

In the ORS 656.248 Medical Fee Dispute of

McCutcheon, Jack, Claimant

Contested Case No: HH02-041

PROPOSED & FINAL ORDER

July 3, 2002

STEPHEN ROSS, DC., Petitioner

SAIF CORPORATION, Respondent

Before John L. Shilts, Workers' Compensation Division Administrator

PROCEDURAL HISTORY OF THE CASE

Petitioner appeals an Administrative Order dated February 27, 2002 finding insurer not liable for medical services delivered to claimant Jack McCutcheon. On May 21, 2002, Administrative Law Judge Paul Vincent conducted a contested case hearing. Petitioner Stephen Ross, DC, was represented by attorney William Brewster. Respondent SAIF Corporation (SAIF or insurer) was represented by attorney Stefan Gonzales. The Workers' Compensation Division waived appearance. Testimony was taken from Allyson Vandenberg and Holly Walker. The record was left open for supplementation of the hearing record. The record closed on June 4, 2002.

ISSUE

The issue, pursuant to a notice of hearing issued April 10, 2002, is whether SAIF appropriately reduced reimbursement for office visits from December 26, 2000 through March 15, 2000 under ORS chapter 656 and OAR chapter 436.

EVIDENTIARY RULINGS

WCD Exhibits 1-41 were received without objection. Petitioner's Exhibit P7A was received without objection.

The parties stipulate that SAIF's claim's management database shows that that SAIF claims adjuster Holly Hunter made an entry on October 15, 2001, that states "Allison at Dr Ross' office called for explanation as to why bills are not being paid. I went over NC's 4/26/01 memo. Allison will see if she has treatment plans and treatment notes to fax to me."

FINDINGS OF FACT

Claimant sustained a compensable lumbar strain on December 12, 2002. (Exs. 1, 18). He received chiropractic care at Aloha Chiropractic Center, Inc. from Stephen J. Ross, DC, during the period from December 26, 2000 through March 15, 2000. (Exs. 4, 5, 6, 7, 8). Dr. Ross billed insurer for the services. (Ex. 8). The last billing was submitted on March 20, 2001. (Ex. 8-21).

On May 10, 2001, insurer sent Dr. Ross a Medical Bill Analysis that denied payment of certain services. The Analysis covered the following dates of service: January 9, 2001; January 10, 2001; January 11, 2001; January 16, 2001; January 17, 2001; January 18, 2001; January 22, 2001; January 24, 2001; January 25, 2001; February 1, 2001; February 6, 2001; February 7, 2001; February 12, 2001; February 14, 2001; February 15, 2001; February 20, 2001; February 22, 2001; February 26, 2001; and March 15, 2001. On May 21, 2001, insurer sent Dr. Ross a Medical Bill Analysis denying certain payments for the following dates of service: December 26, 2000; December 27, 2000; December 28, 2000; January 2, 2001; January 3, 2001; January 4, 2001; and January 8, 2001. On June 8, 2001, insurer sent Dr. Ross a Medical Bill Analysis denying certain payments for the following dates of service: December 18, 2000; December 19, 2000; December 20, 2000; and December 21, 2000. Each of the above-mentioned Medical Bill Analysis was accompanied by the following notice: "If you dispute or disagree with the amount of payment, OAR's 436-009-0008(2) and 436-010-0008(5)(b) require your request for review to be submitted to the Department of Consumer and Business Services within 90 days of the date you knew or should have known there was a dispute." (Ex. 24).

Allyson Vandenberg is employed by Aloha Chiropractic Center as an account manager. (Ex. 27; Testimony of Allyson Vandenberg). Her duties include data entry, HICFA mailings, and following up on accounts. As part of her duties she received the insurer's Medical Bill Analysis in this matter, beginning with the May 10, 2001 Analysis. Although she reviewed the Analysis, she didn't subjectively believe that there was a "dispute" with insurer, believing that the matter involved a simple processing error on SAIF's end that would be easily resolved if she contacted the adjuster. She based this belief on her review of the adjustment codes provided by SAIF in the Medical Bill Analysis. (Exs. 24, 41).

On October 14, 2001, Vandenberg contacted Holly Walker, the SAIF claims adjuster responsible for this claim. Walker reviewed with Vandenberg an April 26, 2001 internal memo prepared by SAIF nurse consultant Joelee Crites, RN. The nurse consultant had come to the conclusion that Dr. Ross had exceeded "his 12 visits starting on 1-10-01," referring to the 30 day / 12 visit limitation on independent chiropractic treatment pursuant to the applicable WCD administrative rule. (Testimony of Holly Walker; Testimony of Allyson Vandenberg; Ex. 21). On October 18, 2001, Vandenberg submitted a rebilling for the services delivered from December 18 – 21, 2000 and January 10, 2001. She requested that Walker "let me know if you are unable to pay these or I will be expecting a ✓ in 2 weeks." (Ex. 25). She submitted a new billing for unpaid services for the period from December 18, 2000 through March 15, 2001 on October 31, 2001. (Ex. 26). On November 6 and 9, 2001, SAIF paid certain of the resubmitted billings. (Ex. 28). On November 12, 2001, Vandenberg wrote SAIF regarding the unpaid services, contending that the unpaid services fell within the "twelve visit / thirty day statute or [were] provided under written authorization from the Attending Physician." She asked that SAIF respond in writing to confirm that it was "denying the above referenced Chiropractic treatment as not compensable medical services and / or unreasonable treatment." (Ex. 27). On December 27, 2001, Walker wrote Vandenberg and again stated SAIF's position on the disputed billings. (Ex. 28). On January 15, 2002, Dr. Ross requested administrative review of the disputed billings by the Workers' Compensation Division. (Ex. 29).

CONCLUSIONS OF LAW

SAIF appropriately reduced reimbursement for office visits from December 26, 2000 through March 15, 2000

OPINION

Jurisdiction over this medical services dispute lies with the director. ORS 656.248; OAR 436-010-0008(1). Since ORS 656.248 prescribes no standard of review, I review *de novo*. *Archie M. Ulrich*, 2 WCSR 152, 153 (1997); OAR 436-010-0225(1). The burden of proving a fact or position rests with the proponent. ORS 183.450(2). As petitioner, Dr. Ross bears the burden of proving by a preponderance of the evidence that the administrative order is incorrect. See *Cook v. Employment Div.*, 47 Or 437 (1982) (In the absence of contrary legislation, the standard of proof in an administrative hearing is preponderance of evidence).

The director determined that Dr. Ross failed to make a timely request for administrative review pursuant to OAR 436-009-0008(2) and therefore dismissed the request for review. That rule provides in relevant part:

(2) The medical provider, injured worker, or insurer may request review by the director in the event of a dispute about either the amount of a fee or non-payment of bills for medical services on a compensable injury. The following time frames and conditions apply to requests for administrative review before the director under this rule:

(b) For all claims not enrolled in an MCO, the aggrieved party must request administrative review by the director within 90 days of the date the party knew, or should have known, there was a dispute over the provision of medical services. This time frame only applies if the aggrieved party other than the insurer is given written notice that they have 90 days in which to request administrative review by the director. For purposes of this rule, the date the insurer should have known of the dispute is the date action on the bill was due pursuant to OAR 436-009-0030.

Petitioner argues that MRU erred in finding that the request for review was untimely under this rule. Petitioner argues that MRU incorrectly found that the “clock start ticking” for purposes of calculating the 90-day appeal period from the date that Dr. Ross’ office received SAIF’s letter on December 17, 2001, and not from the date of Dr. Ross’ receipt of SAIF’s medical bill analysis in May 2001 as the director determined. The insurer argues that pursuant to 436-009-0008(2), the date the aggrieved party “knew or should have known” is the date from which the 90-day period is calculated and the director correctly identified the date the medical bill analysis as the date from which to calculate the time period.

The hearing record shows that there was a series of interactions between SAIF and Dr. Ross’ office staff following the latter’s receipt of the medical bill analysis in May 2001.

However, while SAIF continued to interact with Dr. Ross' office long after that office's receipt of the medical bill analysis and the accompanying appeal notice, at no time did insurer make any representation to Dr. Ross' office that the 90-day appeal period mentioned in the notice had ceased running.

WCD's administrative order has implicitly found that "the date the party knew, or should have known, there was a dispute over the provision of medical services" was the date that Dr. Ross' office received the medical bill analysis. While Dr. Ross disagrees that a "dispute" existed on that date, WCD's interpretation of the rule as applying from the date that Dr. Ross received a medical bill analysis identifying specific billings that would not be paid along with a notice of appeal rights is a plausible one given the context of term "dispute" within the rule. In particular, the rule's requirement of written notice to an aggrieved party other than the insurer "that they have 90 days in which to request administrative review by the director" lends support to the director's finding that a medical bill analysis that detailed why certain bills would not be paid and which contained the requisite notice was sufficient to trigger running of the 90-day period.

An administrative agency's interpretation of its own rule must be upheld if the interpretation is plausible and not inconsistent with "the wording of the rule itself, or with the rule's context, or with any other source of law." *Don't Waste Oregon Comm. V. Energy Facility Siting Council*, 320 Or 132, 142 (1994). While Dr. Ross seeks to read into the rule a tolling of the time period during which he sought to reach an understanding with insurer over the dispute, nothing in the rule suggests that a provider's attempts to resolve a dispute without resort to the available administrative procedures tolls the running of the 90-day period.

Having found that the request for administrative review was untimely, the director declined to take further action. Likewise, I decline to address the substantive issue raised by insurer of whether the delivered treatment was excessive or inappropriate for the compensable condition.

ORDER

IT IS HEREBY ORDERED that:

The Director's Review and Order dated February 27, 2002, is affirmed. SAIF appropriately reduced reimbursement for office visits from December 26, 2000 through March 15, 2001.

DATED this _____ day of July 2002.

Paul Vincent
Administrative Law Judge
Hearing Officer Panel