MEDICAL CONTESTED CASE HEARING NO. 09085
M6-09-16457-01

DECISION AND ORDER

This case is decided pursuant to Chapter 410 of the Texas Workers' Compensation Act and Rules of the Division of Workers' Compensation adopted thereunder.

ISSUE

A benefit contested case hearing was held on January 12, 2008, to decide the following disputed issue:

> Is the preponderance of the evidence contrary to the decision of the Independent Review Organization (IRO) that Claimant is not entitled to inpatient total left knee arthroplasty with inpatient length of stay for 3 days for the compensable injury of _____?

PARTIES PRESENT

Claimant appeared and was represented by DM, attorney. Carrier appeared and was represented by attorney, TW. Present on behalf of Employer was SH.

BACKGROUND INFORMATION

It is undisputed that Claimant sustained a compensable injury to his left knee while working as a policeman for the (Employer). As the result of his compensable injury, Claimant underwent two arthroscopic surgeries, which did not improve his condition. He has returned to work at desk duty as he can no longer perform his pre-injury patrol duties due to the compensable injury.

The records of Claimant's treating doctor, Dr. M, show that Claimant underwent various conservative procedures including steroid and Hyalgan injections for treatment of his knee injury. Dr. M referred Claimant to an orthopedic surgeon, Dr. DP, who recommended left knee arthroplasty. Dr. M agreed that this procedure would provide Claimant with significant relief and, after rehabilitation, would offer a chance that he would get back to his pre-injury job duties.

Dr. DP saw Claimant in June of 2008, and diagnosed morbid obesity and severe traumatic degenerative joint disease of the left knee. He stated that he would prefer for Claimant to be at least 60 years old before having the surgery, but opined that he did not believe Claimant would make it that long. He did note the fact that carrying more weight on his knee would make Claimant's condition worse, and recommended the possibility of surgical weight loss procedures as Claimant had difficulty exercising due to his knee injury. Dr. DP requested the total knee arthroplasty on August 26, 2008.

The carrier's first utilization review doctor cited the *ODG* indications for knee surgery and denied preauthorization of the requested left knee arthroplasty. The reviewer stated that Claimant was 46 years old with significant arthritis of the knee; stood 67 inches in height; and, weighed 357 pounds, with a body mass index (BMI) of 55.9. The reviewer opined that Claimant did not satisfy the age

and body mass index criteria recommended by the *ODG* for the requested surgery.

The utilization review doctor who reviewed the request on reconsideration also denied the requested surgery. He also cited the *ODG* and stated that Claimant did not meet the evidence-based criteria for the requested procedure, specifically the third criteria regarding age and body mass index of less than 35.

An IRO reviewer and board certified orthopedic surgeon reviewed the records and upheld the adverse determinations of the utilization review doctors. The IRO reviewer stated that Claimant did not meet the *ODG* criteria for the requested surgery because he did not have a body mass index of less than 35. The reviewer noted that Claimant met the criteria regarding conservative care, medications and viscosupplementation or steroid injections as well as limited range of motion and pain and no relief after conservative care. The reviewer further noted that imaging studies documented severe changes. The sole reason given for the IRO to uphold the preauthorization denials was that Claimant's "body mass index is so far from one that would be considered acceptable under the ODG Guidelines that this reviewer is unable to overturn the previous decision…." The reviewer opined that with his hypertension, weight of 357 pounds and a recent rapid weight gain of greater than 100 pounds since the injury, the outcome of the total knee replacement would be jeopardized.

DISCUSSION

Texas Labor Code Section 408.021 provides that 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. **Section 401.011(22-a)** defines health care reasonably required as "health care that is clinically appropriate and considered effective for the injured employee's injury and provided in accordance with best practices consistent with: (A) evidence based medicine; or (B) if that evidence is not available, generally accepted standards of medical practice recognized in the medical community."

"Evidence based medicine" is further defined, by **Section 401.011(18-a)** as the use of the current best quality scientific and medical evidence formulated from credible scientific studies, including peer-reviewed medical literature and other current scientifically based texts, and treatment and practice guidelines in making decisions about the care of individual patients.

The Division of Workers' Compensation has adopted treatment guidelines under Division **Rule 137.100**. That rule requires that health care providers provide treatment in accordance with the current edition of the *Official Disability Guidelines (ODG),* and treatment provided pursuant to those guidelines is presumed to be health care reasonably required as mandated by the above-referenced sections of the **Texas Labor Code**.

ODG

The initial inquiry, therefore, in any dispute regarding medical necessity, is whether the proposed care is consistent with the *ODG*. As the utilization review and IRO doctors in the instant case have stated, the *ODG* allows for arthroplasty and sets out the circumstances under which such treatment is recommended as reasonable and necessary.

The *ODG* Treatment Guidelines for arthroplasty for treatment of the knee refer the reader to "knee joint replacement," which the *ODG* discuss as follows:

> Recommended as indicated below. Total hip and total knee arthroplasties are well accepted as reliable and suitable surgical procedures to return patients to function. The most common diagnosis is osteoarthritis. Overall, total knee arthroplasties were found to be quite effective in terms of improvement in health-related quality-of-life dimensions, with the occasional exception of the social dimension. Age was not found to be an obstacle to effective surgery, and men seemed to benefit more from the intervention than did women. (Ethgen, 2004) Total knee arthroplasty was found to be associated with substantial functional improvement. (Kane, 2005) Navigated knee replacement provides few advantages over conventional surgery on the basis of radiographic end points. (Bathis, 2006) (Bauwens, 2007) The majority of patients who undergo total joint replacement are able to maintain a moderate level of physical activity, and some maintain very high activity levels. (Bauman, 2007) Functional exercises after hospital discharge for total knee arthroplasty result in a small to moderate short-term, but not long-term, benefit. In the short term physical therapy interventions with exercises based on functional activities may be more effective after total knee arthroplasty than traditional exercise programs, which concentrate on isometric muscle exercises and exercises to increase range of motion in the joint. (Lowe, 2007) The safety of simultaneous bilateral total knee replacement remains controversial. Compared with staged bilateral or unilateral total knee replacement, simultaneous bilateral total knee replacement carries a higher risk of serious cardiac complications, pulmonary complications, and mortality. (Restrepo, 2007) Unicompartmental knee replacement is effective among patients with knee OA restricted to a single compartment. (Zhang, 2008) Accelerated perioperative care and rehabilitation intervention after hip and knee arthroplasty (including intense physical therapy and exercise) reduced mean hospital length of stay (LOS) from 8.8 days before implementation to 4.3 days after implementation. (Larsen, 2008) After total knee arthroplasty (TKA) for osteoarthritis of the knee, obese patients fare nearly as well as their normal-weight peers. A British research team reports that higher BMI (up to 35) should not be a contraindication to TKA, provided that the patient is sufficiently fit to undergo the short-term rigors of surgery. TKA also halts the decline and maintains physical function in even the oldest age groups (> 75 years). (Cushnaghan, 2008) In this RCT, perioperative celecoxib (Celebrex) significantly improved postoperative resting pain scores at 48 and 72 hrs, opioid consumption, and active ROM in the first three days after total knee arthroplasty, without increasing the risks of bleeding. The study group received a single 400 mg dose of celecoxib, one hour before surgery, and 200 mg of celecoxib every 12 hours for five days. (Huang, 2008) Total knee arthroplasty (TKA) not only improves knee mobility in older patients with severe osteoarthritis of the knee, it actually improves the overall level of physical functioning. Levels of physical impairment were assessed with three tools: the Nagi Disability Scale, the Instrumental Activities of Daily Living Scale (IADL) and the Activities of Daily Living (ADL) Scale. Tasks on the Nagi Disability Scale involve the highest level of physical functioning, the IADL an intermediate level, and the ADL Scale involves the most basic levels. Statistically significant average treatment effects for TKA were observed for one or more tasks for each measure of physical functioning. The improvements after TKA were

"sizeable" on all three scales, while the no-treatment group showed declining levels of physical functioning. (George, 2008)

ODG Indications for Surgery™ -- Knee arthroplasty:

Criteria for knee joint replacement (If only 1 compartment is affected, a unicompartmental or partial replacement is indicated. If 2 of the 3 compartments are affected, a total joint replacement is indicated.):

1. Conservative Care: Medications. AND (Visco supplementation injections OR Steroid injection). PLUS

2. Subjective Clinical Findings: Limited range of motion. AND Nighttime joint pain. AND No pain relief with conservative care. PLUS

3. Objective Clinical Findings: Over 50 years of age AND Body Mass Index of less than 35. PLUS

4. Imaging Clinical Findings: Osteoarthritis on: Standing x-ray. OR Arthroscopy. (Washington, 2003) (Sheng, 2004) (Saleh, 2002) (Callahan, 1995)

As noted previously herein, "health care reasonably required" means health care that is clinically appropriate and considered effective for the injured employee's injury and provided in accordance with best practices consistent with evidence-based medicine or if that evidence is not available, generally accepted standards of medical practice recognized in the medical community. Treatment provided pursuant to the *ODG* is presumed to be health care reasonably required.

Both of the doctors who reviewed the requested arthroplasty and the IRO doctor denied the requested surgery citing the relevant provisions of the *ODG*, specifically the third criteria regarding age and body mass index. It is clear from the IRO report that Claimant meets all of the other criteria for the requested surgery.

Claimant cited the *Cushnaghan* study referenced in the *ODG* in support of his position that there is no justification for withholding total knee arthroplasty from obese patients solely on the grounds of their body mass index. Claimant also cited a study entitled *Long-term Outcome of Total Knee Replacement: Does Obesity Matter?* published in the Obesity Surgery Journal (Volume 16, Number 1) in January 2006, which concluded that moderate obesity does not affect the clinical and radiologic outcome of total knee arthroplasty; however, total knee arthroplasty results in improved mobility, enhancing the success of subsequent weight loss therapy.

In the instant case, both parties relied on the *ODG* in support of their position for or against the requested treatment. The IRO cited the *ODG* as well, and opined essentially that because Claimant's BMI is so far in excess of that recommended by the *ODG* the procedure could not be approved.

When both parties cite the *ODG* in support of their position, that position must be supported by sufficient evidence to justify application of the *ODG*. Mere citation to the *ODG* does not carry the day. In the instant case, the IRO report is specific and sets out exactly how Claimant fails to meet the criteria set out in the *ODG*.

While it is true that there is evidence-based medicine in support of the proposition that BMI alone should not justify withholding total knee arthroplasty from obese patients, Claimant has not provided evidence-based medicine sufficient to overcome the IRO opinion in the instant case. The *ODG* acknowledges the studies cited by the Claimant herein, however, the *ODG* criteria did not change

based on those studies. The *ODG* still has a cut-off point for BMI at 35. Claimant's BMI exceeds the *ODG* recommended BMI by almost 21. Claimant did not provide an opinion from his surgeon or any other qualified doctor to explain how Claimant's specific situation justifies a departure from the four criteria set out in the *ODG*. In fact, Claimant's own orthopedic surgeon recommended weight-loss surgery in light of his obesity and continued knee problems.

Under the Act, treatment provided pursuant to the *ODG* is presumed to be health care reasonably required as mandated by the above-referenced sections of the **Texas Labor Code**. Claimant failed to present an evidence-based medical opinion from a competent source to overcome the IRO's decision. The preponderance of the evidence is not contrary to the IRO decision and the requested total knee arthroplasty with inpatient length of stay for 3 days does not meet the criteria set out in the *ODG*.

Even though all the evidence presented was not discussed, it was considered. The Findings of Fact and Conclusions of Law are based on all of the evidence presented.

FINDINGS OF FACT

1. The parties stipulated to the following facts:

   A. Venue is proper in the (City) Field Office of the Texas Department of Insurance, Division of Workers' Compensation.

   B. On _____, Claimant was the employee of (Employer), when he sustained a compensable injury.

   C. The IRO determined that the requested services were not reasonable and necessary health care services for the compensable injury of _____.

2. Carrier delivered to Claimant a single document stating the true corporate name of Carrier, and name and street address of Carrier's registered agent which was admitted into evidence as Hearing Officer's Exhibit Number 2.

3. Claimant's orthopedic surgeon recommended total knee arthroplasty with inpatient length of stay for 3 days as needed for treatment of Claimant's compensable left knee injury.

4. For treatment of the knee, the *ODG* sets out the circumstances under which total knee arthroplasty is recommended.

5. Claimant meets three of the four ODG criteria for total knee arthroscopy; but, does not meet the third criteria regarding age and body mass and index.

6. The IRO decision upheld the Carrier's denial of the requested total knee arthroplasty for treatment of the left knee injury because the requested surgery did not meet the criteria set out in the *ODG*.

7. The requested service is not consistent with the *ODG* criteria for total knee arthroplasty of

the left knee.

8. The requested total knee arthroplasty with inpatient length of stay for 3 days is not health care reasonably required for the compensable injury of _____.

CONCLUSIONS OF LAW

1. The Texas Department of Insurance, Division of Workers' Compensation, has jurisdiction to hear this case.

2. Venue was proper in the (City) Field Office.

3. The preponderance of the evidence is not contrary to the decision of IRO that total knee arthroplasty with inpatient length of stay for 3 days is not health care reasonably required for the compensable injury of _____.

DECISION

Claimant is not entitled to total knee arthroplasty with inpatient length of stay for 3 days for the compensable injury of _____.

ORDER

Carrier is not liable for the benefits at issue in this hearing. Claimant remains entitled to medical benefits for the compensable injury in accordance with Section 408.021.

The true corporate name of the insurance carrier is **TEXAS POLITICAL SUBDIVISIONS JOINT SELF-INSURANCE FUNDS** and the name and address of its registered agent for service of process is

TIM OFFENBERGER
12720 HILLCREST DRIVE, SUITE 100
DALLAS, TEXAS 75230

Signed this 22nd day of January, 2009.

Erika Copeland
Hearing Officer