

In the Matter of the ORS 656.260 Medical Services Dispute of

Mironchenko, Andrey, Claimant

Contested Case No: H03-009

AMENDED PROPOSED AND FINAL ORDER

March 26, 2003

ANDREY MIRONCHENKO, Petitioner

SAIF CORPORATION, Respondent

Before John L. Shilts, Workers' Compensation Division Administrator

HISTORY OF THE CASE

Claimant appeals an Administrative Order issued on December 23, 2002 by the Medical Review Unit (MRU) of the Workers' Compensation Division (WCD) Department of Consumer and Business Services (director or the department). On March 14, 2003, Administrative Law Judge Catherine P. Coburn conducted a hearing in this matter. Petitioner Andrey Mironchenko (claimant) was represented by attorney James Dodge. SAIF Corporation was represented by attorney Charles Edelson. WCD and Caremark Comp, a managed care organization (MCO) waived appearance. No witnesses testified and the record closed on the date of hearing. This amended order is issued to correct an error in the caption of the March 18, 2003 order. No substantial modifications to the Hearing Officer's proposed order have been made. The parties' review and appeal rights begin to run on the date of this order.

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.

ISSUE

Whether medical bills for treatment provided to claimant by Donald Ferrante DC and Don Walker ND, DC from March 19, 2001 through May 3, 2001 are reimbursable.

EVIDENTIARY RULINGS

The documentary record consists of WCD Exhibits 1 through 27 were received into the record without objection.

FINDINGS OF FACT

I adopt and incorporate the findings of fact contained in the administrative order with the following supplementation:

- (1) On February 8, 2001, claimant suffered a compensable injury while working for a stucco business. Insurer accepted the following conditions: cervical strain/sprain, thoracic strain, bilateral shoulder sprain, concussion with post

concussive syndrome, non-displaced fracture of the greater tuberosity of the left shoulder, partial thickness tear of the supraspinatus tendon, rotator cuff injury, left shoulder. (Exs.1, 2 and 15.) On February 22, 2001, claimant was enrolled in the MCO. (Ex. 3.) The MCO rules require pre-authorization of chiropractic care. (Ex. 26.)

- (2) In March 2001, claimant selected Victoria Carvalho MD, a Caremark panel member, as his attending physician. She referred him to Dr. Ferrante for chiropractic care one to two times per week for four weeks. (Exs. 4, 5, 6 and 26.)
- (3) Dr. Ferrante DC, who is not an MCO panel member, provided care to claimant on March 21, 23, and 26, 2001. Dr. Ferrante provided chiropractic manipulation. (Exs. 7, 8, 10 and 26.)
- (4) Dr. Walker ND, DC who is an MCO panel member, provided care to claimant on March 30, 2001, April 2, 6, 9, 12, 17, 19, 24, 2001. Dr. Walker treated claimant with chiropractic manipulation. (Exs. 9, 10 and 26.)
- (5) On April 2, 2001, SAIF notified Dr. Ferrante that the care he provided to claimant might require pre-authorization but neither Dr. Ferrante nor Dr. Walker requested pre-authorization. (Ex. 12.)

CONCLUSIONS OF LAW

Medical bills for treatment provided to claimant by Donald Ferrante DC and Don Walker ND, DC from March 19, 2001 through May 3, 2001 are not reimbursable.

OPINION

The director exercises jurisdiction over MCO disputes. ORS 656.260(6). I review for substantial evidence and error of law. ORS 656.260(16). The burden of proving a fact or position rests with the proponent. ORS 183.450(2); *Harris v. SAIF*, 292 Or 683 (1982). In the absence of contrary legislation, the standard of proof in administrative hearings is preponderance of evidence. *Cook v. Employment Div.*, 47 Or 437 (1982).

Pursuant to ORS 656.245(1), an insurer is obligated to provide medical services for compensable conditions for such period as the nature of the injury or the process of recovery requires. ORS 656.260(4)(a) authorizes insurers to provide medical services to injured workers through a contract with a state-certified managed care organization.

MRU determined that the disputed medical bills are not reimbursable because Dr. Ferrante and Dr. Walker provided chiropractic care without pre-authorization. Claimant contends that Dr. Walker's bills are reimbursable because no pre-authorization was required. In support of his contention, claimant argues that Dr. Walker is a naturopath as

well as a chiropractor and he was an MCO panel member. In contrast, insurer contends that pre-authorization was required by both the MCO rules and by OAR 436-001-0230(4).

Pursuant to OAR 436-010-0230(3)(a), ancillary medical services such as chiropractic treatment are reimbursable only if they are carried out under a written treatment plan prescribed by the attending physician prior to the commencement of treatment. "The treatment plan shall include objectives, modalities, frequency of treatment and duration. The treatment plan may be recorded in any legible format including, but not limited to, signed chart notes." OAR 436-010-0230(3)(a).

The Court of Appeals has made it clear that the rule requiring a treatment plan is to be strictly applied. *See Aetna Casualty & Surety Co. v. Blanton*, 139 Or App 283, (1996). Here, Dr. Ferrante and Dr. Walker both provided chiropractic treatment in the absence of pre-authorization. I find that the failure to obtain pre-authorization for chiropractic treatment is not excused by Dr. Walker's status as a naturopath or as an MCO panel member. Therefore, the insurer is not liable for the disputed chiropractic treatment. Finally, finding no grounds to modify the administrative order, I affirm.

Attorney Fees

Claimant has not finally prevailed in a contested case, and therefore, is entitled to no attorney fee. ORS 656.385(1).

ORDER

IT IS HEREBY ORDERED that:

The administrative order dated December 23, 2002 is affirmed.

DATED this 26 day of March 2003.

John Shilts, Administrator
Workers' Compensation Division