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Petitioner § **BEFORE THE STATE OFFICE**
V. § **OF**

CONTINENTAL CASUALTY COMPANY, § **ADMINISTRATIVE HEARINGS**
Respondent §

DECISION AND ORDER

_____. (Athe Claimant") challenges the decision of an Independent Review Organization (IRO) denying his request to preauthorize total knee replacement surgery. Continental Casualty Company (Athe Carrier@) denied the claim as medically unnecessary and the IRO upheld that decision. This decision finds that the requested procedure should be preauthorized.

I. JURISDICTION, NOTICE, AND PROCEDURAL HISTORY

Administrative Law Judge (ALJ) Kerry D. Sullivan held the hearing on this matter on May 5, 2004. The Claimant represented himself, with the assistance of Commission Ombudsman Luz Loza. The Carrier was represented by James M. Loughlin. Proper notice of the hearing was provided as set out in the findings of fact and conclusions of law. The record closed on May 11, 2004, with the filing of written closing arguments.

II. BASIS FOR DECISION

A. The Evidence.

The documentary record consists of 324 pages of medical records reviewed by the MRO. The Claimant also testified on his own behalf. The Carrier called no witnesses. The evidence shows that, on ___, the Claimant, a ___year-old male, suffered a compensable injury to his lower back and right leg while employed as a janitor at ___ in Laredo, a position he had held for twenty-three years. He slipped and fell on a wet floor. Following X-rays, bone scan, and MRI studies, the Claimant underwent two surgical interventions on his knee and one on his ankle. The first knee surgery, an arthroscopy, was performed on December 10, 1999. The Claimant continued to experience pain and underwent a second operation in 2001 referred to as a tibial osteotomy (shaving of the tibia) to improve joint space in the knee. The Claimant has also undergone conservative management for lower back and right leg pain. This has included physical therapy, pain and anti-inflammatory medications, epidural steroid injections, use of a brace, and psychological support. He continues to experience debilitating pain and has not returned to work since his injury. Based on his doctor' s advice, he now requests knee replacement surgery.

Based on the record presented at the hearing, the ALJ finds that the requested operation is medically necessary. The ALJ accepts the (claimant') testimony regarding the debilitating nature of his injuries. Although there is some documentation suggesting symptom enhancement, the Claimant was a longtime employee who plainly suffered a serious injury that has resulted in three surgical interventions. Even though he testified by phone and through a Spanish language interpreter, the Claimant came across as a credible and sincere witness who simply wants to get better so that he can support himself and his family and enjoy an improved quality of life.

Dr. Ty Goletz, the surgeon who has performed the previous operations on the (claimant') knee and who now recommends knee replacement surgery, confirmed this view in a letter dated June 13, 2003. He wrote that, following the initial surgery, the Claimant developed narrowing in the medial compartment with bone on bone degenerative joint disease in the knee. To address this problem, Dr. Goletz performed the tibial osteotomy to improve joint space. According to Dr. Goletz, this second procedure was temporarily successful but ultimately failed. Dr. Goletz' s letter states that persistent pain and swelling returned to the knee, the pain has become progressive, and the Claimant has experienced progressive deterioration of the medial compartment with loss of the joint space that was initially gained with the osteotomy. Dr. Goletz described the condition of the knee as Asevere osteoarthritis,@ stated that the Claimant has failed all conservative care, that there is no other form of conservative care that would offer long-term improvement, and that Athe only alternative for him is going to be knee replacement.@

The Carrier relies primarily on the reasoning of the IRO decision. That decision acknowledges the potential need for knee replacement surgery, but considered it Aquite aggressive in this 51-year-old heavyset male who is at high risk for early wear and loosening of the device which would likely result in further more difficult surgery of revision in his lifetime.@ The IRO observed that, in early documentation, Dr. Goletz mentioned the possibility of undertaking ASynvisc injections.@ The decision also concluded there had been no Arecent, serious effort@ for other conservative care, including use of an unloading brace and anti-inflammatory dietary supplements. Finally, the IRO doctor opined that Aprobably the most important relative contraindication to knee replacement, is the apparent clinical picture of chronic regional pain syndrome in the background of no motivating gainful employment, as well as continued ankle and back pain.@ In other words, in addition to the fact that knee replacement surgery might have to be repeated later in life, there are other things wrong with the Claimant that the knee replacement surgery would not cure now.

B. Analysis.

In the ALJ' s view, this proceeding presents a difficult question. The Claimant suffers from a painful and debilitating condition. The Claimant is young, overweight (he is 5'6" tall and weighs 210 pounds), and suffers from back and ankle problems in addition to the knee. These factors all complicate the decision. But the knee problem is very real, and appears to be paramount. The (claimant') surgeon has explained the deterioration of the (claimant') condition, and the failed extensive trial of more conservative care, including anti-inflammatory medications and a brace, as recommended in the IRO decision. While more detail by the Dr. Goletz in responding to the rationale of the IRO decision would have been helpful, the ALJ finds his June 13, 2003 letter adequately supports the (claimant') request.

In the ALJ' s view, the Claimant has shown that total knee replacement surgery is medically reasonable and necessary and that additional conservative care would likely provide no long-term additional benefit to him. While reasonable medical minds have differed on the risk-benefit analysis and the propriety of the knee replacement surgery at this point, the Claimant should have the option of choosing between medically reasonable courses of treatment.¹ He has chosen to undergo knee replacement surgery, a decision that he would presumably not undertake unless he felt it absolutely

¹ On this point, the ALJ concurs with and follows the decision in Docket No. 453-03-1527.M2, supplied by the Ombudsman.

necessary. The fact that the surgery may have to be repeated in fifteen years or so does not render it unnecessary now, nor does the fact that the Claimant has other medical problems in addition to the need for knee replacement. The preponderance of the credible evidence supports the conclusion that total knee replacement surgery is medically necessary treatment for (claimant') compensable injury and should be authorized.

III. FINDINGS OF FACT

1. On ___, ___ (Athe Claimant@), a ___year-old male, suffered a compensable injury to his lower back and right leg while employed as a janitor ___ in Laredo.
2. At the time of the (claimant') injury, his employer held workers= compensation insurance coverage through Continental Casualty Company (Athe Carrier@).
3. As a result of his injury, the Claimant suffered pain and limited functioning in his right knee.
4. The Claimant received extensive medical care for his knee injury, including two surgical interventions. The first was an arthroscopy performed on December 10, 1999. The Claimant continued to experience pain and underwent a second surgery in 2001 referred to as a tibial osteotomy (shaving of the tibia) to improve joint space.
5. The Claimant has also undergone conservative management for his knee injury as well as for lower back and right leg pain. This has included physical therapy, pain and anti-inflammatory medications, epidural steroid injections, use of a brace, and psychological support.
6. Despite the surgical interventions and treatment, Claimant continues to suffer severe pain and limited functioning of his knee.
7. The (claimant') treating physician, Dr. Ty Goletz, now requests preauthorization from the Carrier to perform total knee replacement surgery on the Claimant.
8. The Carrier denied preauthorization, maintaining that the requested treatment was not medically necessary and reasonable and that more conservative care should first be attempted.
9. The Claimant requested medical dispute resolution at the Workers= Compensation Commission, which referred the matter to an Independent Review Organization (IRO).
10. The IRO reviewed the dispute and issued a decision on October 9, 2003, finding that the requested treatment was not medically necessary and denying authorization for the surgery.
11. In a letter dated November 13, 2003, Claimant requested a hearing before the State Office of Administrative Hearings (SOAH) regarding the IRO decision.

12. Notice of the hearing in this case was mailed to the parties on November 20, 2003. The notice 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. In the notice, the Commission's staff indicated that it would not participate in the hearing.
13. After being continued by agreement of the parties, the hearing on the merits convened on May 5, 2004, with Administrative Law Judge Kerry D. Sullivan presiding. The Claimant appeared via telephone and represented himself with the assistance of Luz Loza, ombudsman. The Carrier appeared through James M. Loughlin, attorney. The record closed on May 11, 2004, with the filing of written closing arguments.
14. Additional conservative care is not likely to significantly benefit the Claimant.
15. Total knee replacement surgery is the treatment most likely to significantly benefit the (claimant)'s knee injury and restore the greatest functioning to the Claimant.
16. The requested total knee replacement surgery is medically necessary and reasonably required by the nature of (claimant)'s compensable injury.

IV. CONCLUSIONS OF LAW

1. The Commission has jurisdiction over this matter pursuant to TEX. LAB. CODE ANN. ' 413.031.
2. SOAH has jurisdiction over this proceeding, including the authority to issue a decision and order, pursuant to TEX. LAB. CODE ANN. ' 413.031 and TEX. GOV=T CODE ANN. ch. 2003.
3. The Claimant timely filed his request for a hearing, as specified in 28 TEX. ADMIN. CODE ' 148.3.
4. Proper and timely notice of the hearing was provided in accordance with TEX. GOV=T CODE ' 2001.052 and 28 TEX. ADMIN. CODE ' 148.4.
5. The Claimant has the burden of proof in this matter by a preponderance of the evidence, pursuant to TEX. LAB. CODE ANN. ' 413.031 and 28 TEX. ADMIN. CODE ' 148.21(h).
17. Under TEX. LAB. CODE ' 408.021(a), 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.
18. Under 28 TEX. ADMIN. CODE ' 134.600(h)(1) and (2), inpatient hospital admissions and outpatient surgical or ambulatory surgical services must be preauthorized, dependent on a showing of medical necessity.
19. The Claimant proved by a preponderance of the evidence that total knee replacement surgery is medically necessary for treating his compensable injury.

20. Based on the above Findings of Fact and Conclusions of Law, the request for preauthorization should be granted.

ORDER

IT IS ORDERED THAT the request for preauthorization for the total knee replacement surgery for Claimant ___ is granted, and Carrier is ordered to reimburse all reasonable and necessary covered expenses associated with such surgery.

SIGNED June 10, 2004.

**KERRY D. SULLIVAN
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS**