

1/30/92

NOTE TO PROCESSING CENTER  
FURTHER ACTION NECESSARY

DEPARTMENT OF  
HEALTH AND HUMAN SERVICES  
Social Security Administration  
OFFICE OF HEARINGS AND APPEALS

JAN 10 1987

DECISION

JAN 10 1987

IN THE CASE OF

CLAIM FOR

NATIONAL LAWYERS HOUSE  
FOR LEGAL SERVICES, INC.

[REDACTED]  
(Beneficiary)

Hospital Insurance Benefits

Medicare Part B  
(Claimant)

[REDACTED]  
000-40-0610  
(Social Security Number)

PROCEDURAL HISTORY AND ISSUES

This case is before the Administrative Law Judge upon a request for hearing filed by the claimant. As it appears to the Administrative Law Judge that a hearing is unnecessary in order to give the claimant the relief sought, the Administrative Law Judge has made pertinent documents submitted part of the hearing record in this case and is issuing a decision based thereon without an oral hearing.

The first issue is whether the various physicians who treated the beneficiary, which primarily included Dr. Thomas Moye, Dr. Brett Jaffrey, and Dr. Kenneth Lister, during the period in question which extended from September 15, 1989, through February 9, 1990, submitted "reasonable charges" for their services as defined by 42 CFR 405.509, and whether such charges exceeded the inflation-index charge as defined in 20 CFR 405.509.

The second issue is whether the charges of Dr. Ronald Wright are for services which fall outside the dental service exclusion of Section 1862(a)(12) of the Social Security Act.

CONCLUSION

After carefully considering all of the evidence in the record, it is hereby held that the charges of Dr. Thomas Moye, Dr. Brett Jaffrey, and Dr. Kenneth Lister were "reasonable charges" as defined by 42 CFR 405.509 and do not exceed the inflation-index charge as defined by 42 CFR 405.509. Moreover, it is further held that the charges of Dr. Ronald Wright do fall outside the dental service exclusion of Section 1862(a)(12) of the Social Security Act.

RATIONALE

The beneficiary is a 67 year old widow. On or about May 23, 1989, she sustained severe injuries in a motor vehicle accident. Specifically, she sustained severe facial fractures consisting of a right mandibular (jaw bone) fracture, fractures to the face and nose, and a fracture of the maxilla (upper jaw) (Exhibit 10). She underwent extensive oral surgery immediately following the accident (Exhibit 11). Following surgery, her treating oral surgeon, Dr. McCalla, stated the following:

"To complete...rehabilitation, she will need prosthetic reconstruction of her mouth. The dental work most likely will involve upper extraction of the remaining maxillary (upper) teeth and fabrication of a completely removable denture. The mandibular (lower) arch will need periodontal treatment, reconstruction, and a new partial removable denture fabricated."

The beneficiary subsequently traveled to the State of Tennessee to undergo further medical rehabilitation to her face, mouth, and jaw as prescribed by Dr. McCalla.

In September 1989, Dr. Thomas Moye, D.D.S., observed that the beneficiary suffered, "facial asymmetry with an acquired skeletal-facial jaw deformity resulting in gross dental malocclusion" (Exhibit 14). He further indicated that she had, "limited vertical opening of the lower jaw and virtually no lateral movements to the left or right." Dr. Moye recommended a "bilateral mandibular osteotomy to reposition the lower jaw so she could have a functional bite or occlusion to enable her to chew better. Because of the risk, total reconstruction, including replacement of the left temporo mandibular joint, was ruled out. Before he operated, Dr. Moye referred the beneficiary

to Dr. Wright to perform **endodontic** treatment to the front teeth (Exhibit 19). Dr. Wright also prepared models of the jaw and mouth to be used to determine where the jaw had to be sawed and repositioned. On October 23, 1989, the beneficiary underwent extensive oral surgery by Dr. Moye with the assistance of Dr. Jaffrey (Exhibit 16). Following surgery, Dr. Wright made maxillary mandibular cast partial dentures in December 1989 "to help restore arch alignment and chewing ability" (Exhibit 18).

Shortly thereafter, the beneficiary suffered "posterior displacement of her mid **face**" (facial bones shrunk as part of healing process), and "**severe**" degenerative changes of the left mandibular **condyle**" (left jaw joint). In July 1991, she underwent a mid-face osteotomy (her upper jaw was sawed loose and repositioned), and replacement of the left TMJ joint with a custom made prosthesis.

There is no dispute that the services performed by Dr. Moye, Dr. Jaffrey, and Dr. Lister were covered services under Medicare. However, the carrier did not pay all of the charges they submitted. The carrier chose to pay the "prevailing charge" of physicians in the relevant geographic area and, thus, chose to pay the lowest of the prevailing, customary, or actual charge for such medical procedures. While 42 CFR 405.501(a) allows the carrier to determine what constitutes "reasonable charges" and, in so doing, to take into account the prevailing charges in the locality for similar services, they must also take into account the customary charges for similar services generally made by the physician or other person furnishing such services. The evidence shows that Dr. Moye's usual and customary charge in 1989 for a single mandibular osteotomy was \$3,495 and \$750 for rigid fixation (Exhibit 22). Thus, his fee was uniform and reveals that he did not charge extra for his services. His assistant, Dr. Jaffrey, charged 25 percent of Dr. Moye's customary charge which is what he has customarily done in the past and what local physicians customarily do in the region. Moreover, the undersigned is persuaded by the beneficiary's argument that the carrier paid for similar services performed in the same locality in 1989 based on an individual physician's usual and customary charges. In 1989, in Oak Ridge, Tennessee, Oral Surgeon, Dr. Travis Witherington, performed similar services on a retarded woman who was unable to breathe through her nose or eat due to a deformed small lower jaw. Dr. Witherington performed "reconstruction of the mandible and maxilla which involved a maxillary forte osteotomy, a mandibular split osteotomy, and

internal rigid fixation" to restore functional use of the jaw and mouth, and the total charges for these services were \$8,985 (Exhibit 34). Following a favorable hearing decision in said case, the carrier reprocessed Dr. Witherington's claims. In conclusion, the undersigned is persuaded that the charges submitted by Dr. Moye, Dr. Jaffrey, and Dr. Lister were their customary charges for such services and, since such charges were reasonable and do not exceed the inflation-index charge, they should be covered under Medicare. Consequently, the charges in the amount of \$4,395, \$1,061.25, and \$427.79 should be allowed.

As to whether Dr. Wright's services fall outside the dental service exclusion of Section 1862(a)(12) of the Social Security Act, a preponderance of the evidence indicates that said services do fall outside the dental service exclusion and should be covered by Medicare. Section 1862(a)(12) of the Social Security Act provides, "where such expenses are for services in connection with the care, treatment, filling, removal, or replacement of teeth or structures directly supporting teeth" said services are excluded from Medicare coverage. However, 42 CFR 404.310(i) allows coverage for the services excluded by Section 1862(a)(12) of the Social Security Act when such services are "for inpatient hospital services in connection with such dental procedures when hospitalization is required because of (1) the individual's underlying medical condition and clinical status; or (2) the severity of the dental procedures." Given the extent and severity of the beneficiary's jaw and mouth injuries, and the recommendation of her primary treating oral surgeon of the necessity for further reconstructive procedures such as those performed by Dr. Wright, the undersigned is persuaded that the services of Dr. Wright were associated with the beneficiary's underlying medical condition and severity of her dental injuries as provided in 42 CFR 405.310(i). The evidence shows that Dr. Wright had to perform a root canal (endodontic treatment) on the beneficiary's two front natural teeth in order to treat infection and to stabilize her teeth for rigid fixation following the osteotomy. In addition, before surgery, Dr. Wright made models of the beneficiary's jaw which were used to determine where her jaw had to be sawed and how it had to be repositioned. Moreover, following surgery, Dr. Wright made partials to restore the beneficiary's functional bite and use of her jaw and mouth. Consequently, it seems clear that Dr. Wright's treatment was preparatory to and integral to the beneficiary's underlying medical condition, and part of the extensive dental procedures necessary for her rehabilitation as contemplated in by 42 CFR

405.310(i). Consequently, it is hereby held that the charges of Dr. Wright are not for services which fall within the dental service exclusion of Section 1862(a)(12) of the Social Security Act and, as a result, they should be reimbursed by Medicare.

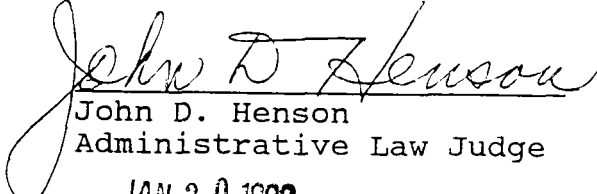
FINDINGS

1. During the period in question which extended from September 15, 1989, through February 9, 1990, the beneficiary received services from the following physicians: Dr. Thomas Moye, Dr. Brett Jaffrey Dr. Kenneth Lister, and Dr. Ronald Wright. Medicare denied the "reasonable charges" submitted by Dr. Moye, Dr. Jaffrey, and Dr. Lister and only paid the lowest of the prevailing, customary, or actual charge for such medical procedures in the region. Medicare did not cover the "reasonable charges" of Dr. Wright on the basis that they fall within the dental service exclusion of Section 1862(a)(12) of the Social Security Act.
2. The amount in controversy exceeds \$500.
3. The evidence shows that Dr. Moye, Dr. Jaffrey, and Dr. Lister submitted "reasonable charges," i.e., their customary charges for similar services and said charges do not exceed the inflation-index charge as defined by 42 CFR 404.509.
4. Moreover, the evidence shows that the carrier has recently covered similar services in the region based upon a physician's customary charges for such services. As a result, the basis for choosing to use the lowest of the prevailing, customary, or actual charge for such medical procedures in the region appears arbitrary and capricious.
5. The charges of Dr. Moye, Dr. Jaffrey, and Dr. Lister are all "reasonable charges" and the charges in the amounts of \$4,395, \$1,061.25, and \$427.79 should be allowed by Medicare.
6. The services of Dr. Wright should be covered by Medicare and do not fall within the dental exclusion of Section 1862(a)(12) of the Social Security Act.

7. The services of Dr. Wright were secondary to the beneficiary's underlying medical condition and an integral part of the necessary and extensive dental procedures. As a result, they should be allowed by Medicare as contemplated by 42 CFR 405.310(i).

DECISION

It is the decision of the Administrative Law Judge that reimbursement may be made under Part B of Medicare for the services rendered by the various physicians during the period in question, which extended from September 15, 1989, through February 9, 1990.

  
John D. Henson  
Administrative Law Judge  
JAN 30 1992

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Date