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In the Matter of the Medical Services of

**David M. Stockstill, Claimant**

Contested Case No: 06-052H

**PROPOSED & FINAL ORDER**

August 3, 2006

SAIF CORPORATION, Petitioner  
R & R PHYSICAL THERAPY, INC., Respondent  
Before Kate Donnelly, Administrative Law Judge

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**HISTORY OF THE CASE**

The SAIF Corporation (SAIF) appeals a March 3, 2006 Amended Administrative Order issued by the Medical Review Unit (MRU) of the Workers' Compensation Division (WCD), Department of Consumer and Business Services (DCBS). In the Order, MRU concluded that a July 8, 2005 prescription for physical therapy, signed by claimant's treating surgeon, Dr. Prickett, constituted a "treatment plan" under OAR 436-010-0230(4)(a). Although Dr. Prickett was not the "attending physician," MRU found that Dr. Prickett was a "specialist physician" who was qualified to provide treatment plans. Additionally, MRU found that SAIF had not given written notice to R & R that they had 90 days in which to request administrative review by the director as required by OAR 436-009-0008(2)(b). Consequently, the director ordered that SAIF was liable for the physical therapy services provided by R & R Physical Therapy (R & R) on July 12, 14, 19, 26, and 28, 2005 and August 2, 4, 9, 11, 16, and 18, 2005. SAIF was found not liable for physical therapy treatment provided on June 28 and 30, 2005, and July 5 and 7, 2005. SAIF's appeal was referred to the Workers' Compensation Board, Hearings Division, under ORS 656.704(2)(a) and OAR 436-001-0019.

A hearing convened on July 6, 2006, in Eugene, Oregon before Administrative Law Judge Kate Donnelly. Petitioner, SAIF, was represented by Jesse O'Bryant. Medical Provider, R & R Physical Therapy, appeared by telephone through Rosemary Gecofala (office manager) and Aleksandra Spivak (former office manager). Claimant, and his attorney, Jodie Phillips Polich, waived appearance in this matter. SAIF claims adjuster, Lynda Brooks, testified and the record closed on the date of hearing.

**ISSUES**

1. Whether SAIF is liable for physical therapy provided to claimant by R & R from June 28, 2005 through August 18, 2005.
2. Whether R & R timely requested administrative review under OAR 436-010-0008(5)(b).

**EVIDENTIARY RULINGS**

WCD Exhibits 1 through 46 were admitted into the record without objection.

## FINDINGS OF FACT

The Findings of Fact in the March 3, 2006 Amended Administrative Order are accepted and incorporated in this Proposed and Final Order, with the following supplementation:

Dr. Gecosala was claimant's attending physician from July 15, 2003 through August 15, 2005 (Exs. 2; 3; 9; 21). On November 11, 2003, claimant began physical therapy treatment with R & R, upon referral from Dr. Gecosala (Ex. 4-1). Dr. Gecosala did not sign a physical therapy treatment plan.

On May 5, 2004, claimant was seen for surgical consultation by Dr. Prickett, an orthopedic surgeon (Ex. 11-1). On June 2, 2004, Dr. Prickett performed surgery for claimant's left shoulder rotator cuff tear (Ex. 12). On June 16, and July 14, 2004, Dr. Prickett prescribed physical therapy (Ex. 13-1-2). Dr. Prickett did not sign a physical therapy treatment plan.

Following surgery, claimant continued to treat with Dr. Gecosala (Ex. 3-18-37). Dr. Gecosala wrote 5 physical therapy prescriptions, beginning May 4, 2004, and continuing through March 9, 2005 (Ex. 10-1-5).

In February 2005, Lynda Brooks, a senior claims adjuster for SAIF, took over management of the claim. On February 17, 2005, Ms. Brooks sent R & R a letter and a summary sheet of the regulations for medical providers under Oregon workers' compensation laws (Ex. 14). She was concerned because there had been ongoing physical therapy for months with no way for her to evaluate the progress or effectiveness for the worker (Lynda Brooks testimony). On February 22, 2005, Ms. Brooks spoke to "Claudia" at R & R to explain that she needed to receive progress reports in order to monitor claimant's progress and appropriate direction from the attending physician.

On March 3, 2005, Ms. Brooks spoke to Stephanie Dunn, claimant's physical therapist at R & R. She discussed claimant's ongoing need for physical therapy and also the need for documented treatment plans. Ms. Brooks explained to Ms. Dunn that the requisite procedures were not being followed. Ms. Brooks continued to pay for the treatment while she provided "education" to the provider regarding the correct procedures (Lynda Brooks testimony; *see* Ex. 17-1-6). The reason Ms. Brooks decided to stop payment as of the June 28, 2005 treatment was that she was not getting documented treatment plans from R & R.

Dr. Prickett saw claimant for follow-up on March 1, 2005 and recommended a Functional Capacity Evaluation (Ex. 11-3). He prescribed physical therapy on April 20, 2005 for 6 weeks (Ex. 13-3). On June 24, 2005, Dr. Prickett examined claimant and advised against further surgery for the "re-tear" of the left rotator cuff (Ex. 11-4). Dr. Prickett had no further treatment options and told claimant that he would see him back as needed (Ex. 11-4).

On July 8, 2005, R & R left a voicemail message for Dr. Prickett that they needed a script for additional physical therapy. That same day, Dr. Prickett wrote a prescription for physical therapy as follows: "PT, B1W x 6 wks, shoulder ROM & strengthening, and [left] shoulder" (Ex. 13-5).

Beginning July 12, 2005, SAIF issued “Explanation of Benefits” forms to R & R disallowing payment for services provided on June 28, 30, 2005, July 5, 7, 12, 14, 19, 26, 28, 2005, and August 2, 4, 9, 11, 16, 18, 2005 (Ex. 17). SAIF advised the provider that “Oregon Administrative Rules (OAR) 436-009-0008(2)(a), (b) and 436-010-0008(6)(b) directs that disputes must be submitted in a timely manner” (Ex. 17). SAIF did not specifically tell R & R that they had 90 days in which to request administrative review by the director.

On November 16, 2005, R & R requested administrative review by the director regarding unpaid physical therapy billings for dates of service from June 28, 2005 through August 18, 2005 (Ex. 25-1).

### CONCLUSION OF LAW

Physical therapy provided to claimant by R & R from June 28, 2005 through August 18, 2005 is not reimbursable pursuant to OAR 436-010-0230(4)(a).

### OPINION

SAIF has the burden of showing that the Administrative Order is not supported by substantial evidence or that it reflects an error of law. OAR 436-001-0225(2).

“Substantial evidence exists to support a finding of fact when the record viewed as a whole, would permit a reasonable person to make that finding.” ORS 183.482(8)(c). A finding is supported by substantial evidence if it is reasonable in light of countervailing as well as supporting evidence. *Garcia v. SAIF*, 187 Or App 51, 57 (2003); *Garcia v. Boise Cascade Corp.*, 309 Or 292, 295 (1990). To determine whether substantial evidence exists, a reviewer must:

“[I]ook at the whole record with respect to the issue being decided, rather than one piece of evidence in isolation. If an agency’s finding is reasonable, keeping in mind the evidence against the finding as well as the evidence supporting it, there is substantial evidence.” *Armstrong v. Asten-Hill Co.*, 90 Or App 200 (1988).

Pursuant to ORS 656.245(1)(a), an insurer is obligated to provide medical services that are materially related to a compensable condition for so long as the nature of the injury or the process of recovery requires.

OAR 436-010-0230(4)(a) provides:

“(a) Except as otherwise provided by an MCO, ancillary services including but not limited to physical therapy or occupational therapy, by a medical service provider other than the attending physician, authorized nurse practitioner, or specialist physician will not be reimbursed unless prescribed by the attending

physician, authorized nurse practitioner, or specialist physician and carried out under a treatment plan prepared prior to the commencement of treatment and sent by the ancillary medical service provider to the attending physician, authorized nurse practitioner, or specialist physician, and the insurer within seven days of beginning 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. Treatment plans required under this subsection do not apply to services provided under ORS 656.245(2)(b)(A).

MRU determined that SAIF was liable for the disputed physical therapy services from July 12, 2005 through August 18, 2005, after concluding that Dr. Prickett's signed July 8, 2005 prescription constituted a treatment plan under OAR 436-010-0230(4)(a).

SAIF contends that the signed prescription does not qualify as a treatment plan under the rule because it does not include all the elements required; *i.e.*, objectives, modalities, frequency of treatment, and duration. SAIF argues that strict compliance with the rule is mandatory. SAIF also contends that, if even one of the elements is missing, it does not qualify as a treatment plan. *Donna Gump*, 9 CCHR 392 (2004).

The Court of Appeals has ruled that strict compliance with the rule is mandatory and furthermore, where a medical provider fails to comply, the insurer is not liable to reimburse the disputed medical bill. *Blanton v. AETNA Insurance Co.*, 139 Or App 283 (1994). However, a treatment plan need not be contained in a single document; it may be made up of various documents prepared at different times. *SAIF v. Ross*, 191 Or App 212 (2003), *rev'd and remanded on recon*, 192 Or App (2004). The insurer is not liable for services provided before the requirements of a treatment plan are met. *SAIF v. Ross*, 192 Or App 200 (2004).

Here, Dr. Prickett's alleged "treatment plan" was a prescription that was written in response to a voice mail from R & R. There was no examination on July 8, 2005 or corresponding chart note from Dr. Prickett. The prescription states "PT, B1W x 6 wks, shoulder ROM & strengthening, and [left] shoulder" (Ex. 13-5). Arguably, Dr. Prickett addressed the "objectives" of the proposed physical therapy by stating "shoulder ROM & strengthening." One could also conclude that he addressed the "frequency of treatment" and "duration" by stating "B1W x 6 wks." However, I find that Dr. Prickett's prescription did not address the "modalities" of treatment.

Under such circumstances, I find that Dr. Prickett's July 8, 2005 prescription does not qualify as a treatment plan under OAR 436-010-0230(4).

In summary, because R & R failed to comply with the mandatory requirements of OAR 436-010-0230(4)(a), I conclude that SAIF is not liable for the physical therapy services provided

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to claimant from June 28, 2005 through August 18, 2005.<sup>1</sup> See *Aetna Casualty and Surety Co. v. Blanton*, 139 Or App at 287-88. Consequently, the Amended Administrative Order dated March 3, 2006 will be reversed.

**ORDER**

**IT IS HEREBY ORDERED** that the March 3, 2006 Amended Administrative Order is reversed.

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<sup>1</sup> In light of this disposition, it is not necessary to address the issue of timeliness of R & R's appeal.