

In the Matter of the ORS 656.245 Medical Services Dispute of

**Olsen, Cristine O., Claimant**

Contested Case No: H03-002

**FINAL ORDER**

August 12, 2003

SAIF CORPORATION, Petitioner

CRISTINE O. OLSEN, Respondent

Before John L. Shilts, Workers' Compensation Division Administrator

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Administrative Law Judge (ALJ) Catherine P. Coburn issued a Proposed and Final Order Upon Default on May 8, 2003. The proposed order reversed the December 18, 2002 Administrative Order finding SAIF liable for physical therapy evaluation and cryotherapy provided on May 13, 2002 and cryotherapy provided on May 16, 20, 28, and 31, 2002 by Walton Physical Therapy and Sports Medicine. SAIF conceded at hearing that it is liable for the physical therapy evaluation provided on May 13, 2002. The only service that remains in dispute is the cryotherapy.<sup>1</sup>

The director received a letter dated May 19, 2003 from Walton, and considered the letter to be timely exceptions to the proposed order. SAIF timely responded, arguing that Walton's May 19, 2003 letter was intended to appeal the December 18, 2002 administrative order and as such, is untimely and should be dismissed. Claimant, Ms. Olsen, has not participated in the exceptions process.

The record has been reviewed, including the exhibits in evidence, the audio recording of the hearing, the underlying orders, and the exceptions and response. The director adopts and affirms the May 8, 2003 Proposed and Final Order with the following supplementation.

The December 18, 2002 administrative order found that the requirements for a treatment plan, under OAR 436-010-0230(4)(a), were satisfied for cryotherapy, and that OAR 436-009-0050(7)(d)<sup>2</sup> was satisfied because the cryotherapy was performed in conjunction with other procedures requiring the constant attendance of the provider.

The ALJ agreed that the treatment plan requirements were satisfied, but disagreed as to whether OAR 436-009-0050(7)(d) was satisfied. That rule requires that CPT<sup>♦</sup> codes 97010 through 97028, in order to be paid, must be performed in conjunction with other procedures or modalities which require constant attendance or knowledge and skill of the licensed medical provider. The ALJ found it implicit in the rule that the procedures requiring constant attendance be directed to the compensable condition and be reimbursable; because the other services here were not reimbursable, the requirements of the rule were not met.<sup>3</sup>

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<sup>1</sup> The administrative order also found that SAIF was not liable for manual therapy, therapeutic exercise, ultrasound, and electrical stimulation provided by Walton between May 13, 2002 and June 21, 2002. That portion of the administrative order was not timely challenged and therefore remains in effect.

<sup>2</sup> The proposed order incorrectly cites this rule as OAR 435-009-0050(7)(d).

<sup>3</sup> The director limits her review to the issues raised by the parties. Because Walton's exceptions are primarily factual and do not raise questions of rule interpretation, the director will not address the ALJ's conclusion in this regard.

Walton, who did not participate in the hearing, directed a letter to the Hearing Officer Panel on May 19, 2003. Enclosed with the letter were copies of exhibits in the hearing record marked as 1-1, 3-1, and 3-2. By the terms of the letter, Walton is “appealing the denial of physical therapy services for Cristine O. Olsen.” The letter refers to services being denied by the Medical Review Unit. Walton states that the services were denied because they were not ordered by the attending physician. While neither the administrative order nor the proposed order deny reimbursability on this basis, the letter further states that “[w]e are appealing the denial of procedures which required direct contact with the therapist \* \* \*.” This is the basis on which the ALJ denied reimbursability of the cryotherapy. Accordingly, the director believes Walton intended to file exceptions to the ALJ’s May 8, 2003 proposed order rather than appeal the December 18, 2002 administrative order, as SAIF argues.<sup>4</sup>

The exceptions do not raise any new issues not addressed at hearing. Accordingly, the director affirms the ALJ’s order.

**IT IS HEREBY ORDERED** that the May 8, 2003 Proposed and Final Contested Case Hearing Order is adopted and affirmed as supplemented herein, with the following clarification.

SAIF Corporation is liable for the physical therapy evaluation provided by Walton Physical Therapy and Sports Medicine on May 13, 2002.

SAIF Corporation is not liable for the cryotherapy provided by Walton Physical Therapy and Sports Medicine on May 13, 16, 20, 28, and 31, 2002.

SAIF Corporation is not liable for the manual therapy, therapeutic exercises, ultrasound, and electrical stimulation provided by Walton Physical Therapy and Sports Medicine between May 13, 2002 and June 21, 2002.

DATED this 12<sup>th</sup> day of August, 2003.

**CORY STREISINGER, DIRECTOR**  
**DEPT. OF CONSUMER AND BUSINESS SERVICES**

By: \_\_\_\_\_  
John Shilts, Administrator  
Workers' Compensation Division

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<sup>4</sup> SAIF is correct, however, that if Walton intended to appeal the December 8, 2002 administrative order, that appeal would be untimely.