

In the ORS 656.248 Medical Fee Dispute of

TIM J. VENDEHAY, Claimant

Contested Case No: H05-032

PROPOSED AND FINAL ORDER

June 28, 2005

WORKING RX, INC., Petitioner

SAIF CORP., Respondent

Before Catherine P. Coburn, Administrative Law Judge, Administrative Hearings

HISTORY OF THE CASE

Working Rx, Inc.¹ appeals the Administrative Order issued on February 15, 2005 by the Medical Review Unit (MRU) of the Workers' Compensation Division (WCD), Department of Consumer and Business Services (department or director). On March 18, 2005, the department referred the matter to the Office of Administrative Hearings (OAH). On June 17, 2005, Administrative Law Judge Catherine P. Coburn conducted a hearing in Beaverton, Oregon. Pursuant to OAR 137-003-0555(1)(b), Rex Huang² represented petitioner Working Rx, Inc (Working Rx or petitioner) in his capacity as corporate secretary. Attorney Nancy C. Marque represented respondent SAIF Corporation (insurer). Tim J. Vandehey (claimant) waived appearance. Marcus Anthony Cecchini, Vice President for Pharmacies, Fred Meyer Stores and James W. Lloyd, Director of Payor Reimbursement, Working Rx, testified on petitioner's behalf. Lisa J. Wilch, SAIF Claims Supervisor, testified on insurer's behalf. The record closed on the date of hearing.

ISSUE

Whether insurer is liable for payment to Working Rx, Inc. for medications dispensed by Fred Meyer Pharmacy (Fred Meyer) from March 31, 2004 through April 28, 2004.

EVIDENTIARY RULINGS

WCD Exhibits 1 through 18 as well as insurer's Supplementary Exhibits 4A, 8A, and 15A were admitted into the record without objection. Insurer's Supplementary Exhibit 19 was admitted into the record over Working Rx's lack of foundation objection. Working Rx withdrew Supplementary Exhibit 20.

FINDINGS OF FACT

(1) On March 26, 2004, claimant suffered a compensable lumbar strain.
(Ex. 4-2.)

¹ Pursuant to OAR 137-003-0535(2), Working Rx Inc. appears as a limited party with an interest in the outcome of the case.

² Mr. Huang is a member of the Utah Bar.

(2) Prior to 1999, Fred Meyer did not fill workers' compensation prescriptions due to administrative cost and risk of nonpayment. (Testimony of Cecchini.) In 2003, Fred Meyer Pharmacy entered into a contract with Working Rx, Inc whereby Working Rx provides billing services to the pharmacy. (Ex. 1; testimony of Cecchini.)

(3) Fred Meyer contracts with Restat, another pharmacy billing service. (Testimony of Cecchini.) Upon acceptance of the claim, Restat issues an identification card to the injured worker for use in filling prescriptions without incurring out of pocket expenses. (Testimony of Wilch.) Upon claim acceptance, Restat covers the cost of the medication, researches claim information and seeks reimbursement from insurer. (Testimony of Cecchini and Wilch.)

(4) From March 31, 2004 through April 28, 2004, Fred Meyer Pharmacy filled prescriptions for claimant's compensable medications. (Exs. 2 and 5.) Working Rx covered the cost of the medications, researched claim information and sent invoices to insurer, billing at the Oregon fee schedule rate. (Exs. 3 and 15; testimony of Lloyd.) Working Rx did not submit NCPDP Forms. (Ex 3.) The invoice lists the medical provider as "Fred Meyer" and the city where the pharmacy is located. (*Id.*) Insurer denied payment and Working Rx requested administrative review. (Exs. 6, 7, 8, 9.)

CONCLUSION OF LAW

Insurer is not liable for payment to Working Rx, Inc. for medications dispensed by Fred Meyer Pharmacy from March 31, 2004 through April 28, 2004.

OPINION

Jurisdiction over this medical fee dispute lies with the director. ORS 656.248(12), 656.704(3)(a) and OAR 436-009-0008(1)(a). I review *de novo*. OAR 436-001-0225(3). The burden of proving a fact or position rests with the proponent. ORS 183.450(2); *Harris v. SAIF*, 292 Or 683 (1982). As petitioner, Working Rx 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). Preponderance of evidence means that the factfinder is persuaded that the facts asserted are more likely true than false. *Riley Hill General Contractors v. Tandy Corp.*, 303 Or 390 (1989).

MRU determined that insurer is not liable for the disputed medications. MRU first determined that Working Rx does not meet the administrative definition of "medical provider" and consequently, it may not submit medical bills to insurer. Next, MRU determined that, even if Working Rx qualified as a medical provider, it submitted bills to insurer using an incorrect form.

Working Rx contends that it is a medical provider and that insurer is obligated to reimburse its bills. In the alternative, Working Rx contends that it acts as an agent of medical provider Fred Meyer Pharmacy and that it is entitled to reimbursement. Next, Working Rx contends that insurer's contract with a competing pharmacy billing service, known as Restat,

impermissibly limits injured workers' choice of pharmacy. Finally, Working Rx contends that it submitted adequate information to obtain reimbursement from insurer. In support of its position, Working Rx argues that its services benefit pharmacies by reducing administrative burden and benefit injured workers by avoiding out-of-pocket expenses. Insurer disagrees and further contends that Working Rx is not entitled to reimbursement because it bills without regard to the medical provider's usual and customary rate.

Medical Provider

Pursuant to ORS 656.245(1)(a) and (b), an insurer is obligated to provide medical services, including medications, that are materially related to the compensable injury. ORS 656.248(1) authorizes the director to promulgate rules for developing and publishing fee schedules for medical services provided to injured workers. Pursuant to OAR 436-009-0005(1),³ the director incorporated the following definitions into the medical fee schedule.

OAR 436-010-0005(29) provides:

“Medical Provider” means a medical service provider, a hospital, medical clinic, or vendor of medical services.

Working Rx provides billing services to Fred Meyer Pharmacy. Working Rx is not licensed to provide pharmaceutical services and does not sell medical services to injured workers. Consequently, Working Rx is not a medical provider within the meaning of OAR 436-010-0005(29).

Next, OAR 436-009-0030 provides in pertinent part:

(2) The insurer, or its designated agent, may request from the medical provider, any and all necessary records needed to review accuracy of billings.

(3) Insurers shall date stamp medical bills and reports upon receipt and pay bills for medical services on accepted claims within 45 days of receipt of the bill, if the billing is submitted in proper form in accordance with OAR 436-009-0010(2) through (4) and clearly shows that the treatment is related to the accepted compensable injury or disease. Billings not submitted in the proper form must be returned or a request for chart notes on EDI billings must be made, to the medical provider within 20 days of receipt of the bill. The number of days between the date the insurer returns the billing or requests for chart notes from the provider and the date the insurer

³ OAR 436-009-0005(1) provides: Unless a term is specifically defined elsewhere in these rules or the context otherwise requires, the definitions of ORS Chapter 656 and OAR 436-010-0005 are hereby incorporated by reference and made part of these rules.

receives the corrected billing or chart notes, shall not apply toward the 45 days within which the insurer is required to make payment.

The plain meaning of OAR 436-009-0030 establishes that insurers are obligated to reimburse medical providers for services they render to injured workers. Inasmuch as Working Rx is not a medical provider, and sells no services to injured workers, insurer is not obligated to reimburse it.

Agent

Similarly, I find Working Rx's argument concerning its role as a pharmacy agent unpersuasive. Even if Working Rx establishes such an agency relationship, the administrative scheme contains no provision requiring insurer to pay an agent rather than a medical provider. Furthermore, insurer is not bound by a contract between Fred Meyer and Working Rx and is not required to reimburse the disputed bills.

Choice of Pharmacy

OAR 436-010-0230(6) provides in pertinent part:

Workers may have prescriptions filled by a provider of their choice
***.

Working Rx contends that insurer's contract with a competing pharmacy billing service, known as Restat, impermissibly limits claimant's choice of pharmacy. In support of its position, Working Rx argues that Restat does not contract with every pharmacy and that in order to avoid out-of-pocket expense, claimant must fill his prescriptions in a Restat pharmacy. I find this argument unpersuasive because the record contains no evidence that either Restat or Working Rx contracts with every pharmacy in the state. Moreover, by contracting with Restat, insurer does not limit claimant's choice of pharmacy; rather it provides enhanced services at Restat pharmacies by assisting claimant in avoiding out-of-pocket expenses. However, claimant remains free to choose a pharmacy.

NCPDP Form

OAR 436-009-0010(2) provides in pertinent part:

All medical providers shall submit bills to the insurer or managed care organization, as provided by their contract for medical services, on a current UB92 or HCFA/CMS 1500 form, except for:

(b) Pharmacy billings, which shall be submitted on the most current NCPDP form.

Working Rx requested reimbursement from insurer by submitting invoices that were not NCPDP forms. Moreover, the invoices fail to identify which Fred Meyer pharmacy in a

particular city filled each prescription, making it impossible to verify. Consequently, Working Rx is not entitled to reimbursement.

Reimbursement Rate

OAR 436-009-0090 provides in pertinent part:

(1) Except for in-patient hospital charges, pharmacy fees shall be paid at the provider's usual and customary rate or the maximum allowable fee established by this rule, **whichever is the lower**.

(Emphasis added.)

OAR 436-009-0090 requires insurers to reimburse medical providers according to the medical provider's usual and customary fee or in accordance with the fee schedule "whichever is the lower." Here, Working Rx billed insurer according to the Oregon fee schedule without regard to the usual and customary rate. Therefore, insurer is not obligated to reimburse the disputed bills.

Conclusion

In conclusion, I find that Working Rx has failed to carry its burden in challenging the administrative order. A preponderance of the evidence establishes that Working Rx is not a medical provider within the meaning of OAR 436-010-0005(29). Next, Working Rx is not entitled to reimbursement as a pharmacy agent pursuant to OAR 436-009-0030. Additionally, insurer's contract with Working Rx's competitor does not limit claimant's choice of pharmacy in violation of OAR 436-010-0230(6). Moreover, Working Rx is not entitled to reimbursement because it failed to comply with the billing form requirements specified by OAR 436-009-0010(2). Furthermore, Working Rx billed insurer according to the fee schedule without regard to the medical provider's usual and customary rate rather than billing the lower of the two figures. Consequently, it is not entitled to reimbursement pursuant to OAR 436-009-0090. Finally, inasmuch as a preponderance of the evidence supports the administrative order, I affirm.

ORDER

IT IS HEREBY ORDERED that:

The Administrative Order dated February 15, 2005 is affirmed.