

In the Managed Care of  
**Timothy R. Gilbert, Claimant**

Contested Case No: 08-173H

**REMANDED**

February 24, 2009

TIMOTHY R. GILBERT, Petitioner  
SAIF CORPORATION, Respondent

Before John Mark Mills, Administrative Law Judge

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Hearing convened and closed before Administrative Law Judge John Mark Mills in Portland, Oregon on January 29, 2009. Claimant was not present, but was represented by his attorney, Michael Gilbertson. The employer, Jade Properties, and their insurer, SAIF Corporation were represented by their attorney, Roy Miller. Exhibits 1 through 26 were submitted as part of the record.

**ISSUES**

Claimant contests the Administrative Order issued in this matter on August 8, 2008 which approved the insurer's denial of payment for medical services provided by claimant's treating physician, Dr. Brett. Claimant also seeks the award of an assessed attorney fee should he prevail.

**FINDINGS OF FACT**

I adopt the findings of fact from the Administrative Order. I do not make additional findings of fact as this is substantial evidence review of a medical services dispute under ORS 656.245, ORS 656.248(12), and OAR 438-001-0225(2).

**CONCLUSIONS AND OPINION**

The nature of the dispute in this case is relatively straight forward. Dr. Brett had proposed a discogram for claimant to be performed at the L3 through S1 levels of claimant's low back. The insurer disputed the proposed treatment. That matter was reviewed by the resolution team (RT) under the authority of the Director.

As part of the review RT obtained an evaluation of the proposed study by Dr. Fiks who indicated on March 21, 2008 that the discogram was appropriate, but suggested that rather than limit it to be L3 through S1 levels, it be performed from T12 through S1. An Order was issued on April 9, 2008 which approved the proposed surgery, but did not address the difference between the two specific procedures proposed by Dr. Brett and Dr. Fiks. Accordingly, after receiving the approval for his proposed procedure, but also Dr. Fiks' report indicating that the procedure should be expanded, Dr. Brett performed a records review to address the appropriateness of expanding the procedure. He issued a report dated April 16, 2008 and concluded that it would more appropriate to limit the procedure to L3-S1. (Ex. 13). He office then billed for this report under CPT code 99358 which is a CPT code for an evaluation and

records review without a face to face meeting with the patient.

The insurer refused to pay the bill, indicating that it had not authorized the records review by Dr. Brett. (Ex. 15). After claimant requested review the Order issued in this matter which accepted the insurer's position, and indicated that the payment did not have to be paid pursuant to the provisions of OAR 436-009-0015(11) since the insurer had not requested the records review.

That provision provides as follows; "Except as otherwise provided in OAR 436-009-0070, when a medical provider is asked to prepare a report, or review records or reports prepared by another medical provider, an insurance carrier or their representative, a medical provider should bill for their report or review of the records utilizing CPT codes such as 99080. . . ."

I agree with claimant that it was error of law for the Order to approve the denial of payment for the medical services on the basis that the insurer had not requested the Dr. Brett do a records review, because that determination ignores the initial provision of the rule which provides that payment by this method is only one method for payment and that there are other provisions allowing for payment such as OAR 436-009-0070. That rule specifically allows for payment of medical reports such as a brief narrative or complex narrative. Neither of these types of billings require a request for review by the insurer. The CPT code used by Dr. Brett's office also does not require such a request.

Accordingly, I conclude that it was error of law for the Order to rely exclusively on a partial sentence OAR 436-009-0015(11) to determine that payment was inappropriate. Since the Order did not consider alternative bases for payment of the bill, I remand for further consideration.

### **ORDER**

IT IS HEREBY ORDERED that this matter is remanded for further consideration of the Administrative Order issued in this matter on August 8, 2008.