
In the ORS 656.248 Medical Fee Dispute of

Flores, Linda, Claimant

Contested Case No: HH02-021

PROPOSED & FINAL ORDER

May 14, 2002

LINDA FLORES, Petitioner

, Respondent

Before John L. Shilts, Workers' Compensation Division Administrator

PROCEDURAL HISTORY

Petitioner SAIF Corporation (SAIF or insurer) appeals an Amended Administrative Order dated January 18, 2002 finding insurer liable for medical services delivered to claimant Linda Flores. On April 10, 2002, Hearing Officer Paul Vincent conducted a contested case hearing. SAIF was represented by attorney Mary Goebel Adams. There were no respondents. The Workers' Compensation Division waived appearance. No testimony was taken. The record closed on the date of hearing.

ISSUE

The issue, pursuant to a notice of hearing issued March 5, 2002, is whether insurer is liable for additional payments to Dr. Wobig for an examination of Linda Flores on March 27, 2001 under ORS chapter 656 and OAR chapter 436.

EVIDENTIARY RULINGS

WCD Exhibits 1-14 were received without objection.

FINDINGS OF FACT

Insurer does not dispute the factual findings of Amended Administrative Order MF 01-1182, dated December 7, 2001, and I adopt and incorporate the following findings of fact contained in that order, Exhibit 10, in their entirety. I make the following supplementary findings:

Claimant was seen by Ronald D. Wobig, MD, on Tuesday, March 27, 2001. In a chart note for that date, Dr. Wobig described the services performed as follows:

“Ms. Flores is here at this time for preop in regards to her right knee lateral meniscal tear. I have discussed with her the risks, benefits, and alternatives to treatment. I have described to her the procedure. She understands.

“Physical Exam: The repeat exam of her knee still shows her right knee has some tenderness over the lateral joint line and positive lateral McMurray’s

test. Otherwise, her range of motion is 0-0-125 degrees today. She is otherwise neurovascularly intact.

“Impression: Right knee probable lateral meniscal tear.

“Recommendations: I have discussed with Ms. Flores the operation, her questions have been answered, her consent has been signed, and we will proceed as scheduled.” (Ex. 1).

On Monday, April 2, 2001, Dr. Wobig performed a right knee arthroscopy with medial femoral condyle chondroplasty and patellar chondroplasty. (Exs. 1, 2). Dr. Wobig’s operative report does not document that any preoperative history was taken or physical examination performed. (Exs. 1, 2).

On August 28, 2001, SAIF notified Dr. Wobig’s practice group, Specialty Physicians & Surgeons, that it would not allow the charge of \$52.00 for services rendered on March 27, 2001 and billed with code 99212. SAIF stated that “preoperative evaluation and/or non-emergency evaluation is considered part of the surgical/global fee.” (Exs. 3, 8).

Doctor Wobig disagreed with SAIF’s position, and appealed to the Workers’ Compensation Division, Medical Review Unit (MRU), contending that the “global period falls under Medicare Guidelines – which is typically 2 days within surgery.” (Ex. 4).

On December 19, 2001, MRU issued Administrative Order MF 01-1182, finding that SAIF is liable for the March 27, 2001 services independent of the surgical fee. (Ex. 8).

On January 2, 2002, MRU issued an Amended Administrative Order MF 01-1182 that again found that SAIF is liable for the March 27, 2001 services independent of the surgical fee. (Ex. 9).

On January 18, 2002, MRU issued an Amended Administrative Order MF 01-1182 that again found SAIF liable for the March 27, 2001 services. (Ex. 10).

Ultimate Facts

Insurer is not liable for additional payment to Dr. Wobig for an examination of Linda Flores on March 27, 2001.

CONCLUSIONS OF LAW AND REASONING

Jurisdiction over this medical services dispute lies with the director. ORS 656.248; OAR 436-010-0008(1). Since ORS 656.248 prescribes no standard of review, I review *de novo*. *Archie M. Ulrich*, 2 WCSR 152, 153 (1997); OAR 436-010-0225(1). The burden of proving a fact or position rests with the proponent. ORS 183.450(2). As petitioner, insurer bears the burden of proving by a preponderance of the evidence that the administrative order is incorrect. See *Cook v. Employment Div.*, 47 Or 437 (1982) (In the absence of contrary legislation, the

standard of proof in an administrative hearing is preponderance of evidence).

When the director first addressed this issue in the administrative order of December 19, 2001, the director found that SAIF was liable for Dr. Wobig's office visit of March 27, 2001 pursuant to *Current Procedural Terminology (CPT™ 2001)*, Fourth Edition Revised, 2000, which was adopted by the Director through OAR 436-009-0004(3) as governing billing for billing by medical providers unless otherwise provided by administrative rule. Noting that the CPT surgical guidelines do not provide that "an evaluation and management visit prior to surgery is automatically considered part of the global surgery package," the director concluded that Dr. Wobig was entitled to separate payment for the disputed visit. (Ex. 8). In the January 2, 2002 Amended Administrative Order, MRU reached the same conclusion on the same grounds. (Ex. 9).

In the January 18, 2002 Amended Administrative Order, which I now review, MRU again determined that SAIF was liable for the March 27, 2001 visit as a separate procedure. In this order the director noted that OAR 436-009-0050(3)(a) does provide that the global value includes "the immediate preoperative visit, in the hospital or elsewhere." (Ex. 10-2). However, MRU was "not persuaded that the primary purpose of the March 27, 2001 visit was to perform a preoperative history and physical" and concluded that the disputed visit was not covered as part of the global surgical package. (Ex. 10-2).

OAR 436-009-0050(3) states:

"(3) Surgery services.

"(a) When a worker is scheduled for elective surgery, the immediate pre-operative visit, in the hospital or elsewhere, necessary to examine the patient, complete the hospital records, and initiate the treatment program is included in the listed global value of the surgical procedure. If the procedure is not elective, the physician is entitled to payment for the initial evaluation of the worker in addition to the global fee for the surgical procedure(s) performed."

Pursuant to this rule, the correct test to apply to determine whether the March 27, 2001 service was reimbursable is not whether it was a "preoperative history and physical" but whether it was a "immediate pre-operative visit, in the hospital or elsewhere, necessary to examine the patient, complete the hospital records, and initiate the treatment program." Under this standard, it is clear that the March 27, 2001 visit was part of the global procedure. The only evidence presented as to the purpose of the visit is the doctor's own statement in the chart note for the visit. The note clearly states that "Ms. Flores is here at this time for preop in regards to her right knee lateral meniscal tear. I have discussed with her the risks, benefits, and alternatives to treatment. I have described to her the procedure. She understands." There is no ambiguity in these statements. Neither is there any ambiguity in Dr. Wobig's statement that the physical exam was a "repeat exam of her knee," nor is there ambiguity in Dr. Wobig's concluding statement that "I have discussed with Ms. Flores the operation, her questions have been answered, her consent has been signed, and we will proceed as scheduled." (Ex. 1).

Taken together, Dr. Wobig's note could not more clearly have stated that this was a preoperative visit. (Ex. 1). It was necessary to examine the patient, complete hospital records, and initiate the treatment program. There was no intervening visit or examination by the surgeon prior to surgery. (Ex. 1, 2). It is thus an "immediate pre-operative visit, in the hospital or elsewhere, necessary to examine the patient, complete the hospital records, and initiate the treatment program" and "is included in the listed global value of the surgical procedure." OAR 436-009-0050(3). There is no evidence in the record to support a contrary conclusion.

The Amended Administrative Order erred by concluding that SAIF is liable for additional compensation for this visit and is reversed.

ORDER

IT IS HEREBY ORDERED that:

The Director's Review and Order dated January 18, 2002, is reversed. SAIF is not liable for additional payment to Dr. Wobig for an examination of Linda Flores on March 27, 2001.

DATED this _____ day of May 2002.

Paul Vincent
Hearing Officer
Hearing Officer Panel