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IN THE COUNTY COURT IN AND
FOR BROWARD COUNTY, FLORIDA

Case No: 09 14363 COCE 56

Claim No.: 59-A198-681

Hallandale Beach Orthopedics, Inc.
(a/a/o Monette Bonhomme),

Plaintiff,

vs.

State Farm Mutual Automobile
Insurance Company,

Defendant

_____ /

FINAL JUDGMENT FOR THE DEFENDANT

THIS CAUSE came before the Court for hearing on April 27, 2011 on Plaintiff's Motion for Final Summary Judgment and Defendant's Motion for Final Summary Judgment. Pursuant to the Order entered on June 2, 2011,

IT IS ADJUDGED:

Background and Undisputed Facts

This is an action by the Plaintiff, Hallandale Beach Orthopedics, Inc., a/a/o Monette Bonhomme to recover alleged overdue Personal Injury Protection ("PIP") benefits from the Defendant, State Farm Mutual Automobile Insurance Company (hereinafter referred to as "State Farm").

On March 8, 2009, Monette Bonhomme was involved in a motor vehicle accident in which she sustained injuries. State Farm issued a policy of insurance to Monette & Ethny Bonhomme which provided Personal Injury Protection (PIP) benefits up to \$10,000.00 and inured to the benefit of Monette Bonhomme for the alleged injuries that she sustained in the March 8, 2009 accident.

On April 2, 2009, Monette Bonhomme underwent Magnetic Resonance Imaging (MRI) scans of her cervical and lumbar spine at County Line Chiropractic Center, Inc., after she was referred by Christopher Thompson, D.C. These cervical and lumbar MRI scans were interpreted by radiologist, Dr. Ronald I. Landau, M.D. at County Line Chiropractic Center, Inc., and a report of the findings was issued.

On April 27, 2009 the Defendant, State Farm received a bill from County Line Chiropractic Center, Inc., for Monette Bonhomme's cervical and lumbar MRI scans

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which were taken on April 2, 2009. This bill was submitted on a Health Insurance Claim Form ("HCFA") and listed CPT code 72141 representing the cervical MRI scan and CPT code 72148 representing the lumbar MRI scan. CPT codes 72148 and 72141 represents charges for both the technical and professional components of these MRI scans. On June 10, 2009, State Farm made payment to County Line Chiropractic Center, Inc., for Monette Bonhomme's MRI Scans for date of service April 2, 2009.

On April 13, 2009, Monette Bonhomme first treated with the Plaintiff, Hallandale Beach Orthopedics, Inc., (hereinafter referred to as "HBO"). As part of this initial visit, Dr. Harry Cooper, D.O. of HBO performed an Evaluation and Management Consultation of Monette Bonhomme and provided a re-interpretation and/or re-read of Monette Bonhomme's Cervical and Lumbar MRI scans which were taken at County Line Chiropractic Center, Inc., on April 2, 2009. Dr. Cooper listed his findings of these two MRI scans in a separate report titled "MRI RESULT".

On May 12, 2009, State Farm received a bill for date of service April 13, 2009 from HBO listing CPT code 99244 with appended modifier 25 for the Initial Office Consultation in the amount of \$550.00; and CPT code 72141 with appended modifier 26 for the re-reading of Monette Bonhomme's cervical MRI scans in the amount of \$125.00; and CPT code 72148 with appended modifier 26 for the re-reading of Monette Bonhomme's lumbar MRI scans in the amount of \$125.00. On May 15, 2009, State Farm made payment to HBO in the amount of \$308.43 for CPT code 99244 (25) for date of service April 13, 2009, while denying payment of CPT codes 72141 (26) and 72148 (26) for the billed amount of \$250.00.

Thereafter, HBO filed the instant lawsuit for payment for the re-reading of Monette Bonhomme's cervical and lumbar MRI scans on April 13, 2009.

The issue presented to this Court is whether the Defendant, State Farm is obligated to make payment to the Plaintiff, HBO for Dr. Cooper's re-reading of Monette Bonhomme's Cervical and Lumbar MRI scans when State Farm had previously made payment for the "Initial Interpretation" or "Professional Component" of these MRI scans to County Line Chiropractic Center, Inc. Additionally, whether the Plaintiff, HBO has unbundled CPT code 72141 (26) and CPT code 72148 (26) from CPT code 99244 (25), in that the re-reading of these outside MRI scans would be included as part of Dr. Cooper's comprehensive Evaluation and Management Consultation for that same date of service and should not have been billed separately.

The Plaintiff has submitted the Affidavit of Dr. Harry Cooper, DO in support of Plaintiff's Motion for Summary Judgment. The Defendant, State Farm has submitted the Affidavit of State Farm Claims Representative, Harold Ly and its certified coding expert, Connie Coleman in support of Defendant's Motion for Summary Judgment.

Findings of Law

The Defendant, State Farm maintains it is not obligated to make payment to HBO for the re-reading and interpreting of Monette Bonhomme's April 2, 2009 cervical and lumbar MRI scans because this service is part of the medical decision making and counseling components of the Evaluation and Management ("E/M") service code 99244

which was billed on the same date of service, and should not have been billed separately.

The Plaintiff alleges that it is allowed to bill separately for the re-reading of Monette Bonhomme's April 2, 2009 cervical and lumbar MRI scans and for the E/M service which was performed on April 13, 2009

Florida Statutes, §627.736(5)(d) and §627.736(5)(b)(1)(e), provide in pertinent part:

"All statements and bills for medical services rendered by any physician, hospital, clinic, or other person or institution shall be submitted to the insurer on a properly completed Centers for Medicare and Medicaid Services (CMS) 1500 form, UB 92 form, or any other standard form approved by the office or adopted by the commission for purposes of this paragraph. All billings for such services rendered by this provision shall, to the extent applicable, follow the Physicians' Current Procedural Terminology (CPT) or Health Care Correct Procedural Coding System (HCPS), or ICD-9 in effect for the year in which services are rendered and comply with Centers for Medicare and Medicaid Services (CMS) 1500 form instructions and the American Medical Association Current Procedural Terminology (CPT) Editorial Panel and Healthcare Correct Procedural Coding System (HCPCS). All providers other than hospitals shall include on the applicable claim form the professional license number of the provider in the line or space provided for "Signature of Physician or Supplier, including Degrees or Credentials." In determining compliance with applicable CPT and HCPCS coding, guidance shall be provided by the Physicians' Current Procedural Terminology (CPT) or the Healthcare Correct Procedural Coding System (HCPCS) in effect for the year in which services were rendered, the Office of the Inspector General (OIG), Physicians Compliance Guidelines, and other authoritative treatises designed by rule by the Agency for Health Care Administration. . . For purposes of paragraph (4)(b), an insurer shall not be considered to have been furnished with notice of the amount of covered loss or medical bills due unless the statements or bills comply with this paragraph, and unless the statements or bills are properly completed in their entirety as to all material provisions, with all relevant information being provide therein.

* * *

[A]n insurer . . . is not required to pay a claim or charges . . . [f]or any treatment or service that is *upcoded*, or that is *unbundled* when such treatment or services should be bundled . . . [T]o facilitate prompt payment of lawful services, an insurer may change codes that it determines to have been improperly or incorrectly *upcoded* or *unbundled*, and may make payment based on the changed code, without affecting the right of the provider to dispute the change by the insurer, provided that before doing so, the insurer must contact the health care provider and discuss the reasons for the insurer's change and the health care provider's reason for the coding, or make a reasonable good faith effort to do so . . . (emphasis added).

In support of its position, the Defendant, State Farm has directed the Court to take notice of the Physician's Current Procedural Terminology® (CPT) code book which is specifically referenced in *Florida Statutes, §627.736(5)* and the CPT Assistant. According to the introductory chapter of the CPT code book or manual:

“When reporting codes for services provided, it is important to assure the accuracy and quality of coding through verification of the intent of the code by use of the related guidelines, parenthetical instructions, and coding resources, including CPT Assistant and other publications resulting from collaborative efforts of the American Medical Association with medical specialty societies (ie, *Clinical Examples in Radiology*).” (emphasis added)

In the “References to AMA Resources” in the Introduction Section of CPT Professional 2007, it states, “The symbols ☺ (green) and ☹ (red) appear after many codes throughout this codebook and indicate that the AMA has published reference material regarding that particular code. The symbol ☺ (green) refers to the CPT Assistant monthly newsletter and CPT Changes: An Insider's View, an annual book with all of the coding changes for the current year. The symbol ☹ (red) refers to the new Clinical Examples in Radiology quarterly newsletter. Search past issues of the AMA's authoritative coding newsletter by key word, phrase, CPT code number, newsletter issue, article index, or codebook table of contents.”

Since the Physicians Current Procedural Terminology code book directs the use of CPT Assistant to discern its intent, the Court finds that reference to CPT Assistant is appropriate when interpreting the CPT code book.

The CPT code book defines CPT code 99244 as: “Office consultation for a new or established patient, which requires these three key components: A comprehensive history; A comprehensive examination; Medical decision making of moderate complexity. Counseling and coordination of care with other providers or agencies are provided consistent with the nature of the problem(s) and the patient' and/or family's needs. Usually, the presenting problem(s) are of moderate to high severity. Physicians typically spend 60 minutes face-to-face with the patient.”¹ (emphases added)

The CPT code book under “Instructions for Selecting a Level of E/M Service” states:

Determine the Complexity of Medical Decision Making

Medical decision making refers to the complexity of establishing a diagnosis and/or selecting a management option as measured by:

- The number of possible diagnosis and/or the number of management options that must be considered;
- The amount and/or complexity of medical records, diagnostic tests, and/or other information that must be obtained, reviewed and analyzed; and

¹ CPT Codebook 2007, page 15.

- The risk of significant complications, morbidity and/or mortality, as well as comorbidities, associated with the patient's presenting problems(s), the diagnostic procedure(s) and/or the possibility management options. . . ²

The CPT code book defines "Counseling" as a discussion with a patient and/or family concerning one or more of the following: Diagnostic results, impressions, and/or recommended diagnostic studies; Prognosis; Risks and benefits of management (treatment) options; Instructions for management (treatment) and/or follow up; Importance of compliance with chosen management (treatment) options; Risk factor reduction; Patient and family education.³

The Defendant, State Farm submitted the affidavit of certified coding expert, Connie Coleman to support its contention that the re-interpretation and/or re-reading of these MRI scans would be included as part of the "Medical Decision Making" and "Counseling" component of the 99244 E/M Service code and that the services should not be billed separately. The affidavit of Dr. Cooper does not address the issue of coding. Thus the only evidence as to the proper interpretation of the CPT code book is the affidavit of Defendant's expert.

The Plaintiff cited to the case of *Gary H. Diblasio, M.D., P.A. (a/a/o Cheryl Baumann) v. Progressive Express Ins. Co.*, 14 Fla. L. Weekly Supp. 1027a (15th Jud. Cir. (Appellate) 2007) to establish that the separate charge for re-reading the two MRI scans at issue by the Plaintiff is a matter of law and therefore expert witness testimony should not be allowed. The Court disagrees. See: *State Farm Mutual Automobile Insurance Company v. Bowling*, case no. 2D10-1505 (Fla. 2nd DCA, July 8, 2011).

Ruling

The Court finds that based upon the record in this case, including the un rebutted affidavit of defendant's expert, there is no dispute of material fact or law and the CPT code book along with CPT Assistant recognizes that the re-reading of diagnostic scans performed by the Plaintiff in this case is part of the medical decision making and counseling components of the E/M service code 99244 which was billed on the same date of service. Therefore, the Plaintiff inappropriately unbundled CPT code 72141 (26) and CPT code 72148 (26) from CPT code 99244 (25) and as such CPT code 72141 (26) and CPT code 72148 (26) are not reimbursable.

Final Judgment

IT IS HEREBY ORDERED AND ADJUDGED that the Plaintiff's Motion for Final Summary Judgment is hereby denied and that the Defendant's Motion for Final Summary Judgment is hereby granted, and Final Judgment is hereby entered on behalf of Defendant, State Farm Mutual Automobile Insurance Company. The Plaintiff, Hallandale Beach

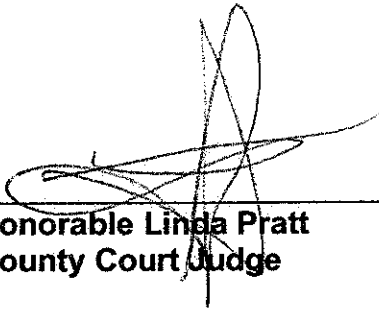
² CPT Codebook 2007, page 7.

³ CPT Codebook 2007, page 1

Orthopedics, Inc., shall take nothing by this action and the Defendant, State Farm Mutual Automobile Insurance Company shall go hence without a day. The Court retains jurisdiction for the purpose of determining any motion by the Defendant to tax fees and costs.

DONE AND ORDERED in Chambers at Broward County, Florida

this 4 day of August, 2011.



Honorable Linda Pratt
County Court Judge

Copies Furnished to:

Stephen G. Mellor, Esq.
Brian P. Levy, Esq.

LINDA R. PRATT

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