

In the ORS 656.260 Managed Care Dispute of

ANDRES NIEVES, Claimant

Contested Case No: H05-107

INTERIM ORDER OF REMAND

February 28, 2006

SAIF CORP., Petitioner

ANDRES NIEVES, Respondent

Before Daina Upite, Administrative Law Judge, Administrative Hearings

HISTORY OF THE CASE

SAIF Corporation (SAIF) appeals the Amended Administrative Order issued on June 22, 2005 by the Medical Review Unit (MRU) of the Workers' Compensation Division (WCD), Department of Consumer and Business Services. On July 28, 2005, WCD referred the matter to the Office of Administrative Hearings (OAH).

On November 16, 2005, Administrative Law Judge (ALJ) Daina Upite conducted a contested case hearing. SAIF was represented by Attorney David Runner. Respondent Andres Nieves (Claimant) was represented by Attorney R. Adian Martin. Claimant did not appear; therefore, interpreter services were not needed, but Spanish interpreter Christopher Dimick remained on call during the hearing in the event Claimant appeared. Caremark Company, a managed care organization (MCO), was not represented. No witness testified, and the record closed on the date of hearing without a request for continuance.

On January 16, 2006, the matter was referred to ALJ Lawrence S. Smith for preparation of the order. ALJ Smith reviewed the whole record, including the audio record of the argument, and issued this order.

ISSUE

Whether the matter should be remanded to MRU because the Amended Administrative Order refers to evidence that is not in the record.

EVIDENTIARY RULING

WCD Exhibits 1 through 54 were received into the record without objection.

FINDINGS OF FACT

(1) On October 30, 2002, Claimant sustained serious injuries from a fall at work. (Exs. 1 and 3.) These injuries were to his back, left arm, and head and included a fractured skull, intracerebral hemorrhage, and multiple brain contusions. He was taken to the emergency room for treatment at Tillamook Hospital. (Ex. 2.) He was then transported to Emanuel Hospital in Portland, Oregon, for surgery, where he remained until November 17, 2002. (Ex. 5 at 1 and 2.)

(2) On November 18, 2002, Claimant sought emergency treatment at Tillamook Hospital for a sudden onset of fever, rash, and chills. He was again transferred to Emanuel Hospital. (Ex. 5 at 3.)

(3) On December 16, 2002, SAIF accepted Claimant's various conditions as compensable and enrolled Claimant in CareMark Company, a managed care organization. (Ex. 6.) CareMark (the MCO) is authorized to provide care to injured workers in geographical areas 1 (North Coast), 4 (Portland Metro), 5 (Salem), and 10 (The Dalles). At the time of injury, Claimant worked and lived in Tillamook, which was within geographical area 1. He changed his attending physician to Dr. Jefferson Chen, who diagnosed abnormal mentation and prescribed ophthalmologic evaluation, further physical therapy, occupational therapy, and rehabilitation to include cognitive rehabilitation and follow-up CT scans. (Ex. 12.) After a follow-up visit on January 30, 2003, Dr. Chen again prescribed the same treatment and signed a treatment plan for Claimant. (Ex. 14.) Claimant began the treatment on February 14, 2003. SAIF received a copy of the treatment plan on February 20, 2003. (Ex. 18.)

(4) On February 28, 2003, SAIF received a chart note dated February 17, 2003, that said Claimant was moving to Corvallis, Oregon by the end of the week. (Ex. 19 at 2.)

(5) On March 4, 2003, the MCO sent retroactive approval for speech therapy received by Claimant from February 13 to 20, 2003. (Ex. 26.)

(6) On March 6, 2003, Claimant began speech and occupational therapy at Good Samaritan in Corvallis, Oregon, pursuant to the order by Dr. Chen. A treatment plan for speech/language therapy was prepared March 6, 2003, and signed by Dr. Chen on March 19, 2003. (Ex. 24 at 4.) A treatment plan for occupational therapy was developed on March 12, 2003, and signed by Dr. Chen. (Ex. 24 at 1.)

(7) On March 17, 2003, SAIF notified the MCO that Claimant was seeking treatment from Norman Castillo, DO in Corvallis. SAIF's letter said that Claimant is seeking care from a non-attending physician in an MCO with limited provider choice and requested the MCO to provide temporary credential to Dr. Castillo. (Ex. 28.) The MCO did not provide such credential because Dr. Castillo did not respond timely to its request for information. (Ex. 33.)

(8) On April 30, 2003, SAIF wrote to Good Samaritan, informing them that Claimant was enrolled in the MCO and that "[y]our services may require pre-certification." (Ex. 36.) The letter further stated that if Good Samaritan was not a member of the MCO, "no further services will be paid past April 30, 2003 without authorization from [the MCO]." *Id.* The same day, SAIF sent a second letter to Good Samaritan, declining to process the charges for Claimant's treatment until it received additional information, including copies of chart notes from March 3 to April 2, 2003 and a copy of a signed treatment plan. (Ex. 37.)

(9) On February 9, 2005, SAIF advised Claimant's attorney that it was denying payment for the services provided by Good Samaritan "because they were not from a MCO provider and because there was no precertification for the services." (Ex. 41.)

CONCLUSION OF LAW

The matter is remanded to MRU because the Amended Administrative Order refers to evidence that is not in the record.

OPINION

WCD exercises jurisdiction over MCO disputes. ORS 656.260(6).ORS 656.260(15) provides:

Upon a request for administrative review, the director shall create a documentary record sufficient for judicial review. The director shall complete administrative review and issue a proposed order within a reasonable time. The proposed administrative order of the director pursuant to this section shall become final and not subject to further review unless a written request for a hearing is filed with the director within 30 days of the mailing of the order to all parties.

Among the powers of the administrative law judge is the authority to remand. OAR 436-001-0170(1).¹

The Amended Administrative Order (Ex. 52) refers in its findings at page three to a statement by “Elizabeth from Caremark” and relies on this statement in concluding that SAIF had the obligation in its contract with Caremark to credential Good Samaritan. This statement was not contained in any of the exhibits or the documentary record provided for the hearing. Such a statement is needed for a complete review of the conclusion in the Amended Administrative Order that SAIF had the obligation to credential Good Samaritan for the therapy it provided Claimant. SAIF at one time concluded that an MCO provider did not prescribe the physical therapy, but the record contains evidence that Claimant’s physician, Dr. Chen, was a member of Caremark and he prescribed the therapy by Good Samaritan in a timely manner. The remaining question is whether Claimant or SAIF has the obligation under WCD’s rules and the contract between SAIF and Caremark to credential Good Sam’s therapy services. The alleged statement of someone apparently from Caremark or other evidence of the relevant terms in the contract between SAIF and Caremark is needed to resolve this question. Therefore, the matter is remanded to WCD/MRU for supplementation of the record for review.

ATTORNEY FEE

Claimant has not finally prevailed in a contested case hearing, and therefore, is not entitled to an attorney fee.

ORDER

Claimant’s appeal of the Administrative Order dated June 22, 2005, is remanded pursuant to OAR 436-001-0170(1) for further consideration after the record is supplemented, as described above.

¹ “The administrative law judge may remand a dispute to the director for further administrative action.”