

**SOAH DOCKET NO. 453-04-2775.M2
MR NO. M2-04-0549-01**

AMERICAN MANUFACTURES	§	BEFORE THE STATE OFFICE
MUTUAL INSURANCE COMPANY,	§	
Petitioner	§	
	§	
V.	§	OF
	§	
TARRANT COUNTY CHIROPRACTIC	§	
& REHABILITATION, INC.,	§	
Respondent	§	ADMINISTRATIVE HEARINGS

DECISION AND ORDER

I. Introduction

American Manufactures Mutual Insurance Company (Carrier) has appealed a decision of an independent review organization (IRO) on behalf of the Texas Workers' Compensation Commission (TWCC). Tarrant County Chiropractic & Rehabilitation, Inc. (Treating Physician) requested pre-authorization of certain medical services for A.M. (Claimant). The IRO found those services-right knee arthroscopy/meniscectomy, chondroplasty, and possible retinacular releaseBshould be pre-authorized. The only disputed issue is whether the submitted documentation reasonably showed that those services are reasonably medically necessary to treat the Claimant's compensable injury.

As set out below, the Administrative Law Judge (ALJ) finds that the documentation submitted to the Carrier did not show that the services are reasonably medically necessitated by the compensable injury and denies the request for pre-authorization.

II. FINDINGS OF FACT

1. On (Date of Injury), the Claimant sustained a work-related injury to her right knee as a result of her work activities.
2. On the date of injury, the Claimant's employer was (Employer) and his workers' compensation insurance carrier was the Carrier.
3. The Claimant has constant, sharp, and moderate to severe right-knee pain accompanied by intermittent swelling, tenderness, weakness, numbness, tingling from hips to toes, loss of motion, catching, locking, popping, grinding, giving away, and buckling.
4. The Claimant is five feet and one inch tall and weighs 198 pounds.

5. On July 1, 2002, a magnetic resonance image (MRI) was taken of the Claimant's right knee.
6. That first MRI showed a minor sprain of the medial collateral ligament and a small to moderate knee effusion (fluid in the knee), which likely was caused by the compensable injury, and a small cyst and degenerative changes, which did not stem from the compensable injury.
7. On July 10, 2003, John C. McConnell, M.D., (Referral Doctor) prescribed arthroscopic abrasion arthroplasty (*i.e.* cartilage surgery) for the Claimant's right knee due to chondromalacia (*i.e.* degeneration). Because he believed the first MRI also possibly showed a minor meniscal (*i.e.* cartilage) tear, the Referral Doctor also prescribed probable arthroscopic meniscectomy and/or meniscal repair (*i.e.* additional cartilage surgery).
8. The Treating Physician requested the Carrier to pre-authorize all of the above surgery.
9. On July 21, 2003, the Carrier denied that first pre-authorization request, maintaining that the first MRI did not support the assertion that the requested surgery was reasonably medically necessitated by the compensable injury.
10. On August 2, 2003, a second MRI was taken of the Claimant's right knee.
11. The second MRI showed degeneration and a small cyst, neither of which stemmed from the compensable injury, but no cartilage or ligament tears or other abnormalities.
12. On August 4, 2003, the Claimant reached maximum medical improvement (MMI), which meant that further material recovery from or lasting improvement of her compensable injury could no longer reasonably be anticipated.
13. On August 7, 2003, the Referring Doctor prescribed right knee arthroscopy/meniscectomy, chondroplasty, and possible retinacular release (*i.e.*, cartilage repair) for the Claimant.
14. The Treating Physician requested the Carrier to pre-authorize that surgery.
15. On September 30, 2003, a bone scan was conducted of the Claimant's right knee, which also indicated likely degenerative changes but no other abnormalities.
16. Taken together, the first and second MRIs, the MMI finding, the bone scan, and other documentation submitted to the Carrier show that the Claimant more likely than not needs the surgery for which pre-authorization was requested due to degeneration and not due to her compensable injury.
17. Taken together, the first and second MRIs, the MMI finding, the bone scan, and other documentation submitted to the Carrier do not reasonably show that the Claimant's remaining medical problems with her right knee reasonably stem from her compensable injury.

18. On November 4, 2003, the Carrier timely denied the second pre-authorization request, maintaining that the submitted documentation did not reasonably demonstrate that the requested surgery was reasonably medically necessitated by the compensable injury.
19. On November 13, 2003, the Treating Physician filed a request for medical dispute resolution with the TWCC.
20. On January 6, 2004, on behalf of the TWCC, the IRO reviewed the medical dispute, found that the requested services were reasonable and necessary to treat the Claimant's compensable injury, and pre-authorized them.
21. After the IRO decision was issued, the Carrier asked for a contested-case hearing by a State Office of Administrative Hearings (SOAH) Administrative Law Judge (ALJ).
22. On February 2, and March 24, 2004, notice of a May 6, 2004, contested-case hearing concerning the dispute was mailed to the Carrier, the Treating Physician, and the Claimant.
23. On May 6, 2004, SOAH ALJ William G. Newchurch held a contested-case hearing concerning the dispute at the William P. Clements Office Building, Fourth Floor, 300 West 15th Street, Austin, Texas. The hearing concluded and the record closed on that same day.
24. The Claimant did not appear at the hearing.
25. The Carrier appeared at the hearing through its attorney, Tommy W. Lueders, II.
26. The Provider appeared at the hearing by telephone and through its designated representative, Monica Sharp.

III. CONCLUSIONS OF LAW

1. SOAH has jurisdiction over matters related to the hearing in this proceeding, including the authority to issue a decision and order, pursuant to TEX. LABOR CODE ANN. (Labor Code) §§ 402.073(b) and 413.031(k) (West 2004) and TEX. GOV'T CODE ANN. (Gov't Code) ch. 2003 (West 2004).
2. Adequate and timely notice of the hearing was provided in accordance with Gov't Code §§ 2001.051 and 2001.052.
3. Based on the above Findings of Fact and Gov't Code § 2003.050 (a) and (b), 1 TEX. ADMIN. CODE (TAC) § 155.41(b) (2004), and 28 TAC §§ 133.308(v) and 148.21(h) (2003), the Carrier has the burden of proof in this case.
4. 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 that cures or relieves the effects

naturally resulting from the compensable injury, promotes recovery, or enhances the ability of the employee to return to or retain employment. Labor Code § 408.021 (a).

5. TWCC must specify by rule which health care treatments and services require express pre-authorization by a carrier. A carrier is not liable for those specified treatments and services unless pre-authorization is sought by the claimant or a health care provider and either obtained from the carrier or ordered by TWCC. Labor Code §413.014
6. Pre-authorization is required for the requested surgery, whether it is to be provided on an inpatient or an outpatient basis. 28 TAC § 134.600(h)(1) and (2).
7. Based on the above Findings of Fact, the documentation submitted to the Carrier does not reasonably show that the surgery for which pre-authorization was requested is reasonably made medically necessary by the Claimant's compensable injury.
8. Based on the above Findings of Fact and Conclusions of Law, the request for pre-authorization should be denied.

ORDER

IT IS ORDERED THAT the request for pre-authorization for right knee arthroscopy/menisectomy, chondroplasty, and possible retinacular release is denied.

SIGNED May 20, 2004.

**WILLIAM G. NEWCHURCH
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS**