

Department of Health and Human Services
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IN THE MATTER OF:

Dr. Craig Small)
37 Herschel Street) **FINAL DECISION**
Caribou, ME 04736-0396)

This is the Department of Health and Human Services' Final Decision.

The Recommended Decision of Hearing Officer Meyer, mailed May 1, 2012 and the responses and exceptions filed by Dr. Small have been reviewed.

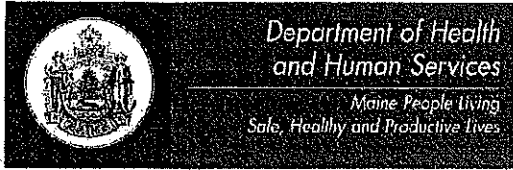
I hereby adopt the findings of fact and I accept the Recommendation of the Hearing Officer that the Department was correct when it determined for the period 7/1/06 to 8/31/10 that Dr. Craig K. Small owes the Department \$1,866.50 as a result of its recoupment request because Dr. Small received MaineCare payment for refraction services that under MaineCare rules are not paid as a separate service, and are part of the comprehensive eye examination.

DATED: 6/20/12 SIGNED: Mary C. Mayhew
MARY C. MAYHEW, COMMISSIONER
DEPARTMENT OF HEALTH & HUMAN SERVICES

YOU HAVE THE RIGHT TO JUDICIAL REVIEW UNDER THE MAINE RULES OF CIVIL PROCEDURE, RULE 80C. TO TAKE ADVANTAGE OF THIS RIGHT, A PETITION FOR REVIEW MUST BE FILED WITH THE APPROPRIATE SUPERIOR COURT WITHIN 30 DAYS OF THE RECEIPT OF THIS DECISION.

WITH SOME EXCEPTIONS, THE PARTY FILING AN APPEAL (80B OR 80C) OF A DECISION SHALL BE REQUIRED TO PAY THE COSTS TO THE DIVISION OF ADMINISTRATIVE HEARINGS FOR PROVIDING THE COURT WITH A CERTIFIED HEARING RECORD. THIS INCLUDES COSTS RELATED TO THE PROVISION OF A TRANSCRIPT OF THE HEARING RECORDING.

cc: Thomas Bradley, AAG, Office of the Attorney General
Terry Fancy, Program Integrity, DHHS/OMS



Paul R. LaPage, Governor Mary C. Mayhew, Commissioner

Department of Health and Human Services
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TO: Mary C. Mayhew, Commissioner
Department of Health and Human Services
221 State Street
11 State House Station
Augusta, ME 04333

DATE MAILED MAY 01 2012

In Re: Craig K. Small, O.D., Appeal of a determination that for the period of 7/1/06 through 8/31/10, Dr. Craig Small owes the Department \$1,866.50 as a result of billing separately for refraction procedure code 92015.

RECOMMENDED DECISION

An administrative hearing was held on March 29, 2012, at Caribou, Maine in the case of Dr. Craig Small, O.D., before Hearing Officer Norma L. Meyer. The Hearing Officer's jurisdiction was conferred by special appointment from the Commissioner, Department of Health and Human Services.

FACTUAL BACKGROUND AND ISSUE:

On December 16, 2011, the Department notified Dr. Small that after an Informal Review of his billing, it found that for the period from 7/1/06 to 8/31/10, the Department had overpaid Dr. Small a total of \$1,866.50. See, exhibit DHHS-11. Dr. Small requested a hearing to appeal the Department's decision. See, exhibit HO-3.

ISSUE FOR HEARING:

The Department convened the hearing for the purpose of a de novo review of the above determination. The Order of Reference, dated January 23, 2012, identified the specific issues for consideration at this proceeding is as follows:

"Was the Department correct when for the billing period of July 1, 2006 through August 31, 2010, it had determined that Craig K. Small, O.D. had been overpaid for refractions procedure code 92015 that were billed separately on the same day as a comprehensive eye examination service because refraction services are included in the rate for comprehensive eye examinations, which resulted in a recoupment demand in the amount of \$1,866.50?"

APPEARING ON BEHALF OF APPELLANT:

Dr. Craig K. Small, O.D.
Tracy Roberts, Office Manager

APPEARING ON BEHALF OF DEPARTMENT:

Thomas Bradley, AAG (by telephone)

ITEMS INTRODUCED INTO EVIDENCE:

Hearing Officer Exhibits:

- HO-1. Notice of Hearing, dated 1/24/12
- HO-2. Order of Reference, dated 1/23/12
- HO-3. Fair Hearing Report Form, dated 1/11/12
- HO-4. Request for Hearing, 12/20/11
- HO-5. AAG letter, dated 1/27/12

Department Exhibits:

- DHHS-1. Provider Agreement, May 2006
- DHHS-2. Provider Agreement, November 2009
- DHHS-3. MBM, Chapter I, Section 1.03-3
- DHHS-4. MBM, Chapter I, Section 1.19-1. Sanctions/Recoupments
- DHHS-5. MBM, Chapter II, Section 75.03, Covered Services
- DHHS-6. Vision Services Procedure Code Rates
- DHHS-7. Recoupment Letter, dated 8/22/11
- DHHS-8. Letters dated 10/18//2011 and 10/19/11, from Dr. Small
- DHHS-9. Letter dated 10/24/11 from Greg Nadeau
- DHHS-10. Letter dated, 11/17/11 from Dr. Small
- DHHS-11. Final Informal Review Decision from Mr. Downs, dated 12/6/11
- DHHS-12. Request for Administrative Hearing, dated 12/20/11
- DHHS-13. Administrative Hearing Letter, dated 1/24/12

Appellant Exhibits:

- Small-1. Medicaid Claim Processing forms
- Small-2. Provider Notification e-mail, dated 11/14/2008

RECOMMENDED FINDINGS OF FACT:

1. Dr. Craig K. Small, O.D., is an authorized MaineCare and Medicaid¹ service provider. See, exhibit DHHS-1.
2. On August 22, 2011, the Program Integrity Unit (PI Unit) sent Dr. Small notice that it had completed an audit of his MaineCare billing records from July 1, 2006 through August 31, 2010, and found that he owes the Department \$1,866.50. See, exhibit DHHS-7.
3. On October 18, 2011, Dr. Small requested an Informal Review. See, exhibit DHHS-8.
4. On November 17, 2011, Dr. Small provided additional information to the Department. See, exhibit DHHS-10.
5. On December 6, 2011, Dr. Small was notified that the Informal Review found that he owed the Department \$1,866.50. See, exhibit DHHS-11.

¹ In the documents submitted, the terms Medicare and Medicade appear in different documents. Dr. Small's billing records state they are Medicade forms, but in his November 17, 2011 letter, he refers to Medicare billing.

6. On December 20, 2011, Dr. Small requested a hearing. See, exhibit DHHS-12.
7. Under MaineCare rules, a comprehensive eye examination includes the cost of a refraction examination, if provided on the same days as the eye examination. See, MaineCare Benefits Manual, Chapter II, Section 75.03-3.
8. In 2010, Dr. Small charged \$100.00 for a comprehensive eye examination, and \$12.00 for a refraction examination. See, exhibit DHHS-10.
9. In 2010, MaineCare paid \$54.27 for a comprehensive eye examination billed under 92004 (new patient and 92014 (returning patient), which includes the refraction procedure code of 92015. See, exhibit DHHS-10.
10. Medicaid rules require that Dr. Small must bill the comprehensive eye examination and the refraction examination separately. (testimony at hearing).
11. When a patient has Medicaid and MaineCare coverage, Medicaid is billed first, and then the bill goes to MaineCare. This is known as crossover billing. (testimony at hearing).
12. When Medicaid denies payment, the bill is automatically submitted to MaineCare. MaineCare paid Dr. Small the full rate of \$100.00, and the \$12.00 refraction fee, which resulted in a MaineCare overpayment.
13. MaineCare overpaid Dr. Small in the amount of \$1,866.50 for eye refraction examinations billed separately from the comprehensive eye examinations from July 1, 2006 to August 31, 2010.

RECOMMENDED DECISION:

The Department was **correct** when it determined that for the period from July 1, 2006 to August 31, 2010, Dr. Craig K. Small, O.D. owes the Department \$1,866.50 as a result of its recoupment request because Dr. Small received MaineCare payment for refraction services that under MaineCare rules are not paid as a separate service, and are part of the comprehensive eye examination.

REASON FOR RECOMMENDATION:

The rules governing Vision Services are found in the MaineCare Benefits Manual, Chapter II, Section 75.03:

***COVERED SERVICES:** MaineCare reimburses for some services differently for members based on age or residence in an ICF-MR. Only an ophthalmologist or optometrist may provide services described in Section 75.03-1. (in relevant part):*

3. ***Eye Examination - Comprehensive***

A comprehensive eye examination is a level of service involving an in-depth evaluation of a member with a new or existing problem requiring the development or complete re-evaluation of data.

Example: The examination of the eye and related structures to ascertain defects or abnormalities, to detect the presence of eye diseases, to determine the refractive and accommodative states of the eyes, and to evaluate the visual functions. The eye

examination includes a diagnostic history, visual acuity determination, testing for refraction (emphasis added), muscle balance and accommodative function, ophthalmoscopy and biomicroscopy. Tonometry and gross visual field testing should be included when indicated. Other tests may be included as required as long as they fall within the scope of licensure for optometry.

MaineCare Benefits Manual, Chapter II, Section 75.07.3

Billing

Providers must bill in accordance with the Department's billing requirements. The Department may require accordance with specific billing instructions including use of the CMS-1500 claim form. Providers must bill using the allowances for vision services listed by procedure code on the OMS website.

Dr. Craig K. Small, O.D., a licensed optometrist, is the owner of a three-generation family eye care practice located in Caribou, Maine, doing business as Family Eye Care. Dr. Small is an authorized Medicaid and MaineCare service provider. See, exhibit DHHS-1. The Department's records show that Dr. Small signed a provider agreement with the State of Maine in May of 2006 and again, in September of 2009, which encompasses the time period of the Department's audit. See, exhibits DHHS-1 & 2.

On August 22, 2011, the PI Unit sent Dr. Small a "Recoupment Notice." This notice informed Dr. Small that the PI Unit had conducted an audit of his MaineCare billing records from July 1, 2006 through August 31, 2010, and found that he owed the Department \$1,866.50. See, exhibit DHHS-7. Specifically, the Recoupment Notice stated (in relevant part), "Pursuant to Chapter II, Section 75.03-3 of the MaineCare Benefits Manual states, "A comprehensive eye examination is a level of services involving an in-depth evaluation of a member with a new or existing problem requiring the development or complete re-evaluation of data. Example: The examination of the eye and related structures to ascertain defects or abnormalities, to detect the presence of eye diseases, to determine the refractive and accommodative states of the eyes, and to evaluate the visual functions. The eye examination includes a diagnostic history, visual acuity determination, testing for refraction, muscle balance and accommodative function, ophthalmoscopy and biomicroscopy. Tonometry and gross vision field testing should be included when indicated. Other tests may be included as required as long as they fall within the scope of licensure for optometry. PI conducted a MaineCare member's claim review of all billings for the period from July 1, 2006 to August 31, 2010. Our review identified billing for refraction procedure code 92015 that were billed separately on the same day as a comprehensive eye examination service. Refraction services are included in the rate for comprehensive eye examinations. ...As a result of the PI review, it has been determined that the following amount is deemed as an overpayment and is now due. The calculated overpayment amount is \$1,866.50. See, MBM Chapter I, Section 1.19."

On October 18, 2011, Dr. Small requested an Informal Review in accordance with MBM, Chapter I, Section 1.21. See, exhibit DHHS-8. On October 19, 2011, Dr. Small's Office Manager, Tracy Roberts faxed the Department a letter. Id. This letter states (in relevant part), "We are appealing the overpayment amount of \$1866.50 going back to 2006. The overpayment amounts are from crossovers from Medicare on the refraction portion of the eye examination. With Medicare billing we have to separate the fee for the refraction from the eye health examination. Say we billed Medicare \$95.00 for the 92014 code, and then \$7.00 for the 92015 refraction code, the total billed \$102.00. Had we just billed \$102 with the 92014 code as MaineCare does not require us to separate the refraction fee out of the examination cost. I spoke with Terrance Fancy yesterday and he said that Medicare is aware of the ruling for billing for routine eye examinations is different from Medicare

billing requirements. We feel that we should have been given the option to combine the fees when crossing over non-coverage from Medicare...."Id.

On November 17, 2011, Dr. Small wrote a letter to the Department in which he provided additional information and presented arguments related to the Department's informal review. See, exhibit DHHS-10. In this letter, Dr. Small indicated that there were two claims that he did not contest. He explained, "MaineCare does not allow payment of the refraction in an eye examination and therefore wants us to subtract out the refraction portion of the examination, and bill a (92004 or 92014) and a 92015. Because Medicaid automatically transfers the claim to MaineCare, but does not add the refraction back into the eye examination, MaineCare receives the claim with two codes a (92004 or 92014). If MaineCare had added the two codes together this would equal the eye examination with the refraction included just like all the other (92004 or 92014) codes I have billed directly to MaineCare." See, exhibit DHHS-10. Dr. Small provided examples of billing records to support his claim. In closing he said, "Therefore, in this case, MaineCare should pay for the examination (92014) of \$100.00 and the refraction (92015) of \$12.00 since it had been taken out of Medicaid. I believe this has always been the correct way to bill in this situation since we have always been paid for both codes going back to before 2006. Also, in speaking with the Maine Optometric Association's liaison to MaineCare and other colleagues, we are all in agreement that this is indeed the correct procedure for billing."

On December 6, 2011, Dr. Small was notified that the Informal Review found that he owes the Department \$1,866.50 for having overbilled MaineCare separately for the refraction part of the comprehensive eye examination. See, exhibit DHHS-11. In its Informal Review decision, the Department responded to Dr. Small's November 17, 2011 letter stating (in relevant part), "Based on the additional information, the Department is maintaining its recoupment of \$1,866.50." Id. On December 20, 2011, Dr. Small requested a hearing. See, exhibit DHHS-12.

At hearing, Terrance Fancy, an auditor from the PI Unit explained that in its audit of Dr. Small's billing records for the period of July 1, 2006 to August 31, 2010, it found that out of 265 billings, in 188 cases Dr. Small had billed MaineCare for refraction examinations on the same day that he had billed for a comprehensive eye examination, which resulted in Dr. Small having been overpaid. He said that under MaineCare rules the refraction examination is included in the comprehensive eye examination, if the service is provided on the same day. Mr. Fancy indicated that in each of these 188 billings, Medicaid had been billed first, and the bills were denied. He stated that the bills were then submitted to MaineCare as the secondary provider, and MaineCare paid the whole amount, and not the MaineCare rate. Mr. Fancy said that Dr. Small was paid separately for the refraction examination, which MaineCare pays as part of the comprehensive examination. He explained the MaineCare payment system did not have edits in its system to prevent these payments being made in excess of MaineCare rates.

When questioned by this Hearing Officer, Mr. Fancy stated that Dr. Small was not the only optometrist who has this same problem. However, Mr. Fancy also said that he had recently completed four audits of other optometrists, and he found no problems with their MaineCare billing. Mr. Fancy agreed that Dr. Small had been overpaid more than just the \$12.00 for the refractions examinations, he acknowledged that Dr. Small may be receiving another recoupment notice. The Department indicated that it did not believe that Dr. Small had intentionally over billed the Department.

Dr. Small provided a copy of an e-mail sent from Maine Provider Notification, dated November 14, 2008, with the subject heading of "Billing Refractions and Comprehensive Eye Examinations." See, exhibit Small-2. This notice states (in relevant part), "We recently discovered that some providers have been billing for Refractions (92015) along with Comprehensive Eye Examinations (92004 or 92014) on the same date of service. The Refraction is included in the Comprehensive Eye Examination (92004 or 92014). ... The exception is when

billing after Medicaid. Medicaid does not reimburse for the Refraction, therefore, the Refraction is separately billable to MaineCare when billing after Medicaid. MaineCare has overpaid for Refractions provided the same date of service as Comprehensive Eye Examinations (92004 or 92014). Please void the MaineCare claim if you have been overpaid. In some cases, MaineCare paid the Refraction first, and denied the Comprehensive Eye Examination. In these cases, please submit a void for the Refraction...." Id.

Dr. Small is an authorized provider under Medicaid and MaineCare. In his practice, in 2010, Dr. Small charged \$100.00 for a comprehensive eye examination billed under code 92004 for a new patient or code 92014 for a returning patient, and \$12.00 for refraction, billed under code 92015, for a total of \$112.00. Under MaineCare rules, Dr. Small bills MaineCare \$112.00, and MaineCare pays Dr. Small a total of \$54.27 for a comprehensive eye examination, which encompasses the payment for the refraction examination code 92015. See, exhibit DHHS-10. However, when a patient of Dr. Small's is covered under Medicaid and MaineCare, Medicaid rules require that Medicaid be billed first. Medicaid rules also require that the eye examination and the refraction examination be billed separately. Therefore, when the bill goes to Medicaid, and it is not paid, it is automatically submitted to MaineCare. According to the Department, because the MaineCare billing system lacks certain edits, Dr. Small was paid the full amount of \$112.00, \$100.00 for the eye examination and \$12.00 for the refraction examination, and not the MaineCare rate of \$54.27.

The Department indicated that in its audit of Dr. Small's MaineCare billing records, it only focused on the payments made under billing code 92015, which is not allowed under MaineCare rules if the service was provided on the same day as a comprehensive eye examination. The Department stated that it was aware that Dr. Small had been overpaid more than the \$12.00 refraction amount, but that it was not pursuing any other overpayments at this time. The Department also acknowledged that the issue with the provider payment system's edits, has not been resolved.

In this matter, it is clear that the Department has been aware that there is a problem in its MaineCare provider payment system. The November 2008 e-mail indicates that since at least 2008, billing separately for refraction examinations has caused providers to be overpayment. The Department's auditor, Mr. Fancy stated that the MaineCare provider payment system lacks edits that would prevent an overpayment resulting from billing separately for refraction examinations. Dr. Small asserted that the problem lies with the "crossover billing," which is when the bills are sent to Medicare first, and then to MaineCare. This certainly appears to be the case, because according to the Department's records, all of the 188 cases found with billing errors were billed to Medicare first, rejected, and then sent to MaineCare. It is concerning that Dr. Small's records show that not only was he overpaid for the refraction examinations, but in some of the cases, MaineCare paid the full amount of \$112.00 and not the MaineCare rate of \$54.27. Yet, the Department testified that in its audit, it was only looking at the billing for refraction examinations done on the same day as the comprehensive eye examinations. That being said, as a MaineCare provider, Dr. Small is only entitled to receive MaineCare rates for the services billed to MaineCare. The evidence shows that in regard to just the refraction billings, billed on the same day as a comprehensive eye examination, Dr. Small was overpaid \$1,866.50.

Based on the testimony and evidence, this Hearing Officer finds that Dr. Small billed MaineCare separately for refraction examinations under the code 92015, on the same day as comprehension examinations were done. The evidence shows that Dr. Small was over paid \$1,866.50 from MaineCare from July 1, 2006 to August 31, 2010.

Manual Citations:

MBM, Chapter I, Section 1.03-3

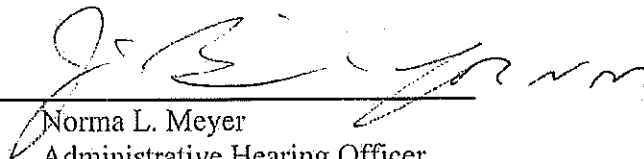
MBM, Chapter I, Section 1.19-1. Sanctions/Recoupments

MBM, Chapter II, Section 75.03, Covered Services

THE PARTIES MAY FILE WRITTEN RESPONSES AND EXCEPTIONS TO THE ABOVE RECOMMENDATIONS. ANY WRITTEN RESPONSES AND EXCEPTIONS MUST BE RECEIVED BY THE DIVISION OF ADMINISTRATIVE HEARINGS WITHIN TWENTY (20) CALENDAR DAYS OF THE DATE OF MAILING OF THIS RECOMMENDED DECISION. A REASONABLE EXTENSION OF TIME TO FILE EXCEPTIONS AND RESPONSES MAY BE GRANTED BY THE CHIEF ADMINISTRATIVE HEARING OFFICER FOR GOOD CAUSE SHOWN OR IF ALL PARTIES ARE IN AGREEMENT. RESPONSES AND EXCEPTIONS SHOULD BE FILED WITH THE DIVISION OF ADMINISTRATIVE HEARINGS, 11 STATE HOUSE STATION, AUGUSTA, ME 04333-0011. COPIES OF WRITTEN RESPONSES AND EXCEPTIONS MUST BE PROVIDED TO ALL PARTIES. THE COMMISSIONER WILL MAKE THE FINAL DECISION IN THIS MATTER. THE INFORMATION CONTAINED IN THIS DECISION IS CONFIDENTIAL. See, e.g., 42 U.S.C. section 1396a(a)(7), 22 M.R.S.A. section 42(2) and section 1828(1)(A), 42 C.F.R. section 431.304, MaineCare Benefits Manual, Ch.1, sec. 1.03-5. ANY UNAUTHORIZED DISCLOSURE OR DISTRIBUTION IS PROHIBITED.

DATED: April 30, 2012

SIGNED: _____



Norma L. Meyer
Administrative Hearing Officer
Division of Administrative Hearings

cc: Dr. Craig K. Small, 37 Herschel Street, PO Box 396, Caribou, Maine 04736-0396
Thomas C. Bradley, AAG, Officer of the Attorney General, Augusta
Terry Fancy, Program Integrity Unit, OMS