

In the Matter of a Medical Fee Dispute of

Humphrey, Terrell L., Claimant

Contested Case No: HH02-008

PROPOSED & FINAL ORDER

February 24, 2002

SAIF CORPORATION, Petitioner

JOHN V. HAMBY, Respondent

Before John L. Shilts, Workers' Compensation Division Administrator

HISTORY OF THE CASE

Petitioner appeals a January 2, 2002 administrative order finding the insurer liable for reimbursement of medical expenses. On March 5, 2002, Administrative Law Judge Paul Vincent conducted a telephone hearing on the matter. Petitioner SAIF Corporation (SAIF or insurer) appeared and was represented by attorney Jerry Larkin. Respondent John Hamby, MD, appeared without an attorney. The Department of Consumer and Business Services, Workers' Compensation Division (WCD) waived appearance.

The record of this proceeding, consisting of a tape recording of the hearing, all evidence received, and all hearing papers filed, has been considered. The findings of fact and conclusions of law are based upon the entire record.

ISSUE

Whether insurer is liable for electrodiagnostic testing provided to Terrell L. Humphrey by Dr. Hamby on August 8 and 15, 2001.

EVIDENTIARY RULINGS

The following exhibits were offered without objection and admitted into evidence: WCD Exhibits 1-18; Petitioner's A – 26 (in the format submitted on March 11, 2002).

FINDINGS OF FACT

Terrell Humphrey (claimant) experienced an acute onset of right wrist dorsal pain and numbness and tingling of the right hand after his right hand was forcibly hyperextended in a workplace accident on August 7, 2001. The next day, claimant sought treatment from Dr. Hamby. (Exs. 2 to 4). After physically examining the claimant, Dr. Hamby felt that claimant presented "classic symptoms" of carpal tunnel syndrome (CTS) in the right hand. (Testimony of Dr. Hamby). Dr. Hamby obtained x-rays that were negative for fractures and electrodiagnostic testing with a NeuroMetrix Electroneurometer. The electrodiagnostic tests confirmed the diagnosis of right CTS. Dr. Hamby manipulated claimant's wrist, placed him in a splint, and prescribed Anaprox, rest and ice for the wrist. (Exs. 2 to 4).

On August 15, 2001, Dr. Hamby re-evaluated claimant. While the worker reported substantial improvement, Dr. Hamby was concerned that the worker's reported symptoms might not reflect his actual condition due to the claimant's desire to return to work without restriction. (Ex. 4; Testimony of Dr. Hamby). Dr. Hamby repeated the electrodiagnostic testing to confirm the physical findings. The electrodiagnostic testing confirmed the continued diagnosis of right CTS. Dr. Hamby referred the claimant to Michael Van Allen, MD (Orthopedic and Hand Surgery) for a second opinion and billed SAIF for both electrodiagnostic tests. (Ex. 4).

On October 4, 2001, SAIF reviewed the billings and disallowed payment for both electrodiagnostic tests and supplies on the grounds "service/billings incongruous with CPT and/or OAR's." (Ex. 7).

CONCLUSIONS OF LAW

This is a medical fee dispute arising under ORS 656.248. The scope of my review is *de novo*. OAR 436-001-0225(1). The burden of proof is on the petitioner. ORS 183.450(2).

Is the Treatment Compensable Under OAR 436-009-0015(6)?

Insurer argues that the director's administrative review erred by failing to apply OAR 436-009-0015(6) in determining whether these billings were compensable. OAR 436-009-0015(6) states:

[P]ayment shall not be made for surface EMG tests... While these services may be provided, medical providers shall not be paid for such services or for treatments of side effects.¹

Pursuant to OAR 436-009-0005(2)(i), "EMG means electromyography" for purposes of OAR Chapter 436, Division 009, but does not define electromyogram. The Tablor Encyclopedic Medical Dictionary defines electromyogram as "a graphic record of the contraction of a muscle as a result of electrical stimulation."

¹ The quoted text is taken from *previous* OAR 436-009-0015(6), effective April 1, 2001, by Administrative Order 01-051. The current version of OAR 436-009-0015(6) contains materially similar language. Effective April 1, 2002 the administrative rule will be amended to read:

Pursuant to ORS 656.245(3), the director has excluded from compensability the following medical treatment. While these services may be provided, medical providers shall not be paid for the services or for treatment of side effects....(c) Surface EMG tests.

I agree with insurer that the record in this case establishes that the NC-Stat device functions as a surface EMG device. Insurer's expert witness, Dr. Moore, testified that the NCStat is "a surface device for picking up muscle activity." The manufacturer's literature states explicitly that the device is "substantially equivalent" to the "Neurotron Nuerometer" and

“TECA TD-10/TD-20 EMG.” (Ex. A-1). The device “consists of a hand-held, battery-operated monitor and a disposable sensor.” *Id.* The device works by applying a non-invasive sensor to the patient’s skin where the patient’s response to electrical muscle stimulus can be measured as follows:

The single-use disposable sensor, containing a proprietary electrode array, is placed on the patient’s wrist in alignment with the distal most wrist crease and connected to the monitor. The monitor non-invasively stimulates the patient’s median nerve and detects the subsequent CMAP [compound muscle action potential] as an electrical potential on the skin, via the sensor. The sensor also contains a temperature electrode that monitors surface temperature of the patient’s skin. All this data is analyzed and digitally stored in a non-volatile manner by the monitor.

(Ex. A-2). The manufacturer states that the intended use is “to measure neuromuscular signals that are useful in diagnosing and evaluating systemic and entrapment neuropathies. The NC-stat is intended to be used as an adjunct to and not a replacement for conventional electrodiagnostic measurements.” (Ex. A-2).

Because the NC-Stat’s primary function is as a surface EMG test under the plain language of OAR 436-009-0015(6), it was error to require the insurer to pay for the services delivered on August 8 and 15, 2001.

CPT CODE

SAIF argues that MRU also erred in finding that Dr. Hamby properly used CPT code 95903 in the submitted billing. SAIF argues that it correctly denied payment under the code provided because the NC-Stat device is appropriately used only as a screening tool, not as an electrodiagnostic study. No billing code for such screening tools exists, argues SAIF, and therefore the billings were correctly denied. I disagree and find MRU’s order well reasoned on this point:

OAR 436-009-0004(3) adopts the *Current Procedural Terminology (CPT 2001)*, Fourth Edition Revised 2001, for billing by medical service providers. The rule further states the guidelines in CPT are adopted as the basis for determining the level of service. CPT 2001 defines code 95903 as, “nerve conduction, amplitude and latency/velocity study, each nerve; motor, with F-wave study. The CPT does not restrict or specify what type of machine may be used. (Ex. 15-2).

In the absence of a specific rule making surface EMG tests non-reimbursable, the NC-stat device, as used by Dr. Hamby, would properly be reimbursable under this CPT code.

ORDER

IT IS HEREBY ORDERED that MRU's order of January 2, 2002 is reversed; insurer is not liable for NC-Stat testing provided to Terrell L. Humphrey by Dr. Hamby on August 8 and

15, 2001.

DATED this ____ day of April 2002.

Paul Vincent, Administrative Law Judge
Hearing Officer Panel