

DOCKET NO. 453-03-0891.M4
[MDR TRACKING NO. M4-02-2982-01]

DAVID OSTERMAN, M.D.,
Petitioner

v.

AMERICAN PROTECTION
INSURANCE COMPANY,
Respondent

§
§
§
§
§
§
§
§
§
§

BEFORE THE STATE OFFICE

OF

ADMINISTRATIVE HEARINGS

DECISION AND ORDER

I. PROCEDURAL HISTORY

Petitioner, David Osterman, M.D. (Provider), seeks reimbursement from American Protection Insurance Company (Carrier) for surgical procedures provided to an injured worker. Carrier denied full reimbursement on the basis that the surgeries were related and, thus, not fully reimbursable as unrelated procedures. This decision find that Provider failed to meet its burden of proving the surgeries were unrelated. Consequently, it is not entitled to additional reimbursement.

Administrative Law Judge (ALJ) Gary Elkins convened and closed a hearing on December 9, 2002. Jennifer Dobbels appeared on behalf of Provider. Wayne Gill appeared on behalf of Carrier.¹

II. EVIDENCE AND BASIS FOR DECISION

On November 9, 2001, Provider performed, through three separate incision, a diagnostic arthroscopy, a claviclectomy, and a rotator cuff repair to the right shoulder of an injured worker. Upon receipt of Provider's bill for the services, Carrier fully reimbursed Provider for the rotator cuff procedure, but reimbursed Provider only 50 percent (\$404.50) for the claviclectomy and refused any reimbursement for the arthroscopy, which was billed at \$506.00.

In support of its decision to reimburse Provider only 50 percent for the claviclectomy, Carrier cited the Commission's Multiple Procedure Reimbursement Rule, found at Section I. D. 1. b. ii. of the *Medical Fee Guideline's* Surgery Ground Rules. The rule provides that when a secondary or subsequent procedure is not performed through the same incision but is related to the primary

¹ The Texas Workers' Compensation Commission was not a party to the dispute.

procedure, the provider is entitled to 50 percent of the Maximum Allowable Reimbursement. According to Carrier, the claviclectomy met this definition. Carrier's denial of reimbursement for the arthroscopy was based on its conclusion that the procedure constituted an intraoperative diagnostic procedure included within the global service package, as provided in Section I.A.1. of the Surgery Ground Rules. Carrier referred to an excerpt from an American Academy of Orthopaedic Surgeons (AAOS) publication identifying arthroscopies under CPT Code 29815 as included in the global service package for rotator cuff surgery.

Provider argued that because the surgical procedures were separate operations performed through separate incisions, he was entitled to full reimbursement for each procedure.

The evidence fails to demonstrate the claviclectomy was unrelated to the rotator cuff repair. Because it was reimbursed at 50 percent of the MAR, as provided under the Surgery Ground Rules as a related procedure, Provider's request for additional reimbursement for the claviclectomy should be denied. Because the AAOS publication was not adequately identified as applicable to services rendered under the Texas Workers' Compensation System, the ALJ did not find it persuasive. Nevertheless, the ALJ was persuaded that because the arthroscopy was used for diagnostic purposes during the shoulder surgery, it constituted a necessary service normally performed by surgeons during surgical procedures. Consequently, Provider is not entitled to separate reimbursement for it.

Accordingly, Provider is entitled to no additional reimbursement.

III. FINDINGS OF FACT

1. On November 9, 2001, David Osterman, M.D. (Provider) performed a diagnostic arthroscopy, a claviclectomy, and a rotator cuff repair to the right shoulder of an injured worker.
2. The worker's injury was covered by worker's compensation insurance provided by American Protection Insurance Company (Carrier).
3. Provider billed Carrier \$506.00 under CPT Code 29815 for the arthroscopy and \$809.00 under CPT Code 23120 for the claviclectomy.
4. Carrier reimbursed Provider fully, at \$1,922.00 under CPT Code 23420, for the rotator cuff procedure and at 50 percent for the claviclectomy, and fully denied reimbursement for the arthroscopy.
5. Provider performed the arthroscopy in conjunction with the rotator cuff repair as a necessary diagnostic procedure.

6. Provider did not present evidence to show that the three surgical procedures were unrelated.

IV. CONCLUSIONS OF LAW

7. The Texas Workers' Compensation Commission (TWCC) has jurisdiction to decide the issues presented pursuant to TEX. LABOR CODE §413.031.
8. 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.
9. The Notice of Hearing issued by TWCC conformed to the requirements of TEX. GOV'T CODE §2001.052 in that it 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 section of the statutes and rules involved; and a short plain statement of the matters asserted.
10. Provider has the burden of proving by a preponderance of the evidence that it should prevail in this matter. TEX. LABOR CODE §413.031.
11. Surgery Ground Rule I. D. 1. b. ii. of the *Medical Fee Guideline* provides for a 50 percent reduction of the MAR for a secondary or subsequent procedure when the secondary or subsequent procedure is not performed through the same incision but is related to the primary procedure.
12. Based on Finding of Fact No. 6 and Conclusion of Law No. 5, Provider failed to prove that the right shoulder claviclectomy billed under CPT Code 23120 was unrelated to the primary procedure and should be reimbursed at 100 percent of MAR.
13. Surgery Ground Rule I.A.1. provides that "a single fee is billed and paid for all necessary services normally performed by the surgeon before, during, and after the surgical procedure."
14. Based on Findings of Fact Nos. 5 and 6 and Conclusion of Law No. 6, Provider is not entitled to separate reimbursement for the right shoulder diagnostic arthroscopy.

15. Provider is not entitled to additional reimbursement.

ORDER

IT IS ORDERED that David W. Osterman, M.D. is not entitled to additional reimbursement from American Protection Insurance Company for the diagnostic arthroscopy and claviclectomy performed on the right shoulder of an injured worker on November 9, 2001.

ISSUED this 7th day of February, 2003.

**GARY W. ELKINS
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS**