely notice of the hearing was provided in accordance with TEX. GOV'T CODE ANN. §§ 2001.051 and 2001.052.

3. The Carrier had the burden of proof in this proceeding, and it failed to meet that burden. TEX. LAB. CODE ANN. § 413.055; 28 TEX. ADMIN. CODE § 148.14(a).
4. The orthopaedic specialist, the pain management specialist, and the Ambien, Neurontin, and Hydrocodone were medically necessary to treat the Claimant's compensable injury. TEX. LAB. CODE ANN. § 408.021 and 28 TEX. ADMIN. CODE § 134.650(e)(1)(D)(i).
5. The compensable injury was a producing cause of Claimant's medical condition that was the subject of the proposed care. 28 TEX. ADMIN. CODE § 134.650(e)(1)(D)(ii).

ORDER

IT IS THEREFORE, ORDERED that the orthopaedic specialist, the pain management specialist, and the Ambien, Neurontin, and Hydrocodone were medically necessary to treat the Claimant's compensable injury and that _____ is ineligible for reimbursement for payments for those services and medications.

SIGNED November 28, 2007.

**MICHAEL J. O'MALLEY
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS**