

**SOAH DOCKET NO. 453-05-8283.M4
TWCC MDR NO. M4-05-6075-01**

DALLAS FIRE INSURANCE COMPANY, § **BEFORE THE STATE OFFICE**
Petitioner §
V. § **OF**
§
EAST HARRIS COUNTY ORTHO ASSOCIATION, § **ADMINISTRATIVE HEARINGS**
Respondent §

and

**SOAH DOCKET NO. 453-05-4466.M5
TWCC MDR NO. M5-04-1597-01**

EAST HARRIS COUNTY ORTHO ASSOCIATION, § **BEFORE THE STATE OFFICE**
Petitioner §
V. § **OF**
§
DALLAS FIRE INSURANCE COMPANY, § **ADMINISTRATIVE HEARINGS**
Respondent §

DECISION AND ORDER

I. DISCUSSION

In SOAH Docket No. 453-05-8283.M4, on July 8, 2005, Dallas Fire Insurance Company (DFIC) requested a hearing to contest the June 30, 2005 Findings and Decision of the Texas Workers' Compensation Commission (Commission). The Commission ordered reimbursement for services provided by East Harris County Ortho Association (EHCOA) to injured worker ___ (Claimant) on June 27, 2003.

In SOAH Docket No. 453-05-4466.M5, on February 16, 2005, EHCOA requested a hearing to contest the January 28, 2005 Commission Decision dismissing its request for dispute resolution for failure to pay an Independent Review Organization fee. The dispute involved the same date and services in dispute in SOAH Docket No. 453-05-8283.M4. At the request of the parties, the two dockets were joined for purposes of hearing and decision. Because resolution of SOAH Docket No. 453-05-8283.M4 also resolves SOAH Docket No. 453-05-4466.M5, only the former will be discussed.

After considering the evidence and arguments of the parties, the Administrative Law Judge (ALJ) concludes EHCOA is entitled to reimbursement in the amount of \$1770.00 for CPT Code 29881.

The hearing convened on October 5, 2005, with State Office of Administrative Hearings (SOAH) ALJ Howard S. Seitzman presiding. John Fundis represented DFIC. Susan Towne represented EHCOA. The parties' exhibits were admitted into evidence without objection and closing argument followed. The hearing concluded and the record closed that day.

The procedural history of the proceedings before the Commission is tortured and the record from the Commission is muddled. At the October 5, 2005 hearing, the parties eased the ALJ's burden by stipulating facts and issues into the record. On May 21, 2003, EHCOA requested preauthorization for CPT Code 29881-Arthroscopy Knee Surgery with Meniscectomy (medial or lateral, including any meniscal shaving). On May 27, 2003, DFIC preauthorized the procedure. Claimant underwent arthroscopic surgery to the left knee on June 27, 2003. The surgery was performed by Eric Scheffey, M.D., and Floyd Hardimon, D.O., assisted. The June 27, 2003, procedure that Claimant underwent involved both a medial and a lateral meniscectomy. The procedure that was performed is described by CPT Code 29880. The maximum allowable reimbursement (MAR) for CPT Code 29881 is \$1416.00 while the MAR for CPT Code 29880 is \$1831.00. The assistant surgeon is reimbursed at 25% of the applicable MAR. The total amount due under CPT Code 29881 is \$1770.00. The total amount due under CPT Code 29880 is \$2288.75

The parties agree that CPT Code 29881 was preauthorized. The parties also agree that because the procedure covered by CPT Code 29881 is a subset of CPT Code 29880, CPT Code 29880 were performed when the surgeons performed CPT Code 29881. EHCOA stipulated that reimbursement for CPT Code 29881 would resolve the dispute. Because CPT Code 29881 was preauthorized, DFIC may not deny EHCOA reimbursement based upon medical necessity.

The Commission Findings and Decision that DFIC contested incorporates by reference CPT Code 29881. The ALJ interprets the Commission's June 30, 2005 Findings and Decision as ordering DFIC to reimburse EHCOA under CPT Code 29881. Based upon the stipulations and evidence, the ALJ finds that no controversy exists between the parties with respect to the issue of DFIC reimbursing EHCOA \$1770.00 for CPT Code 29881.

Consequently, Petitioner failed to demonstrate by a preponderance of the evidence that the services provided Claimant by EHCOA on June 27, 2003, were not preauthorized.

II. FINDINGS OF FACT

1. ___ (Claimant) suffered a work related injury on___.
2. Claimant underwent arthroscopic surgery to the left knee on June 27, 2003.
3. The surgery was performed by Eric Scheffey, M.D., and Floyd Hardimon, D.O., assisted.
4. On May 21, 2003, East Harris County Ortho Association (EHCOA) requested preauthorization for CPT Code 29881-Arthroscopy Knee Surgery with Meniscectomy (medial or lateral, including any meniscal shaving.)
5. On May 27, 2003, Dallas Fire Insurance Company (DFIC) preauthorized the procedure.
6. On June 27, 2003, Claimant underwent a procedure the involved both a medial and a lateral meniscectomy.
7. The procedure that was performed is described by CPT Code 29880.
8. The maximum allowable reimbursement (MAR) for CPT Code 29881 is \$1416.00 while the MAR for CPT Code 29880 is \$1831.00.

9. The assistant surgeon is reimbursed at 25% of the applicable MAR.
10. The total amount due under CPT Code 29881 is \$1770.00. The total amount due under CPT Code 29880 is \$2288.75.
11. CPT Code 29881 was preauthorized.
12. The procedure covered by CPT Code 29881 is a subset of CPT Code 29880.
13. CPT Code 29880 was performed when the surgeons performed CPT Code 29881.
14. Because CPT Code 29881 was preauthorized, DFIC may not deny EHCOA reimbursement for CPT Code 29881 based upon medical necessity.
15. The Texas Workers' Compensation Commission's (Commission) Findings and Decision that DFIC contested incorporates by reference CPT Code 29881.
16. The Commission's June 30, 2005 Findings and Decision ordered DFIC to reimburse EHCOA under CPT Code 29881.
17. No controversy exists between the parties with respect to the issue of DFIC reimbursing EHCOA \$1770.00 for CPT Code 29881.
18. In SOAH Docket No. 453-05-8283.M4, on July 8, 2005, DFIC requested a hearing before the State Office of Administrative Hearings (SOAH) to contest the June 30, 2005 Findings and Decision of the Commission. The Commission ordered reimbursement for services provided by EHCOA on June 27, 2003, to Claimant.
19. In SOAH Docket No. 453-05-4466.M5, on February 16, 2005, EHCOA requested a hearing before SOAH to contest the January 28, 2005 Commission Decision dismissing its request for dispute resolution for failure to pay an Independent Review Organization Fee. The dispute involved the same date and services in dispute in SOAH Docket No. 453-05-8283.M4.
20. In SOAH Docket No. 453-05-4466.M5, the Commission issued a notice of hearing on March 10, 2005.
21. The notice of hearing contained: (1) a statement of the time, place, and nature of the hearing; (2) a statement of the legal authority and jurisdiction under which the hearing is to be held; (3) a reference to the particular sections of the statutes and rules involved; and (4) a short, plain statement of the matters asserted.
22. In SOAH Docket No. 453-05-8283.M4, the Commission issued a notice of hearing on August 12, 2005.

23. The notice of hearing contained: (1) a statement of the time, place, and nature of the hearing; (2) a statement of the legal authority and jurisdiction under which the hearing is to be held; (3) a reference to the particular sections of the statutes and rules involved; and (4) a short, plain statement of the matters asserted.
24. On September 29, 2005, the two dockets were joined for purposes of hearing and decision.
25. The hearing convened on October 5, 2005, with SOAH Administrative Law Judge Howard S. Seitzman presiding. John Fundis represented DFIC. Susan Towne represented EHCOA. The hearing concluded and the record closed that day.
26. Resolution of SOAH Docket No. 453-05-8283.M4 also resolves SOAH Docket No. 453-05-4466.M5.

III. CONCLUSIONS OF LAW

1. SOAH has jurisdiction over this proceeding, including the authority to issue a decision and order, pursuant to the Texas Workers' Compensation Act, specifically TEX. LABOR CODE ANN. §413.031(k), and TEX. GOV'T CODE ANN. ch. 2003.
2. The hearing was conducted pursuant to the Administrative Procedure Act, TEX. GOV'T CODE ANN. ch. 2001 and 28 TEX. ADMIN. CODE ch. 148.
3. The requests for hearing were timely made pursuant to 28 TEX. ADMIN. CODE §148.3.
4. Adequate and timely notice of the hearing was provided according to TEX. GOV'T CODE ANN. §§ 2001.051 and 2001.052.
5. The party requesting the contested case hearing has the burden of proof.
6. DFIC failed to prove by a preponderance of the evidence that the services provided to Claimant by EHCOA on June 27, 2003, were not preauthorized.

ORDER

THEREFORE IT IS ORDERED that Dallas Fire Insurance Company reimburse East Harris County Ortho Association \$1770.00, plus any applicable interest, for charges associated with CPT Code 29881 provided to injured worker __ on June 27, 2003.

SIGNED October 12, 2005.

**HOWARD S. SEITZMAN
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS**