

**DOCKET NO. 453-04-5364.M2**  
**MRD TRACKING NO. M2-04-0871-01**

<b>AMERICAN HOME ASSURANCE</b>	·	<b>BEFORE THE STATE OFFICE</b>
<b>COMPANY,</b>	·	
<b>Petitioner</b>	·	
	·	
<b>VS.</b>	·	<b>OF</b>
	·	
—,	·	<b>ADMINISTRATIVE HEARINGS</b>
<b>Respondent</b>	·	

**DECISION AND ORDER**

American Home Assurance Company (Carrier) seeks review of a decision by the Texas Workers' Compensation Commission (Commission), acting through an independent review organization (IRO), in a dispute regarding preauthorization for a left knee arthroscopy with partial medial meniscectomy. The Commission granted preauthorization of the requested treatment for \_\_\_ (Claimant). In this decision, the Administrative Law Judge (ALJ) finds that Carrier failed to meet its burden of proof that the requested procedure is not medically necessary. Therefore, the ALJ orders Carrier to authorize the requested procedure.

The hearing convened and closed on September 22, 2004, before ALJ Catherine C. Egan. Claimant appeared and was assisted by Ombudsman, Anthony Walker. Carrier appeared and was represented by attorney, Dean Pappas.

**I. DISCUSSION**

1. Background Facts

Claimant, a 42-year-old woman, sustained a compensable injury on \_\_\_\_. While positioning an airport ramp, she tripped, twisted, and fell onto her left knee. Claimant experienced a pop at the time of injury, with the immediate onset of pain and swelling in her left knee and pain in her ankle. Only the knee is in issue in this matter. Claimant received treatment at an emergency room and was then treated by Dr. Donald Breech, an orthopedist. A conservative treatment plan of physical therapy and medication was initiated and she underwent a magnetic resonance image (MRI) and a bone scan.

The MRI evaluation, taken August 4, 2003, indicated findings consistent with a thickening of the anterior cruciate ligament and significant degenerative changes involving the posterior horn of the medial meniscus. A bone scan, taken September 23, 2003, showed that Claimant also had arthritis in her left knee.<sup>1</sup> At Dr. Breech's recommendation, Claimant participated in physical therapy. However, this caused increased pain in Claimant's knee and culminated in a deterioration of the doctor-patient relationship.

Claimant continued to suffer pain and joint swelling, particularly on the medial side of her left knee. On November 10, 2003, Claimant transferred to Dr. Michael J. Willenborg, an orthopedist, for further treatment. Dr. Willenborg diagnosed her with symptomatic medial meniscus tear. On December 15, 2003, he recommended a left knee arthroscopy with debridement of the medial meniscus tear.

Dr. Willenborg submitted a request for preauthorization for this procedure, which was denied by the Carrier as not medically necessary. The dispute was referred to an IRO. The IRO decision agreed with the Claimant that the requested procedure was medically necessary. According to the IRO:

The patient had no prior history of left knee problems before her \_\_\_ injury. She has undergone non-operative treatment without significant benefit. An MRI suggests significant degenerative changes involving the posterior horn of the medial meniscus. The patient's physical examination, as reported by several different physicians, is consistent with reported medial joint tenderness. After six months of conservative treatment, the patient continues to suffer from chronic knee pain over the medial side of her left knee. It is possible that the patient is suffering from a pre-existing degenerative condition in her left knee that was aggravated by her fall, or that she has a medial meniscus tear. False negative MRI reports of the knee are not uncommon.<sup>2</sup>

Carrier appealed the IRO decision to SOAH.

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<sup>1</sup> Pet. Ex. H.

<sup>2</sup> Pet. Ex. A.

2. Applicable Law

3.

Pursuant to the Texas Workers' Compensation Act (The Act), TEX. LAB. CODE ANN. ' 408.021 *et seq.*, an employee who sustains a compensable injury is entitled to all health care 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. Under TEX. LAB. CODE ANN. ' 401.011(19), health care includes all reasonable and necessary medical aid, medical examinations, medical treatment, medical diagnoses, medical evaluations, and medical services.

Certain categories of health care identified by the Commission require preauthorization, which is dependent upon a prospective showing of medical necessity under the Act ' 413.014 and 28 TEX. ADMIN. CODE (TAC) ' 134.600. In this instance, 28 TAC ' 134.600(h)(2) requires preauthorization for outpatient surgical or ambulatory surgical services.

4. Claimant's Evidence

Claimant testified that prior to her injury she had no left knee pain despite being overweight. She worked two jobs, including one that required her to climb into the cargo bay of airplanes and lift heavy luggage. Since the injury, Claimant is in such constant pain that it interferes with her ability to do simple activities of daily living. Claimant explained that prior to the accident she lost weight, from approximately 300 pounds to 245 pounds. According to Claimant, if she had pre-existing arthritis, it never stopped her from being active or being able to do both of her jobs.

Dr. Willenborg testified that it is significant that this was a twisting injury because most meniscus tears result from a twisting injury. Dr. Willenborg noted that while MRIs are sensitive, they are not specific as to what is wrong. Clearly, something is abnormal in the back of Claimant's meniscus. Conservative care has failed to relieve Claimant's pain. After examining Claimant and feeling the popping, catching, and clicking in her left knee, and after considering the discrete

complaints of pain over her medial joint line and the positive McMurray test, Dr. Willenborg determined that the proper treatment protocol is to perform an arthroscopy of the left knee so he can directly observe the meniscus and clean out any tears.

#### 1. Carrier's Evidence

Carrier denied preauthorization because the MRI did not show a definitive tear and because Claimant was overweight, which placed a mechanical overload on her knee. Carrier concluded that there was no objective data to support the Asurgical protocol@ requested.<sup>3</sup> Carrier ultimately sent Claimant to Dr. Aaron Combs to be evaluated.

Dr. Combs, an orthopedist, examined Claimant on January 21, 2004, for about 15 to 20 minutes. According to Dr. Combs, he reviewed the bone scan report, and eventually the MRI report. Dr. Combs testified that although Claimant had substantial pain complaints, he saw her sit down and rise from her chair without difficulty. This involved greater flexibility than she demonstrated during his physical examination. Dr. Combs admitted he did not see the actual MRI films, but testified that what was significant about the MRI report was lack of evidence of any cartilage tear.

#### **E. Analysis and Conclusion**

The ALJ finds that the Carrier failed to show that the arthroscopy was not medically necessary. Claimant had no prior complaints of pain to her left knee, despite being overweight and engaging in a physically demanding job. The injury to her left knee has caused the pain she is experiencing, which has not responded to conservative treatment. Claimant's knee pops, clicks, and catches, all of which are mechanical symptoms of a meniscus tear. In addition, Claimant had a positive McMurray test, which involved the rotation of the tibia on the femur to determine if there is an injury to the meniscal structure. Although the MRI did not show a meniscus tear, it did indicate

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<sup>3</sup> Pet. Ex. B.

an abnormality.

For the foregoing reasons, the ALJ concludes that the requested procedure is reasonable and medically necessary medical care for Claimant's compensable injury and should be preauthorized.

## II. FINDINGS OF FACTS

1. \_\_\_\_ (Claimant) sustained a compensable knee injury on \_\_\_\_, when she tripped while positioning a ramp at an airport, twisted, and fell onto her left knee.
2. At the time of Claimant's compensable injury, Claimant's employer was covered by the American Home Assurance Company (Carrier) under the Texas Workers' Compensation Act.
3. Claimant was treated at an emergency room and was then referred to Dr. Donald Breech. A conservative treatment plan of physical therapy and medication was initiated and she underwent an MRI and a bone scan.
4. The MRI evaluation indicated findings consistent with a thickening of the ACL and significant degenerative changes involving the posterior horn of the medial meniscus.
5. MRIs are sensitive, but are not always specific as to what is causing a medical problem.
6. Claimant continued to suffer pain and joint swelling, particularly on the medial side of her left knee.
7. On November 10, 2003, Claimant was referred to Dr. Michael J. Willenborg for further treatment. Dr. Willenborg diagnosed her with symptomatic medial meniscus tear.
8. On December 15, 2003, Dr. Willenborg recommended a left knee arthroscopy with debridement of the medial meniscus tear.
9. Dr. Willenborg submitted a request for preauthorization for the arthroscopy.
10. Carrier denied the request as not medically necessary.
11. Claimant requested medical dispute resolution through an Independent Review Organization (IRO). The IRO reviewed the dispute and issued a decision on March 26, 2004, finding that the requested procedure was medically necessary.
12. Carrier appealed the IRO decision to the State Office of Administrative Hearings (SOAH).
13. Notice of the hearing in this case was mailed to the parties on May 6, 2004. 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.

14. The hearing convened and closed on September 22, 2004, before Administrative Law Judge Catherine C. Egan (ALJ). Claimant appeared with Ombudsman, Anthony Walker. Carrier appeared through attorney, Dean Pappas.
15. Claimant had no prior history of knee pain before the work-related injury.
16. Conservative treatments of physical therapy, antiinflammatories, and steroid injections have been unsuccessful in treating Claimant's knee pain.
17. Claimant has popping, clicking, and catching in her left knee. These are mechanical symptoms of a meniscus tear.
18. The MRI and Claimant's clinical findings support preauthorization of the proposed left knee arthroscopy.

### **III. 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(d) and TEX. GOV'T CODE ANN. ch. 2003.
3. Carrier timely filed its notice of appeal, as specified in 28 TEX. ADMIN. CODE ' 148.3.
4. Proper and timely notice of the hearing was effected upon the parties according to TEX. GOV'T CODE ' 2001.052 and 28 TEX. ADMIN. CODE ' 148.4.
5. Under TEX. LABOR CODE ' 408.021(a)(1), 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.
6. A carrier is not liable for certain treatment and services unless preauthorization is sought by the claimant or the health care provider and either obtained from the carrier or ordered by the Commission. TEX. LABOR CODE ' 413.04.

7. Preauthorization is required for the requested surgery. 28 TEX. ADMIN. CODE ' 134.600 (h).
8. Carrier failed to meet its burden of proof to show that the requested procedure should be denied as medically unnecessary.
9. Based on the above Findings of Facts and Conclusions of Law, Claimant's request for preauthorization of the requested procedure should be granted.

**ORDER**

IT IS ORDERED THAT the left knee arthroscopy with partial medial meniscectomy requested by Claimant be preauthorized.

**SIGNED October 20, 2004.**

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**CATHERINE C. EGAN  
STATE OFFICE OF ADMINISTRATIVE HEARINGS  
ADMINISTRATIVE LAW JUDGE**