

MEDICAL CONTESTED CASE HEARING NO. 16059

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.

ISSUES

A contested case hearing was held on February 8, 2017 to decide the following disputed issue:

Is the preponderance of the evidence contrary to the decision of the IRO that Claimant is not entitled to right knee arthroscopy with partial lateral meniscectomy for the compensable injury of (Date of Injury)?

PARTIES PRESENT

Claimant appeared and was assisted by CJ, ombudsman. Carrier appeared and was represented by TH, attorney.

BACKGROUND INFORMATION

Claimant sustained a compensable injury to his right knee on (Date of Injury) while unloading equipment from his car. He was assessed with a complex tear of the lateral meniscus and underwent conservative care for his right knee injury. On April 28, 2016, after conservative care failed, Claimant underwent right knee arthroscopy and partial lateral meniscectomy, performed by DM, MD, an orthopedic surgeon. However Claimant continues to complain of severe pain and swelling in his right thigh, right knee, with frequent and painful catching and locking episodes.

On August 4, 2016, Dr. M submitted an Authorization Request for Surgery. The requested procedure was a repeat right knee arthroscopy with partial lateral meniscectomy on an out-patient basis. Pre-authorization was denied by Carrier. On August 9, 2016, GG, MD, performed a utilization review and denied the request for one surgical assistant and the request for right knee arthroscopy with partial lateral meniscectomy. On August 22, 2016, MG, MD, the IRO doctor, an orthopedic physician, upheld the denial for the requested treatment. Claimant appealed the IRO's decision to a Medical Contested Case Hearing.

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. Health care reasonably required is further defined in Texas Labor Code Section 401.011 (22a) 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 evidence based medicine or, if evidence based medicine is not available, then generally accepted standards of medical practice recognized in the medical community. Health care under the Texas Workers' Compensation system must be consistent with evidence based medicine if that evidence is available. Evidence based medicine is further defined in Texas Labor Code Section 401.011 (18a) to be 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. The Commissioner of the Division of Workers' Compensation is required to adopt treatment guidelines that are evidence-based, scientifically valid, outcome-focused, and designed to reduce excessive or inappropriate medical care while safeguarding necessary medical care. Texas Labor Code Section 413.011(e). Medical services consistent with the medical policies and fee guidelines adopted by the commissioner are presumed reasonable in accordance with Texas Labor Code Section 413.017(1).

In accordance with the above statutory guidance, the Division of Workers' Compensation has adopted treatment guidelines by Division Rule 137.100. This rule directs health care providers to provide treatment in accordance with the current edition of the Official Disability Guidelines (ODG), and such treatment is presumed to be health care reasonably required as defined in the Texas Labor Code. Thus, the focus of any health care dispute starts with the health care set out in the ODG. Also, in accordance with Division Rule 133.308(s), "A decision issued by an IRO is not considered an agency decision and neither the Department nor the Division are considered parties to an appeal. In a Contested Case Hearing (CCH), the party appealing the IRO decision has the burden of overcoming the decision issued by an IRO by a preponderance of evidence-based medical evidence."

With regard to a meniscectomy, the ODG lists the following criteria:

ODG Indications for Surgery™ -- Meniscectomy:

Criteria for meniscectomy or meniscus repair (Suggest 2 symptoms and 2 signs to avoid scopes with lower yield, e.g. pain without other symptoms, posterior joint line tenderness that could just signify arthritis, MRI with degenerative tear that is often false positive):

- 1. Conservative Care:** (Not required for locked/blocked knee.) Physical therapy. OR Medication. OR Activity modification. PLUS
- 2. Subjective Clinical Findings (at least two):** Joint pain. OR Swelling. OR Feeling of give way. OR Locking, clicking, or popping. PLUS
- 3. Objective Clinical Findings (at least two):** Positive McMurray's sign. OR Joint line tenderness. OR Effusion. OR Limited range of motion. OR Locking, clicking, or popping. OR Crepitus. PLUS

- 4. Imaging Clinical Findings:** (Not required for locked/blocked knee.)
Meniscal tear on MRI.

(Washington, 2003)

For average hospital LOS if criteria are met, see Hospital length of stay (LOS).

With regard to diagnostic arthroscopy, the ODG lists the following criteria:

ODG Indications for Surgery™ -- Diagnostic arthroscopy:

Criteria for diagnostic arthroscopy:

- 1. Conservative Care:** Medications. OR Physical therapy. PLUS
- 2. Subjective Clinical Findings:** Pain and functional limitations continue despite conservative care. PLUS
- 3. Imaging Clinical Findings:** Imaging is inconclusive.

(Washington, 2003) (Lee, 2004)

For average hospital LOS if criteria are met, see Hospital length of stay (LOS).

On July 8, 2016, a right knee MRI without contrast was performed at One Step Diagnostic. The study was interpreted by RO, MD. The study revealed: post-surgical repair of the anterior horn of the lateral meniscus; grade II signal in the posterior horn of the medial meniscus without MRI criteria for a grade III tear; persistent chondral fissure of the weight bearing articular surface of the lateral tibial plateau; lateral tilt of the patella with grade I chondromalacia patella and moderate effusion; effusion was improved in the interval; persistent Baker's cyst.

In support of his position, Claimant contends that he has completed conservative care as required by the ODG and his initial arthroscopic surgery was unsuccessful in treating his ongoing symptoms, the cause of which is unclear based on the physical examinations and MRIs. He further contends that Dr. M has discussed the available options with him, one of which is surgery. Dr. M is of the opinion that a second arthroscopy might reveal the cause of his symptoms and decreased range of motion and may alleviate his pain. Claimant also points to the fact that the Division-appointed designated doctor, LB, DC, who examined him on December 23, 2016, certified that he had not reached MMI. Dr. B agreed with Dr. M's theory that there may be a trapped collagen fragment that the MRI does not show, which may be causing the non-recovery. Both doctors opined that a second knee arthroscopy would rule this in or out.

On August 9, 2016, the IRO doctor, Dr. GG, performed the utilization review and denied the request for right knee arthroscopy with partial lateral meniscectomy. Dr. GG opined that:

The documented examination findings were not suggestive of meniscal tear to support the need for surgery as required by the ODG. Therefore, the medical

necessity of the request has not been established. As the request for right knee arthroscopy with partial lateral meniscectomy has not been established, concurrent request for one surgical assistant is not warranted. Therefore the medical necessity of the request has not been established.

On August 22, 2016, Dr. MG performed a reconsideration review and upheld the denial with the following rationale: “The documented examination findings were not suggestive of meniscal tear to warrant right knee arthroscopy with partial lateral meniscectomy. As the request for surgery has not been established, the concurrent request for one surgical assistant is not warranted.”

Claimant underwent prior surgery but continues to be bothered by subjective complaints of pain. A post-surgical MRI did not reveal a discreet meniscal tear. There is no objective evidence to support the meniscal tear. All of the ODG requirements for meniscectomy are not met in this case. Specifically, the fourth criteria, evidence of a meniscal tear on the MRI, is not met. Since all of the ODG requirements for the requested procedure have not been met and since no other evidence-based medicine was put forth in support of the necessity of the proposed procedure, Claimant has failed to prove that the preponderance of the evidence based medical evidence is contrary to the IRO decision.

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. The Texas Department of Insurance, Division of Workers’ Compensation has jurisdiction in this matter.
 - B. Venue is proper in the (City) Field Office of the Texas Department of Insurance, Division of Workers’ Compensation.
 - C. On (Date of Injury), Claimant was the employee of (Employer), Employer.
 - D. Claimant sustained a compensable injury on (Date of Injury).
 - E. The Independent Review Organization determined that claimant should not have right knee arthroscopy with partial lateral meniscectomy
2. Carrier delivered to Claimant a single document stating the true corporate name of Carrier, and the name and street address of Carrier’s registered agent, which document was admitted into evidence as Hearing Officer’s Exhibit Number 2.

3. Right knee arthroscopy and partial lateral meniscectomy is not health care reasonably required 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. The preponderance of the evidence is not contrary to the decision of the IRO that right knee arthroscopy with partial lateral meniscectomy is not health care reasonably required for the compensable injury of (Date of Injury).

DECISION

Right knee arthroscopy with partial lateral meniscectomy is not health care reasonably required for the compensable injury of (Date of Injury).

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 §408.021.

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

**CORPORATION SERVICE COMPANY
211 EAST 7TH STREET, SUITE 620
AUSTIN, TEXAS 78701-3218**

Signed this 16th day of February, 2017.

FRANCISCA OKONKWO
Hearing Officer