

AMERICAN HOME ASSURANCE	§	BEFORE THE STATE OFFICE
COMPANY,	§	
Petitioner	§	
	§	
V.	§	OF
	§	
—,	§	ADMINISTRATIVE HEARINGS
	Respondent	

DECISION AND ORDER

After an Independent Review Organization (IRO) granted preauthorization for an elbow ulnar nerve revision/release, American Home Assurance Company (Carrier) appealed. This decision finds that the Carrier failed to sustain its burden of proving that the requested procedure is not medically necessary and preauthorizes the treatment.

I. PROCEDURAL HISTORY AND NOTICE

On June 2, 2004, the Texas Workers' Compensation Commission mailed the notice of the hearing on this matter to the parties at their addresses of record. The hearing convened on June 24, 2004, before Administrative Law Judge (ALJ) Kerry D. Sullivan. Jim Koriath appeared by telephone and represented the Carrier. Worker's compensation claimant F. A., the Respondent, did not appear for the hearing.

In accordance with Section 155.55 of SOAH's rules, the hearing proceeded in the absence of the Claimant. The Carrier offered 175 pages of the Claimant's medical records presented to the IRO. The Carrier then attempted to place a call to Dr. Melissa Tonn, its designated expert witness. Dr. Tonn, however, declined to participate in the hearing.

II. BASIS FOR DECISION

The Claimant is a ___-year-old female who injured her left arm in a compensable injury that occurred on ___. She underwent a shoulder arthroscopy to repair her rotator cuff on June 26, 2002. The IRO decision notes that the Claimant's doctor has unsuccessfully attempted to treat the Claimant's ongoing pain complaints in a conservative manner, that she continues to have significant range of motion deficits, and that she suffers from carpal tunnel syndrome. The IRO concluded that Athis claimant does have a condition over the left elbow that is in all likelihood inhibiting functional limitation goals over the entire left upper quarter. It is appropriate for this claimant to have the requested surgical application to minimize the claimant's current pain generators and afford her the greatest ability to thrive in a functional rehabilitation program with a return to work (RTW) goal. @

The Carrier, which bore the burden of proof notwithstanding the Claimant's absence, could point to no evidence throwing the IRO's conclusion into question. And, as noted above, the Carrier's designated witness declined to testify. Under these circumstances, and after a review of the documentation submitted, the ALJ finds that the Carrier has failed to establish that the requested elbow ulnar nerve revision/release is not necessary. Accordingly, the ALJ finds that the requested procedure should be preauthorized.

III. Findings of Fact

1. The Claimant sustained an injury to her left arm in a compensable injury that occurred on ____.
2. At the time of the accident, American Home Assurance Company (the Carrier) was the worker's compensation carrier for the Claimant's employer.
3. The Claimant underwent arthroscopic surgery to repair her left rotator cuff.
4. The Claimant has undergone conservative care since the surgery but continues to experience significant pain and limited range of motion and suffers from carpal tunnel syndrome.
5. The Claimant's treating doctor now recommends an elbow ulnar nerve revision/release.
6. The Carrier timely denied the preauthorization request, and the Claimant requested medical dispute resolution.
7. In a decision issued April 29, 2004, the Independent Review Organization reviewer (IRO) determined that the requested elbow ulnar nerve revision/release is medically necessary and should be preauthorized.
8. The Carrier timely requested a hearing on the IRO decision, which the Commission had adopted.
9. The Commission sent notice of the hearing to all parties on May 21, 2004.
10. The notice of hearing 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.
11. The hearing convened and closed on June 24, 2004.
12. The Carrier failed to establish that the requested elbow ulnar nerve revision/release is not medically necessary. To the contrary, the preponderance of the credible evidence indicates the procedure is appropriate to minimize the Claimant's current pain generators and afford her the greatest ability to thrive in a functional rehabilitation program with a goal of returning to work.

IV. Conclusions of Law

1. The State Office of Administrative Hearings has jurisdiction over this proceeding, including the authority to issue a decision and order, pursuant to TEX. LAB. CODE ANN. ' 413.031(k) and TEX. GOV ' T CODE ANN. ch. 2003.
2. The Carrier timely requested a hearing, as specified in 28 TEX. ADMIN. CODE (TAC) ' 148.3.
3. Proper and timely notice of the hearing was provided in accordance with TEX. GOV ' T CODE ANN. ' ' 2001.051, 2001.052, and 28 TAC ' 148.4.
4. The Carrier had the burden of proof in this matter pursuant to 28 TAC ' 148.21(h).
5. The Carrier failed to establish that the requested elbow ulnar nerve revision/release would not cure or relieve the effects naturally resulting from the Claimant ' s injury, promote her recovery, or enhance her ability to return to or retain employment.
6. The Carrier did not establish that the requested elbow ulnar nerve revision/release is not medically necessary to treat the Claimant ' s injury.
7. Based on the foregoing Findings of Fact and Conclusions of Law, preauthorization for the requested elbow ulnar nerve revision/release should be approved, pursuant to TEX. LAB. CODE ANN. ' 413.014 and 28 TAC ' 134.600.

ORDER

It is ORDERED that the requested elbow ulnar nerve revision/release is preauthorized for the Claimant. All other pending motions or requests for relief, if any, not specifically granted herein are denied for want of merit.

Signed July 23, 2004.

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