

MEDICAL CONTESTED CASE HEARING 22008

**DECISION**

Claimant appealed the decision of the Independent Review Organization in Case Number 317596.

The hearing for this appeal was held on June 13, 2022, with the record closing on June 17, 2022. For the reasons discussed below, the administrative law judge (ALJ) decides:

Claimant is not entitled to arthroscopy rotator cuff repair to the right shoulder for the compensable injury of (Date of Injury).

**ISSUE**

At the hearing, Christopher M. Maisel, an ALJ, considered the following unresolved issue:

Is Claimant entitled to arthroscopy rotator cuff repair to the right shoulder for the compensable injury of (Date of Injury)?

**PERSONS PRESENT**

Claimant appeared and was assisted by RE, ombudsman. Insurance Carrier appeared and was represented by JF, attorney.

**EVIDENCE PRESENTED**

The following witnesses testified:

For Claimant: Claimant.

For Insurance Carrier: None.

The following exhibits were admitted into evidence:

Administrative Law Judge Exhibit: ALJ-1.

Claimant Exhibits: C-1 through C-5.

Insurance Carrier Exhibits: CR-A through CR-G.

Insurance Carrier acknowledged that exhibit G pg. 9 is blank except for the top line and that is intentional. The record was reopened on June 16, 2022, to correct Insurance Carrier's exhibit list. Insurance Carrier confirmed post hearing that Insurance Carrier Exhibit list should have reflected CR-D had 6 pages not 7. The record was closed again on June 17, 2022.

## DISCUSSION

Claimant worked as a truck driver for Employer and injured himself moving a 500 pound rug. Claimant sustained a compensable injury on (Date of Injury). The parties stipulated that the compensable injury includes a right shoulder full thickness anterior rotator cuff tear, right shoulder Superior Labrum Anterior to Posterior (SLAP) tear, and right shoulder impingement syndrome.

Claimant underwent three surgeries to repair his rotator cuff tear. Claimant continued to complain about his pain and other symptoms, and he was referred to Dr. MM, a consulting surgeon. Dr. M requested preauthorization for the disputed procedure, which Insurance Carrier denied. Claimant then appealed for an Independent Review Organization to review the denial. MEDRx Review, Inc. was certified and appointed by the Texas Department of Insurance as the Independent Review Organization (IRO). The IRO performed the review and sent the parties its Notice of Independent Review Decision on August 16, 2021. The IRO upheld the denial of the disputed procedure. Claimant appealed the IRO decision on August 26, 2021.

To determine if treatment is medically necessary, Texas law requires the Division of Workers' Compensation (DWC) to use treatment guidelines. These guidelines must be evidence-based, scientifically valid, and outcome-focused. Use of these guidelines ensures that an injured employee will receive reasonable and necessary health care. (See Texas Labor Code §413.011(e) and 413.017(1).) DWC uses the current edition of the *Official Disability Guidelines* (ODG). If the ODG does not address the requested treatment, then other guidelines or generally accepted standards of practice recognized in the medical community are used.

In this dispute, Claimant has the burden of showing by a preponderance of the evidence-based medical evidence that the IRO decision is wrong.

Claimant relied on his testimony, the medical records in evidence, and the opinion from Dr. M to support his position of entitlement to the disputed treatment. Insurance Carrier relied on the medical records in evidence and the IRO decision to support its position that Claimant is not entitled to the requested treatment.

Dr. M submitted a preauthorization request on June 25, 2021, requesting arthroscopy shoulder rotator cuff repair-right shoulder. On June 29, 2021, a Utilization Review Peer Reviewer Response was provided by Dr. CT. Dr. T cited the ODG for surgery of moderate to large full thickness rotator cuff tears. He cited the lack of imaging reports to confirm pathology and non-certified the procedure. A July 2, 2021, Utilization Review by Dr. FT found that there is no evidence of full passive range of motion on examination and the imaging shows a substantially retracted tendon tear and muscle atrophy of the supraspinatus tendon. He also stated that there is no active elevation above the horizontal on exam which does not support criteria for a revision

rotator cuff repair. These reviews cited the ODG guidelines for rotator cuff repair and stated that they did not support the surgery. The cited ODG guidelines are in evidence.

The review for the IRO decision was performed by a medical doctor specializing in Orthopedic Surgery and was issued on August 16, 2021. This decision indicated Claimant was post prior repair of the supraspinatus tendon, supraspinatus tendon complete tear with retraction, post labral repair, and post distal clavicle resection. It noted a detailed documentation is not evident regarding trial and failure of recent reasonable and comprehensive less invasive conservative care measures directed to the right shoulder for rotator cuff pathology. It stated that surgery is not guideline supported without documentation of failed conservative measures. The IRO decision noted that Claimant had undergone three rotator cuff repairs, and there is limited support for another surgical attempt, and there was a markedly retracted tendon tear and muscle atrophy of the supraspinatus. Finally, it noted there had been no significant active elevation above shoulder horizontal which is required under the ODG.

Claimant argued that Dr. M's letter of July 16, 2021, was sufficient to establish the preponderance of the evidence-based medical evidence is contrary to the decision of the IRO decision. Dr. M summarized some of Claimant's symptoms and clinical findings and stated, "Because of improvement of his neuropathic pain it was recommended to undergo a redo of rotator cuff repair that was denied as it did not meet ODG guidelines." Dr. M wrote that, "I honestly do not know what that means as the denial is not consistent with the standard of orthopedic shoulder practice in this country." Dr. M did not offer any persuasive evidence of what that standard of orthopedic shoulder practice was, nor did he opine that the ODG guidelines did not address the treatment in question. He also did not opine that Claimant's condition met the ODG requirements.

After consideration of the evidence, the ALJ finds that the ODG addresses rotator cuff repair and revision surgery. The ODG requirements do not support the necessity of the disputed treatment. The evidence offered, including the opinion of Dr. M, does not provide a persuasive explanation using evidence-based medicine of how the disputed treatment is necessary. Claimant did not meet his burden of proof to establish by the preponderance of the evidence-based medicine that he is entitled to the disputed procedure. Therefore, the preponderance of the evidence is not contrary to the decision of the IRO that Claimant is not entitled to the disputed treatment.

The ALJ considered all the evidence admitted. The Findings of Fact and Conclusions of Law are based on an assessment of all the evidence, whether or not the evidence is specifically discussed in this Decision.

## 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 (Date of Injury), Claimant was the employee of (Employer), Employer.
  - C. On (Date of Injury), Employer provided workers' compensation insurance with Protective Insurance Company, Insurance Carrier.
  - D. On (Date of Injury), Claimant sustained a compensable injury.
  - E. The compensable injury of (Date of Injury), extends to and includes right shoulder full thickness anterior rotator cuff tear, right shoulder SLAP tear, and right shoulder impingement syndrome.
  - F. Dr. MM requested preauthorization for arthroscopy shoulder rotator cuff repair-right shoulder.
  - G. Insurance Carrier denied preauthorization for the requested arthroscopy shoulder rotator cuff repair-right shoulder.
  - H. The Texas Department of Insurance appointed MEDRx Review Inc. as the Independent Review Organization.
  - I. The Independent Review Organization upheld Insurance Carrier's denial of preauthorization for arthroscopy shoulder rotator cuff repair-right shoulder.
2. Insurance Carrier delivered to Claimant a document stating Insurance Carrier's true corporate name and the registered agent's name and address. This document was admitted into evidence.
3. The Independent Review Organization decision was sent to the parties on August 16, 2021.
4. On August 26, 2021, Claimant filed this appeal of the Independent Review Organization decision with the Division of Workers' Compensation. The appeal was filed within twenty days from the date the Independent Review Organization decision was sent to the parties.
5. The preponderance of the evidence-based medical evidence is not contrary to the decision of the Independent Review Organization that Claimant is not entitled to arthroscopy rotator cuff repair to the right shoulder for the compensable injury of (Date of Injury).

**CONCLUSIONS OF LAW**

1. The Texas Department of Insurance, Division of Workers' Compensation, has jurisdiction to hear this case.
2. Venue is proper in the (City) Field Office.
3. Claimant is not entitled to arthroscopy rotator cuff repair to the right shoulder for the compensable injury of (Date of Injury).

**ORDER**

Insurance Carrier is not liable for the benefits in dispute in this hearing. Claimant remains entitled to medical benefits for the compensable injury in accordance with Texas Labor Code § 408.021.

The true corporate name of the insurance carrier is **PROTECTIVE INSURANCE COMPANY**. The name and address of its registered agent for service of process is:

**CORPORATION SERVICE COMPANY D/B/A  
CSC-LAWYERS INCORPORATING SERVICE COMPANY  
211 E. 7TH STREET, SUITE 620  
AUSTIN, TX 78701-3218**

Signed this 17th day of June, 2022.

Christopher M. Maisel  
Administrative Law Judge