
In the Matter of the ORS 656.248 Medical Fee Dispute of
Deolus, Michael V., Claimant
Contested Case No: HH02-022
PROPOSED & FINAL ORDER
May 20, 2002
SAIF CORPORATION, Petitioner
, Respondent
Before John L. Shilts, Workers' Compensation Division Administrator

HISTORY OF THE CASE

Insurer appeals an administrative order issued by the Medical Review Unit (MRU) of the Workers' Compensation Division (WCD), Department of Consumer and Business Services (department or director). On April 8, 2002, Administrative Law Judge Catherine P. Coburn conducted a hearing in this matter. Petitioner SAIF Corporation (insurer or SAIF) was represented by attorney Michael G. Fetrow. There was no respondent. WCD waived appearance. No witnesses testified and the record closed on the date of hearing.

The record of this proceeding, consisting of a tape recording of the hearing, all evidence received, and all hearing papers filed, has been considered. The findings of fact set out below are based upon the entire record.

ISSUE

The issue, pursuant to a notice of hearing issued March 5, 2002, is whether insurer is liable for additional payment to Luis Vela, MD for an examination of claimant on July 31, 2001.

EVIDENTIARY RULINGS

WCD Exhibits 1 through 13 as well as insurer's Supplementary Exhibits A and B were received into the record without objection.

FINDINGS OF FACT

I adopt and incorporate the findings of fact contained in the administrative order on appeal with the following supplementation:

On May 31, 2001, Dr. Vela examined claimant and recommended bilateral open carpal tunnel release. (Ex. A).

On June 22, 2001, Dr. Vela's practice group, Specialty Physicians & Surgeons of Corvallis, notified SAIF of his intent to perform surgical bilateral carpal tunnel release. (Ex. B).

Claimant was seen by Luis Vela, MD on July 31, 2001. The chart note of that date reads,

“I have recommended an open right carpal tunnel release for 8-1-01. The patient will plan to have the other one performed at a later point in time. PAR consultation held. Questions were encouraged and answered. The patient agrees with the plan.”
(Ex. 1-1).

The July 31, 2001 chart note is labeled. “PREAD 8/1/01”. (*Id.*)

On August 1, 2001, Dr. Vela performed surgical right carpal tunnel release.
(Ex. 2).

On September 18, 2001, insurer notified Specialty Physicians & Surgeons, that it would not allow the charge of \$52.00 for the disputed service, billed with code number 99212. (Ex. 4).

On December 19, 2001, MRU issued Administrative Order MF01-1181, finding that insurer was liable for the July 31, 2001 services independent of the surgical fee.
(Ex. 9).

On January 18, 2002, MRU issued Amended Administrative Order MF01-1181 that again found insurer liable for the disputed service independent of the surgical fee.
(Ex. 10).

ULTIMATE FACT

Insurer is not liable for additional payment to Dr. Vela for an examination of claimant on July 31, 2001.

CONCLUSIONS OF LAW AND REASONING

Jurisdiction over this medical fees dispute lies with the director. ORS 656.248(12); OAR 436-010-0008(1). Since ORS 656.248 prescribes no standard of review, I review *de novo*. *Archie M. Ulrich*, 2 WCSR 152 (1997); OAR 436-001-0225(2). The burden of proving a fact or position rests with the proponent. ORS 183.450(2). As petitioner, insurer bears the burden of proving by a preponderance of the evidence that the administrative order is incorrect. See *Cook v. Employment Div.*, 47 Or 437 (1982) (In the absence of contrary legislation, the standard of proof in an administrative hearing is preponderance of evidence).

When the director first addressed this issue in the Administrative Order of December 19, 2001, the director found that SAIF was liable for Dr. Vela’s office visit of

July 31, 2001 pursuant to *Current Procedural Terminology (CPT™ 2001)*, Fourth Edition Revised, 2000, which was adopted by the director through OAR 436-009-0004(3) as governing billing by medical providers unless otherwise provided by administrative rule. Noting that CPT surgical guidelines do not provide that a “visit prior to surgery is automatically considered part of the global surgery package”, the director concluded that Dr. Vela was entitled to separate payment for the disputed visit. (Ex. 9-2).

In the January 18, 2002 Administrative Order, which I now review, MRU again determined that SAIF was liable for the July 31, 2001 visit as a separate procedure. In this order, the director noted that OAR 436-009-0050(3)(a) provides that the global value includes “the immediate pre-operative visit, in the hospital or elsewhere.” (Ex. 10-2). However, MRU was “not persuaded that the primary purpose of the July 31, 2001 visit was to perform a preoperative history and physical” and concluded that the disputed visit was not covered as part of the global surgical package. (Ex. 10-2).

OAR 436-009-0050(3) provides:

“(3) Surgery services.

“(a) When a worker is scheduled for elective surgery, the immediate pre-operative visit, in the hospital or elsewhere, necessary to examine the patient, complete the hospital records, and initiate the treatment program is included in the listed global value of the surgical procedure. If the procedure is not elective, the physician is entitled to payment for the initial evaluation of the worker in addition to the global fee for the surgical procedure(s) performed.”

Pursuant to this rule, the correct test to apply to determine whether the July 31, 2001 service was reimbursable is not whether it was a “preoperative history and physical”, but whether it was an “immediate pre-operative visit, in the hospital or elsewhere, necessary to examine the patient, complete the hospital records, and initiate the treatment program.” Under this standard, it is clear that the July 31, 2001 visit was part of the global procedure. The only evidence presented as to the purpose of the visit is the chart note for the visit. In the chart note, Dr. Vela stated, “I have recommended an open right carpal tunnel release for 8-1-01. *** Questions were encouraged and answered. The patient agrees with the plan.” The heading on the chart note is “PREAD 8-1-01” which I interpret to mean “preadmit”, referring to claimant’s hospital admission for surgery the following day. Dr. Vela performed surgery the following day, on August 1, 2001. The record establishes that the July 31, 2001 visit was an “immediate preoperative visit, in the hospital or elsewhere, necessary to examine the patient, complete the hospital records, and initiate the treatment program.” Conversely, the record contains no evidence that the July 31, 2001 visit served any purpose other than examining the patient in preparation for surgery the very next day.

The Amended Administrative Order erred by concluding that insurer is liable for

additional compensation for this visit and is reversed.

ORDER

IT IS HEREBY ORDERED that:

Administrative Order MF01-1181 dated January 18, 2001 is reversed.

DATED this _____ day of May 2002.

Catherine P. Coburn
Administrative Law Judge
Hearing Officer Panel