

In the Medical Fee Dispute of
Olivia M. Snook, Claimant
Contested Case No: 14-066H
Administrative Order No: MF 14-0868
PROPOSED & FINAL ORDER

March 9, 2016

JULIO ORDONEZ, MD, Petitioner
LEGACY HEALTH, Respondent

Before David D. Lipton, Administrative Law Judge

Pursuant to notice, a hearing convened on October 5, 2015 in Portland, Oregon before David D. Lipton, Administrative Law Judge. Claimant was not present. The party in interest herein, Julio Ordonez, M.D., was present and represented by Jodie Phillips Polich. The self-insured and self-administered employer, Legacy Health, was represented by Amy Osenar. She was accompanied by the employer representative Carmen Jones. The hearing was continued for the submission of argument addressing whether evidence other than that in the possession of the Workers' Compensation Division at the time that it issued the Order herein could be considered. An Interim Order addressing this issue was entered on January 15, 2016. Thereafter recorded telephonic closing argument was submitted on February 24, 2016 and the record closed. Exhibits 1 through 4 submitted by the Workers' Compensation Division on January 5, 2015 were admitted.

ISSUE

Julio Ordonez, M.D. appeals Order MF 14-0846 contending that he is entitled to an additional fee (Modifier 22) in connection with his performance of the January 28, 2015 left L4-5 microdiscectomy.

FINDINGS OF FACT

I hereby incorporate the January 15, 2016 Interim Order.

On January 28, 2014 Julio Ordonez, M.D performed a left L4-5 micro discectomy. In his operative report he remarked, *inter alia*, “substantial work that included significant physical and mental effort was performed due to the severity of the patient’s condition – requiring additional time with technical difficulty in the (sic) exposing the disc protrusion. The procedure was prolonged by 45 minutes.”

Thereafter, the office of Dr. Ordonez billed for the surgery using a Modifier 22.

On June 26, 2014 Caremark Comp authorized and Legacy paid for the January 28 surgery but deleted the extra charge based on Modifier 22 for the reason that “there was insufficient supporting documentation for additional reimbursement.”

On September 29, 2014 the office of Dr. Ordonez requested the assistance of the Medical Review Unit of the Workers' Compensation Division in resolving their "dispute" contending that it had billed \$6929.00 for the surgery and had been paid \$3555.08.

Administrative Order MF 14-0846 issued on December 2, 2014. The issue was whether Legacy Health was liable for additional moneys for the L4-5 micro discectomy performed by Dr. Ordonez on January 28, 2014. In his Order, the Director defined Modifier 22 as appropriate "(w)hen the work required to provide a service is substantially greater than typically required, it may be identified by adding Modifier 22 to the usual procedure code. Documentation must support the additional work (i.e. increased intensity, time, technical difficulty of procedure, severity of patient's condition, physical and mental effort required)." The Director concluded that the portion of Dr. Ordonez's operative report detailing additional complexity did not provide "any information supporting the extra time and effort applied to the surgery." The Director agreed with Legacy's position and ordered Legacy Health was not liable for any additional moneys for the L4-5 micro discectomy performed by Dr. Ordonez on January 28, 2014.

On January 2, 2015 Dr. Ordonez requested a hearing appealing the Order and seeking an attorney fee pursuant to ORS 656.385.

OPINION AND CONCLUSION

I note that not all of the documents referenced by the Director in his Findings of Fact are included in the exhibit list submitted by WCD. I further note that while I cannot, and have not, considered matters not in the record admitted at hearing, a Google search for CPT code Modifier 22 provides information that the parties argued was not easily available and also explains that the Modifier increases the charge 20 to 30 percent, leaving unexplained why the alleged unreimbursed amount is 50 percent of what was billed.

The Director does not explain or reference any requirement that the medical provider must state more than what is identified as Modifier 22 criteria in footnote 2 to page 1 of Administrative Order. No rule or standard is identified requiring additional supporting documentation or medical opinion beyond reciting "increased intensity, time, technical difficulty of procedure, severity of patient's condition, physical and mental effort required", which Dr. Ordonez did in his operative report. Consequently, I am unable to find any legal rationale supporting the Director's decision and find that it should be reversed.

Counsel for Dr. Ordonez requests, and is entitled to, a fee pursuant to ORS 656.385. Such a fee is based on results and time and is governed by OAR 436-001-0410. Based on my review of the record and the time spent at hearing and in closing argument, I estimate that Claimant expended between four and eight hours to obtain this result. The amount in controversy appears to be less than \$3500.00. Therefore, pursuant to OAR 436-001-0410 I find that counsel for Dr. Ordonez is entitled to 50 percent of the maximum fee of \$4000.00 or \$2000.00.

Further, I find that there is a legitimate doubt whether the Modifier 22 was applicable in this situation and therefore a penalty is not appropriate.

ORDER

IT IS HEREBY ORDERED that Administrative Order MF 14-01846 is reversed and Legacy is ordered to pay for the January 28, 2014 left L4-5 microdiscectomy incorporating Modifier 22 and to pay counsel for Dr. Ordonez an attorney fee of \$2000.00. The balance of the relief sought is denied.