

Georgia Supreme Court Holds Reviewer Liable

UTILIZATION REVIEWERS CAN'T HIDE BEHIND PEER REVIEW LAWS

Editorial Staff

The case of Antonio Dawson is a sad one. A member of an indigent family, Antonio, 9, developed adenoid hypertrophy that was restricting his breathing. His mother sought medical care through the Medicaid program. Medicaid does not pay for this procedure without preapproval. The hospital where Antonio was diagnosed submitted a request of surgery to the Georgia Medical Care Foundation (GMCF) for review of Medicaid eligibility.

The GMCF doctor who reviewed the case determined that the child needed both an adenoidectomy and a tonsillectomy to correct his breathing disorder (sleep apnea). However, the "approval coordinator" of GMCF informed the hospital that the scheduled surgery "is not necessary at this time for the treatment of the condition identified," and that the "information submitted does not justify the requested procedure."

GMCF did not notify the mother directly. This GMCF administrative decision was passed on to the hospital. A hospital representative then informed the boy's mother by phone that the scheduled surgery (for the next day) had been canceled because Medicaid would not cover the cost! There was no direct with the mother by GMCF.

Antonio did not get his surgery. On May 15, 1992, Antonio, now 10, he died of cardiac arrest induced by obstructive sleep apnea.

Antonio's mother sued. GMCF insisted that they were protected from liability under Georgia's peer review laws. The lower court agreed, but the Supreme Court of Georgia differed. In their decision handed down on November 23, 1998, the justices proclaimed:

"Thus, if an organization meets the definition of review organization and is conducting peer review within the meaning of the statute, a health care provider or member of a review organization is immune from criminal or civil liability, provided the health care provider is acting without malice. See 1988 Ga. Op. Atty. Gen. 15. Even assuming GMCF meets the broad definition of review organization under OCGA S 31-7-131 (3) insofar as it performs peer review as defined by OCGA S 31-7-131 (1), it will not be shielded from immunity under OCGA S 31-7-132 (a) for performing a function which does not amount to peer review.

"We now look to the role of GMCF in the context of the present case. In 1979, GMCF entered into an agreement with the Georgia Department of Medical Assistance to serve as the utilization and quality control review organization for the State of Georgia. In this context, a function of GMCF is to review certain proposed medical procedures for Medicaid recipients in order to assure that health care services are medically necessary and consistent with recognized standards of care. This is a requirement of the Social Security Act, 42 USC S 1396, et seq., to enable states to receive federal financial assistance to reimburse health care providers for the cost of specified services to Medicaid recipients. As pertains to the present case, GMCF was engaged in prospective utilization review by determining whether the proposed medical procedure would be paid for by Medicaid and in communicating its decision to the provider. Because the act of transmitting that information to the provider was purely administrative in nature, it is not peer review activity as defined by OCGA S 31-7-130.

"Reading the statutory scheme as a whole, and giving deference to the stated intent of the legislature, we conclude that OCGA S 31-7-132 was not intended to provide an absolute shield of immunity protecting utilization review providers from potential liability for the consequences of their administrative acts. (Emphasis ours.) Thus, to the extent that liability is predicated on GMCF's alleged negligence in processing the medical precertification, it is not immune from liability under OCGA S 31-7-132 (a)."

This decision is critical to issues that have often plagued doctors of chiropractic. Reviewers state that chiropractic care is not "medically necessary," believing themselves exempt from any kind of liability for those decisions. Insurance companies refuse to pay for chiropractic care, leaving patients and DCs caught in the middle.

This decision strikes a blow for accountability on the part of utilization reviewers. Deciding that they are "not immune from liability" makes them accountable for their decisions.

With the Georgia Supreme Court ruling, we can expect to see the decisions of utilization reviewers challenged in the courts in other states. It is up to the patients, individual DCs, and in some cases the state chiropractic licensing boards, to push these cases into the courts and force the reviewers to be accountable.

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