
In the Matter of the Medical Services and Managed Care Dispute of

Lunceford, Nancy A., Claimant

Contested Case No: HH01-122

PROPOSED & FINAL ORDER

June 5, 2002

NANCY A. LUNCEFORD, Petitioner

PORTLAND ADVENTIST MEDICAL CENTER , Respondent

Before John L. Shilts, Workers' Compensation Division Administrator

HISTORY OF THE CASE

Claimant appeals an administrative order issued on October 16, 2001 by the Medical Review Unit (MRU) of the Workers' Compensation Division (WCD), Department of Consumer and Business Services (director or the department). On May 20, 2002, Administrative Law Judge Catherine P. Coburn conducted a hearing in this matter. Petitioner Nancy A. Lunceford (claimant) was represented by attorney Michael A. Gilbertson. Responding self-insured employer Portland Adventist Medical Center, its claims administrator Adventist Health (insurer) and Caremark Comp managed care organization (MCO) were represented by attorney Karli L. Olson. WCD waived appearance. Claimant testified on her own behalf and called Bobby Klement as a witness; no other witnesses testified. The record closed on the date of hearing.

The record of this proceeding, consisting of all evidence received, and all hearing papers filed, has been considered. The findings of fact set out below are based upon the entire record.

ISSUES

1. Whether insurer is liable for medical services rendered to claimant by Navit Jarayam, MD.
2. Whether insurer is liable for medications prescribed to claimant from June 1995 through March 2001.

EVIDENTIARY RULINGS

WCD Exhibits 1 through 72 were received into the record without objection. Insurer objected to claimant's testimony, arguing that the evidence at the contested case hearing is limited to the record MRU considered. Pursuant to ORS 656.260(16)¹ and OAR 436-010-0008(13)(d),² no new medical evidence is admissible at hearing in an MCO dispute. However, pursuant to OAR 436-001-0195(4),³ relevant testimony does not constitute "new medical evidence" and is admissible at hearing. Therefore, I overruled insurer's objection to claimant's testimony.

FINDINGS OF FACT

On June 18, 1995, claimant suffered a compensable injury while working as registered nurse. (Ex. 1). In July 1995, claimant was enrolled in the MCO. (Ex. 4). Insurer initially accepted a disabling claim for “left temporomandibular joint injury” and later expanded the scope of acceptance.⁴ (Exs. 4, 7 and 9-2). In April 1999, the parties executed a Claims Disposition Agreement. (Exs. 8 and 9).

From June 26, 1995 through June 27, 2001, several medical providers, including Dr. Yanney, Dr. Osterlind, Dr. Jayaram and Dr. Fiks prescribed various medications to

1 ORS 656.260(16) provides:

“At the contested case hearing, the administrative order may be modified only if it is not supported by substantial evidence or reflects an error of law. No new medical evidence shall be admitted.***”

2 OAR 436-010-0008(13)(d) provides:

“Contested cases before the director: Any party that disagrees with an action or order pursuant to this rule, may request a contested case hearing before the director as follows:

“(d) In the review of orders issued pursuant to ORS 656.327(2), ors 656.260(14) and (16), and section 14, Chapter 865, Oregon Laws 2001, no new medical evidence or issues shall be admitted at the contested case hearing. In these reviews, an administrative order may be modified at hearing only if it is not supported by substantial evidence in the record or if it reflects an error of law.”

3 OAR 436-001-0195 provides:

“The following does not constitute “new medical evidence” and, if relevant, may be admissible in a contested case:

“(1) Supplemental cross-examination of medical professionals whose reports or work products are included in the medical evidence gathered by the Medical Review Unit’s staff, provided the scope of the crossexamination deals with events occurring on or before the date the Medical Review Unit’s record was closed.

“(2) Supplemental reports, corrections and clarifications by medical professionals whose reports or work products are in the medical evidence gathered by the Medical Review Unit’s staff provided the scope of the additional items deal with events occurring on or before the date the Medical Review Unit’s record was closed.

“(3) Supplemental cross-examination of those providing data under subsection (2), provided the scope of the cross-examination is limited to what is under subsection (2).

“(4) Relevant testimony.”

4 The record does not contain evidence of the later date(s) of acceptance.

claimant. (Ex. 2). From August 1999 through August 2001, claimant incurred out-of-pocket expenses for the following medications prescribed by Dr. Yanney and Dr. Osterlind:

1. 5-25-00 Roxicet Dr. Osterlind \$ 9.39 (Ex. 2-62).
2. 5-25-00 Amoxicillin Dr. Osterlind \$10.20 (Ex. 2-62).
3. 7-13-00 ...cets Dr. Osterlind \$ 7.99 (Ex. 2-63).
4. 11-18-00 Hydrocodone Dr. Yanney \$30.19 (Ex. 2-67).
5. 11-30-00 Norco Dr. Yanney \$38.19 (Ex. 67-2).
6. 11-24-00 Hydrocodone Dr. Yanney \$30.19 (Ex. 2-68).
7. 12-11-00 Norco Dr. Yanney \$38.19 (Ex. 2-68).

8. 12-20-00 Norco Dr. Yanney \$41.39 (Ex. 2-60).
9. 1-2-01 Norco Dr. Yanney \$41.39 (Ex. 2-70).

In August 2001, claimant requested administrative review of outstanding prescriptions bills. (Ex. 54 and 56). Insurer received no request for reimbursement of out-of-pocket expenses prior to August 2001. (Ex. 60).

CONCLUSIONS OF LAW AND REASONING

This case presents two issues arising under different statutes. As petitioner, claimant bears the burden of proving by a preponderance of evidence that the administrative order is incorrect. *Cook v. Employment Div.*, 47 Or 437 (1982) (In the absence of contrary legislation, the standard of proof in administrative hearings is preponderance of evidence). The burden of proving a fact or position rests with the proponent. ORS 183.450(2); *Harris v. SAIF*, 292 Or 683 (1982).

Managed Care: The first issue is whether insurer is liable for medical services provided to claimant by Dr. Jayaram. This managed care dispute arises under ORS 656.260 and jurisdiction lies with the director. ORS 656.260(6). I review for substantial evidence or error of law. ORS 656.260(16).

Pursuant to ORS 656.245(1), an insurer is obligated to provide medical services that are materially related to a compensable work injury for so long as the nature of the injury of the process of recovery requires. Furthermore, pursuant to ORS 656.245(4), an insurer may provide medical services to injured workers through an MCO.

MRU determined, and I agree, that insurer is not liable for Dr. Jayaram's services to claimant. In July 1995, claimant was enrolled in the MCO and thereafter, Dr. Jayaram, who is not an MCO panel member, rendered services to claimant. Inasmuch as insurer is not required to provide medical services outside the MCO, insurer is not liable for Dr. Jayaram's services. Accordingly, I affirm the administrative order regarding the managed care dispute.

⁵ Exhibit 2-63 is a photocopy showing only part of the prescription receipt.

Medical Services: The second issue is whether insurer is liable for medications prescribed to claimant from June 1995 through March 2001. This medical service dispute arises under ORS 656.245 and jurisdiction lies with the director. ORS 656.245(6). The statute does not specify a standard of review, and therefore, I review *de novo*. OAR 436-001-0225(1). See *Archie M. Ulrich*, 2 WCSR 152 (1997).

Insurer's obligation to provide compensable medical services includes prescription medications. ORS 656.245(1)(c)(B). However, OAR 436-060-0070(3) requires an injured worker to submit prescription reimbursement requests to the insurer within a two-year period. Under the heading, "Reimbursement of Related Services

Costs”, OAR 436-060-0070(3) provides:

(3) Requests for reimbursement of related services costs must be received by the insurer within two years of the date the costs were incurred or within two years of the date the claim or medical condition is finally determined compensable, whichever date is later. The insurer may disapprove requests for reimbursement received beyond the two year period as being untimely requested.

In the administrative order, MRU determined that insurer was not liable for any of the disputed prescription reimbursement requests. MRU noted that many of the medications appear unrelated to the accepted medical conditions, many were obtained more than two years earlier, and many show an amount due of zero. (Ex. 57).

MRU initially determined, and I agree, that insurer is not liable for any medications prescribed by Dr. Jayaram. Because claimant was enrolled in the MCO and Dr. Jayaram was not a panel member, insurer is not liable for any medications he prescribed.

MRU next determined, and I agree, that insurer is not liable for any medications that were prescribed prior to August 1999 because claimant first submitted the prescription reimbursement requests to insurer in August 2001. Claimant testified that in May 1997 and again in January 1999, she provided copies of prescription receipts to her attorney with the expectation that he would submit them to insurer for reimbursement. However, the record contains no evidence that insurer received any reimbursement requests until August 2001 when her subsequent attorney requested administrative review. Furthermore, claimant testified that although she routinely received copies of all correspondence from her former attorney to insurer, she did not receive a copy of any request for reimbursement until the August 2001 request for review. Moreover, insurer’s correspondence indicates that it received no request for reimbursement of out-of-pocket expenses prior to August 2001. Based on the record, I conclude that the requests for reimbursement of any out-of-pocket prescription expenses incurred before August 1999 were untimely submitted, and therefore, are not reimbursable.

MRU further determined, and I agree, that insurer was not liable for two medications prescribed by Dr. Fiks. OAR 436-010-0220(2)⁶ requires all treatment, with the exception of emergency services, to be authorized by the injured worker’s attending physician in order to qualify for reimbursement. The record contains no evidence that attending physician Yanney authorized Dr. Fiks’ treatment. Therefore, any medications prescribed by Dr. Fiks are not reimbursable.

Finally, MRU concluded that none of the disputed prescription medications qualify for reimbursement. Based on information presented at hearing, I disagree.

Insurer concedes that it is liable for reimbursement of medications prescribed by Dr. Yanney and Dr. Osterlind from August 1999 through August 2001 for which

claimant incurred out-of-pocket expenses. The prescriptions that fall into this category are:

1. 5-25-00 Roxicet Dr. Osterlind \$ 9.39 (Ex. 2-62).
 2. 5-25-00 Amoxicillin Dr. Osterlind \$10.20 (Ex. 2-62).
 3. 7-13-00 ...cet7 Dr. Osterlind \$ 7.99 (Ex. 2-63).
 4. 11-18-00 Hydrocodone Dr. Yanney \$30.19 (Ex. 2-67).
 5. 11-30-00 Norco Dr. Yanney \$38.19 (Ex. 67-2).
 6. 11-24-00 Hydrocodone Dr. Yanney \$30.19 (Ex. 2-68).
 7. 12-11-00 Norco Dr. Yanney \$38.19 (Ex. 2-68).
 8. 12-20-00 Norco Dr. Yanney \$41.39 (Ex. 2-60).
 9. 1-2-01 Norco Dr. Yanney \$41.39 (Ex. 2-70).
- \$247.12 Total

Accordingly, I reverse the administrative order regarding the medical services dispute.

Attorney Fees

Claimant has prevailed in a contested case, and therefore, is entitled to a reasonable attorney fee. ORS 656.385(1). Claimant's attorney submitted a statement of services requesting an attorney fee of \$1,400. Considering the factors listed in OAR436-001-0265 and in light of the fact that claimant prevailed on one of two issues, \$700 is a reasonable fee for claimant's attorney's services in this matter.

6 OAR 436-010-0220(2) provides:

"The worker may have only one attending physician at a time. Simultaneous or concurrent treatment by other medical services providers shall be based upon a written request of the attending physician, with a copy of the request sent to the insurer. Except for emergency services, or otherwise provided for by statute or these rules, all treatments and medical services must be authorized by the injured worker's attending physician to be reimbursable. Fees for treatment by more than one physician at the same time are payable only when treatment is sufficiently different that separate medical skills are needed for proper treatment."

7 Exhibit 2-63 is a photocopy showing only part of the prescription receipt.

ORDER

IT IS HEREBY ORDERED that:

1. Administrative Order MS 01-1009 is affirmed in part and reversed in part.
2. Insurer shall pay to claimant's attorney a fee of \$700.

DATED this _____ day of June 2002.

Catherine P. Coburn, Administrative Law Judge
Hearing Officer Panel