

METROPOLITAN TRANSIT	§	BEFORE THE STATE OFFICE
AUTHORITY HARRIS COUNTY,	§	
Petitioner	§	
	§	OF
v.	§	
	§	
MARIO OSVALDO KAPUSTA, M.D.,	§	
Respondent		ADMINISTRATIVE HEARINGS

DECISION AND ORDER

Metropolitan Transit Authority Harris County (Carrier) appealed the Findings and Decision of the Texas Workers= Compensation Commission=s Medical Review Division (MRD)¹ granting reimbursement for an anterior extra peritoneal exposure of the spine (approach procedure) provided in conjunction with spinal surgery. The primary procedure performed by the orthopaedic surgeon consisted of a corpectomy (CPT Code 63090) and fusion. Mario Osvaldo Kapusta, M.D. (Provider) billed the approach procedure as unlisted vascular surgery (CPT Code 37799) using modifier -62, which is used when two surgeons are required to manage a specific surgical procedure. The MRD found that the Provider should be reimbursed \$6,861 of the \$9,500 billed. The Administrative Law Judge (ALJ) finds that the Provider is not entitled to reimbursement as a second surgeon who performed a specific surgical procedure because the opening and closing for an anterior exposure of the spine is not a separate procedure, but is global to the primary procedure. The ALJ recommends reimbursement of \$1,171.22.

I. PROCEDURAL HISTORY, NOTICE AND JURISDICTION

On October 24, 2005, ALJ Michael J. Borkland convened the hearing at the William P. Clements Building, 300 West 15th Street, Austin, Texas. Attorney Steve Tipton represented the Carrier. The Provider appeared *pro se*. Notice and jurisdiction were not contested and will be addressed in the Findings of Fact and Conclusions of Law. The record closed on the same day at the conclusion of the hearing.

¹ Effective September 1, 2005, the functions of the Texas Workers= Compensation Commission were transferred to the newly created Division of Workers= Compensation of the Texas Department of Insurance.

II. EVIDENCE AND BASIS FOR DECISION

The documentary evidence consisted of one exhibit submitted by the Carrier, Exh. 1 (47 pages), and two exhibits presented by the Provider, Exh. 2 (46 pages) and Exh. 3 (1 page). Additionally, the Provider testified at the hearing.

At issue in this case is reimbursement for vascular surgical services provided on October 1, 2003, as part of a corpectomy and fusion requiring an anterior approach. The Carrier denied payment on the basis that the approach procedure was global to the primary procedure. The Carrier argued that the Provider should have billed his part of the procedure under CPT Code 63090-62, and that reimbursement, if any, should be limited to 62.5 percent of the global procedure amount.

The facts are not in dispute. Claimant=s corpectomy and fusion required an anterior approach to the L5-S1 level. The Provider provided surgical opening and closing, and moved internal organs, veins, and arteries to afford the orthopaedic surgeon access to the spine.² The Provider billed the procedure under CPT Code 37799 (unlisted procedure, vascular surgery) and added modifier -62, which means two surgeons were required.³ The Provider testified that many carriers have reimbursed him for his services billed with CPT Code 37799-62, and that he prevailed on the issue in Docket No. 453-01-1460.M5. On cross-examination, he admitted that he has lost all subsequent appeals of this issue to the State Office of Administrative Hearings.

According to the American Academy of Orthopaedic Surgeons, CPT Code 63090 includes the surgical approach as part of the global service package.⁴ When two surgeons work together as primary surgeons, Trailblazer=s description of global surgery provides that modifier -62 should be added to the primary procedure code by each surgeon.⁵ Reimbursement for co-surgery is allowed at 125 percent of the global procedure amount divided equally between the two surgeons, which is 62.5

² Exh. 1, pages 44 - 47.

³ Exh. 2, pages 41 - 46.

⁴ Exh. 1, page 30.

⁵ Exh. 2, page 32.

percent of the global procedure amount.⁶ Trailblazer determined that the global procedure amount was \$1,873.96,⁷ making the Provider entitled to reimbursement of \$1,171.22.

III. FINDINGS OF FACT

1. A workers= compensation claimant (Claimant) suffered a compensable injury under the Texas Workers= Compensation Act (the Act), TEX. LABOR CODE ANN. ' 401.001 *et seq.*, on___, when his employer had workers= compensation coverage with the Metropolitan Transit Authority Harris County (Carrier), which is self-insured.
2. The Claimant=s treatment included a lumbar corpectomy and fusion at the L5-S1 spinal level.
3. Because the Claimant=s surgery required an anterior approach to reach the spine, Mario Osvaldo Kapusta, M.D. (Provider), a vascular surgeon, provided surgical opening and closing, and moved internal organs, veins, and arteries to afford the orthopaedic surgeon access to the spine.
4. The Provider billed the Carrier using CPT Code 37799-62 (unlisted procedure, vascular surgery; second surgeon required) for the primary surgery.
5. CPT Code 63090 is assigned for corpectomy, which was the primary surgical procedure performed by the orthopaedic surgeon.
6. The -62 modifier signifies Aco-surgeons,@ which means that two surgeons worked together as primary surgeons.
7. When an anterior exposure of the spine is performed by a surgeon other than the orthopaedic surgeon, both surgeons should bill for the procedure using the primary surgical procedure CPT code with modifier -62.
8. The Provider should have billed his procedure with CPT Code 63090-62.
9. The global procedure amount was \$1,873.96.
10. The Provider made a timely request to the Medical Review Division (MRD) of the Texas Workers= Compensation Commission (Commission) for medical dispute resolution with respect to the disputed reimbursement.
11. The MRD recommend reimbursement of \$6,861.

⁶ Exh. 1, page 43.

⁷ Exh. 1, page 24.

12. On March 1, 2005, the Carrier requested a hearing with the State Office of Administrative Hearings, seeking review and reversal of the MRD decision regarding reimbursement.
13. The Commission mailed its notice of hearing to the parties on March 23, 2005.
14. The notice included the time, place, and nature of the hearing; the legal authority and jurisdiction under which the hearing was to be held; particular sections of the statutes and rules involved; and a short, plain statement of the matters asserted.
15. At the hearing on October 24, 2005, the Provider appeared *pro se*, and attorney Steve Tipton represented the Carrier.

IV. CONCLUSIONS OF LAW

1. The Texas Department of Insurance, Division of Workers= Compensation, has jurisdiction related to this matter pursuant to Acts of May 30, 2005, 79th Leg., R.S., ch. 265, 2005 Tex. Sess. Law Serv. Ch. 265 (HB 7) and TEX. LAB. CODE ANN. ' 413.031.
2. 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. LAB. CODE ANN. ' 413.031 and TEX. GOV'T CODE ANN. ch. 2003.
3. Adequate and timely notice of the hearing was provided in accordance with TEX. GOV'T CODE ANN. ' ' 2001.051 and 2001.052.
4. The Carrier, the party seeking relief, bore the burden of proof in this case, pursuant to TEX. LAB. CODE ANN. ' 413.031.
5. The Carrier properly effected an appeal of the MRD decision to the State Office of Administrative Hearings.
6. When an anterior approach is performed by a different surgeon, both surgeons should bill using the primary procedure CPT Code with the co-surgeon modifier -62, pursuant to Medicare guidelines.
7. Based on Medicare guidelines, the Provider is entitled to 62.5 percent of the global procedure amount for the anterior approach provided for the corpectomy and fusion that was performed on Claimant on October 1, 2003.
8. Based on Findings of Fact Nos. 5 - 9 and Conclusions of Law Nos. 6 and 7, the Carrier should reimburse the Provider \$1,171.22.

ORDER

IT IS, THEREFORE, ORDERED that Metropolitan Transit Authority Harris County reimburse Mario Osvaldo Kapusta, M.D., for fees incurred in treating the Claimant in the amount of \$1,171.22.

SIGNED December 12, 2005.

**MICHAEL J. BORKLAND
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS**