

EAST HARRIS COUNTY	§	BEFORE THE STATE OFFICE
ORTHOPEDIC ASSOCIATES, PA	§	
	§	
v.	§	OF
	§	
CITY OF HOUSTON	§	ADMINISTRATIVE HEARINGS

DECISION AND ORDER

East Harris County Orthopedic Associates, PA (East Harris) appeals the Texas Workers' Compensation Commission's Medical Review Division (MRD) decision that denied payment for assistant surgeon's fees for lumbar surgery because East Harris failed to provide pertinent medical records or other documents relevant to the fee dispute. The City of Houston (Carrier) argued the underlying surgery was not medically necessary, and East Harris said the surgery's complexity demonstrated the need for two surgeons. This decision finds East Harris failed to meet its burden of proof.

I. Procedural History, Notice, and Jurisdiction

At the hearing on April 29, 2003, attorney Mark Sickles represented the Carrier, and Linda Mallet represented East Harris. The record closed on the same day but was subsequently reopened by the administrative law judge (ALJ). In the ALJ's order, the parties were instructed to address the applicability to this case of certain Commission rules and to discuss what appeared to be a duplicate billing charge. The record finally closed on July 16, 2003.

II. Discussion

Ms. Mallet, who works in East Harris's accounts receivable, billing, and collection department, was the only witness at the hearing. Five exhibits were admitted into evidence. (This case was heard together with Docket No. 453-03-2382.M4, concerning the surgeon's fees.)

Evidence

Based on the maximum allowable reimbursement rate (MAR), the amount in dispute is \$3,391.38. The operative report for the February 5, 2002, surgery lists Floyd Hardimon, M.D., as the assistant surgeon to Eric Scheffey, M.D. The report includes pre- and post-operative diagnoses, a list of the procedures performed, and a narrative explanation. The procedures described include multiple laminectomies and fusions, but the report makes no other mention of an assistant surgeon except as follows:

The surgeon and assistant then changed places. From the right side, the assistant was retracting to the left side. . . The assist [*sic*] then copiously irrigated while the bone graft was prepared by the surgeon.¹

¹Ex. 5, pp. 61-62.

Parties' Arguments

No expert testified as to whether two surgeons are required for this type of surgery, and Mr. Sickles emphasized the lack of documentation to support the use of two physicians. Ms. Mallet noted the multiple procedures performed. She said the surgery went all the way to the spine, and the surgeon had to remove pieces of the spine and put in metal. Further, Ms. Mallet argued that the surgery was preauthorized, and in her opinion, preauthorization guarantees payment unless a rule was violated or a surgeon performed outside the scope of the preauthorization.

III. Analysis

In the Surgery Ground Rules a section pertaining to modifiers states in pertinent part:

. . . Documentation on the operating room record shall indicate the amount of time spent by the assistant surgeon in the operative session and the need for an assistant surgeon. Documentation shall substantiate the attendance of the assistant surgeon 70% of the time during the performance of one operative session. The reimbursement shall be 25% of the listed MAR of the surgical procedure.

The operative report fails to meet this rule's requirements. Even had the rule not been applicable to this case, the medical evidence was insufficient to document the need for a second surgeon. There was no medical testimony as to whether the services Dr. Hardimon performed - retracting and irrigating the area - had to be performed by a surgeon. Therefore, the ALJ finds that East Harris failed to meet its burden of proof.

IV. Findings of Fact

1. A workers' compensation claimant sustained a compensable back injury on __, when his employer had workers' compensation insurance coverage with the self-insured City of Houston (Carrier).
2. Based upon the request of Eric H. Scheffey, M.D., the Carrier preauthorized lumbar surgery, including CPT codes 63047, 22630, and 22842.
3. The operative report for the February 5, 2002, surgery lists Floyd Hardimon, M.D., as the assistant surgeon to Dr. Sheffey.
4. The Carrier paid nothing for East Harris's charges on behalf of Dr. Hardimon and used denial code "V" on its explanation of benefits, which reflected reliance on a peer review to find the surgery was medically unreasonable and unnecessary.
5. East Harris appealed to the Texas Workers' Compensation Commission's Medical Review Division (MRD), and by decision issued November 20, 2003, MRD denied payment for the services based on the lack of required documentation.
6. By letter dated November 22, 2003, East Harris timely appealed to the State Office of Administrative Hearings (SOAH).

7. The notice of hearing on the appeal, sent January 7, 2003, listed the time, place, and nature of the hearing; included a statement of the legal authority and jurisdiction under which the hearing was to be held; referred to particular sections of the statutes and rules involved; and included a short, plain statement of the matters asserted.
8. At the hearing on April 29, 2003, both the Carrier and East Harris were represented.
9. Even though the operative report lists Dr. Hardimon as an assistant surgeon, it makes no other mention of him excepts as follows:

The surgeon and assistant then changed places. From the right side, the assistant was retracting to the left side. . . . The assist [*sic*] then copiously irrigated while the bone graft was prepared by the surgeon.
10. There was no documentation of the amount of time Dr. Hardimon spent in the surgery.
11. There was no evidence that the services Dr. Hardimon performed B retracting and irrigating the area - had to be performed by a surgeon.
12. There was insufficient documentation of the need for an assistant surgeon.

V. Conclusions of Law

1. SOAH 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. Adequate and timely notice of the hearing was provided in accordance with TEX. GOV'T CODE ANN. § 2001.052.
3. East Harris had the burden of proof in this case. 28 TEX. ADMIN. CODE §148.21(h).
4. Based on the Findings of Fact and Conclusions of Law, East Harris's appeal should be denied.

ORDER

IT IS, THEREFORE, ORDERED that no payment is required from the City of Houston for assistant surgeon fees for surgery performed on February 5, 2002.

Signed August 26, 2003.

STATE OFFICE OF ADMINISTRATIVE HEARINGS

SARAH G. RAMOS
Administrative Law Judge