

**DOCKET NO. 453-02-3648.M4**  
**[MDR TRACKING NO. M4-02-1657-01]**

**DAVID OSTERMAN, M.D.,**  
**Petitioner**

v.

**AMERICAN HOME ASSURANCE**  
**COMPANY AND TEXAS WORKERS'**  
**COMPENSATION COMMISSION,**  
**Respondents**

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**BEFORE THE STATE OFFICE**

**OF**

**ADMINISTRATIVE HEARINGS**

**DECISION AND ORDER**

**I. Summary**

David Osterman, M.D., (Provider) sought review of a decision by the Medical Review Division (MRD) of the Texas Workers' Compensation Commission (TWCC or Commission) denying reimbursement of \$116 to him for an in-hospital evaluation of \_\_\_ (Claimant) on July 23, 2001. American Home Assurance Company (Carrier) denied Provider's claim for payment on the basis the visit was part of, or global to, the surgical procedure Provider performed later that same day. Based on the evidence, Provider carried his burden to show that evaluation was a medically necessary and compensable service, so should be reimbursed.

Administrative Law Judge (ALJ) Cassandra Church convened a hearing on this issue on December 9, 2002, and the record closed on that date. Jennifer Dobbels appeared on behalf of the Provider; Steve Tipton appeared for the Carrier. The Commission did not participate.

**II. Discussion**

On \_\_\_\_\_, Claimant suffered an open fracture of the right kneecap (patella) and of his wrist. (Resp. Exh. 1, p. 46). The following day, on \_\_\_\_\_, Provider operated on the knee. He irrigated and debrided the injury site and stabilized the fractured kneecap with instrumentation. The procedure was performed under general anaesthesia. (Resp. Exh. 1, p. 12). Although there is little medical detail, the timing suggests this surgery was an emergency, or nearly so. The fee for this surgery itself is not at issue. Rather, the parties dispute an evaluation Provider performed on the day of the operation, upon Claimant's admission to the hospital. Provider asserts that the in-hospital evaluation can be reimbursed separately from the surgery because it was his first visit with Claimant and required detailed evaluation of his condition. Carrier asserted that the timing of the visit – on the day of the surgery – brought it within the definition of a "preoperative visit." Such preoperative visits are compensated as part of the surgery. *Medical Fee Guideline* (MFG) 28 TEX. ADMIN. CODE (TAC) §134.201 (Eff. date April 1, 1996). The general rule states that all preoperative visits

beginning with the day before the surgery are considered included within, or global to, the surgery itself. Surgery Ground Rule I-A-1. Although this is the general rule, it is not the universal rule as the following exceptions are provided: (1) a preoperative visit which is the doctor's first visit with the patient, at which the surgeon must establish the need for a particular procedure or evaluate the patient; (2) the visit is a consultation as defined by the consultation section of the MFG; (3) the preoperative services are not of a type usual to that procedure, or (4) the patient presented special circumstances that require performance in the hospital of services normally performed in the doctor's office. Surgery Ground Rule I-B.

Provider relied primarily on the record of the MRD proceeding, without submitting additional medical evidence or records. The MRD record in this case was particularly sparse concerning details of the accident, any emergency treatment on the date of the injury, and circumstances of the hospital admission that apparently took place on July 23, 2001. Provider did, however, add one critical detail. Ms. Dobbels, Provider's workers' compensation coordinator, testified that Dr. Osterman's evaluation of Claimant in the hospital was his first contact with him. As there is nothing in the MRD record which contradicts her testimony in that regard, that element moves the Provider's initial visit into the exception provided for in Surgery Ground Rule I-B. Carrier must compensate Provider for the initial evaluation visit (CPT Code 99222).

### **III. Findings of Fact**

1. On \_\_\_\_\_, \_\_\_\_ (Claimant) suffered a compensable injury to his knee and wrist; specifically both joints were fractured.
2. American Home Assurance Company (Carrier) was the responsible insurer on Claimant's date of injury.
3. On July 23, 2001, David Osterman, M.D. (Provider), an orthopedic surgeon, operated on Claimant's fractured knee. The operation, performed under general anesthesia, involved irrigation and debridement of the knee and stabilization of the kneecap (patella) by instrumentation.
4. Provider's first contact with Claimant was at the time of Claimant's admission to the hospital on July 23, 2001. Provider evaluated Claimant for surgery at that time.
5. Carrier denied reimbursement to Provider for the initial evaluation, on the basis that the visit was incorporated within, or was global to, the fee for the knee surgery itself.

6. Provider timely sought review by the Texas Workers' Compensation Commission (Commission) of the Carrier's determination. On June 4, 2002, the Medical Review Division (MRD) of the Commission declined to compel Carrier to reimburse Provider for the in-hospital evaluation, an amount of \$116, on the basis that Provider had not demonstrated that his in-hospital evaluation was compensable.
7. On July 19, 2002, Carrier requested a hearing on the MRD decision.
8. On July 24, 2002, the Commission issued a notice of hearing which included the date, time, and location of the hearing and the applicable statutes under which the hearing would be conducted. The Commission filed a statement of matters asserted on September 24, 2002.
9. Administrative Law Judge Cassandra Church conducted a hearing on the merits of the case on December 9, 2002; the record closed that day.

#### **IV. Conclusions of Law**

10. The Texas Workers' Compensation Commission (Commission) has jurisdiction to decide the issues presented pursuant to TEX. LABOR CODE § 413.031.
11. The State Office of Administrative Hearings 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 § 413.031 and TEX. GOV'T CODE ch. 2003.
12. Carrier timely requested a hearing, as specified in 28 TEX. ADMIN CODE (TAC) § 148.3.
13. Proper and timely notice of the hearing was effected on the parties in accordance with TEX. GOV'T CODE ch. 2001 and 28 TAC § 148.4(b).
14. Provider has the burden of proving by a preponderance of the evidence that it should prevail in this matter, pursuant to 28 TAC § 148.21(h) and (i).
15. Provider proved by a preponderance of the evidence that his consultation and evaluation of Claimant on July 23, 2002, was his initial visit with Claimant, so was an allowable additional charge within the meaning of *Medical Fee Guideline* (MFG) 28 TEX. ADMIN. CODE (TAC) §134.201 (Eff. date April 1, 1996), Surgery Ground Rule I-B.
16. The medical evaluation performed by Provider on July 23, 2001, was a medically necessary service to treat or diagnose Claimant's compensable injury, within the meaning of TEX. LABOR CODE ANN. §§ 408.021 and 401.011(19).

**ORDER**

**IT IS HEREBY ORDERED** that American Home Assurance Company reimburse David Osterman, M.D., a total of \$116 for a medical evaluation performed on July 23, 2001.

**SIGNED January 21, 2003.**

**STATE OFFICE OF ADMINISTRATIVE HEARINGS**

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**CASSANDRA J. CHURCH  
ADMINISTRATIVE LAW JUDGE**