

In the ORS 656.260 Managed Care Dispute of

Pamela K. Orender, Claimant

Contested Case No: 06-179H

FINAL ORDER

July 9, 2007

PAMELA K. ORENDER, Petitioner

SAIF CORPORATION, Respondent

Before John L. Shilts, Workers' Compensation Division Administrator

Claimant, through her attorney Dale C. Johnson, timely filed exceptions to Workers' Compensation Board Administrative Law Judge (ALJ) Gregory J. Naugle's March 13, 2007 Proposed and Final Order. Insurer, through its attorney Janelle Irving, responded to the exceptions. This matter comes before the director for a final order. The issue is whether insurer is liable to pay for chiropractic treatment provided by Richard Gorman DC from July 2, 2003 through December 22, 2003. I affirm with modification.

I adopt the ALJ's findings of fact.

On October 12, 2006, the Medical Review Unit (MRU) issued an order finding that insurer was not liable to pay for the chiropractic treatment provided by Dr. Gorman from July 2 through December 22, 2003. ALJ Naugle affirmed that order on March 13, 2007. Claimant seeks review of that decision.

MRU's order may be modified only if the order is not supported by substantial evidence or the order reflects an error of law. OAR 436-001-0225(2). As ALJ Naugle found, the burden of proving a fact or position lies with its proponent. ORS 183.450(2); *Salem Decorating v. National Council on Comp. Ins.*, 116 Or App 170 (1992), *rev den* 315 Or 643 (1993). Therefore as the proponent of her position, claimant bore the burden of proving by a preponderance of evidence that the administrative order was incorrect. *See Harris v. SAIF*, 292 Or 683 (1982). Claimant did not meet this burden.

ALJ Naugle stated that claimant did not dispute that she was subject to the managed care organization (MCO) contract. However, claimant asserts that after July 8, 2002, she was not subject to the MCO contract, therefore insurer should pay for the disputed treatments provided by Dr. Gorman. Claimant argues that insurer's pattern of paying Dr. Gorman's bills is consistent with a finding that she was not subject to the MCO contract.

The relevant parts of ORS 656.245(4)(a) states that,

“[t]hose workers who are subject to the contract shall receive medical services in the manner prescribed in the contract. . . . *If the managed care organization determines that the change in provider would be medically detrimental to the worker, the worker shall not become subject to the contract until the worker is found to be medically stationary, the worker changes physicians or nurse*

practitioners, or the managed care organization determines that the change in provider is no longer medically detrimental, whichever event first occurs.
. . . A worker becomes subject to the contract upon the worker's receipt of actual notice of the worker's enrollment in the managed care organization, or upon the third day after the notice was sent by regular mail by the insurer or self-insured employer, whichever event first occurs.”

(Emphasis added.)

Claimant received at least three letters from the MCO, Oregon Health Systems (OHS), and insurer stating that she was enrolled in an MCO and that she would have to pick a new physician to receive care if Dr. Gorman was not credentialed. Claimant requested review arguing that it would be medically detrimental for her to switch providers. However, there is no evidence in the record that OHS determined that switching providers would be medically detrimental. Rather claimant argues that insurer's acts of paying Dr. Gorman's bills after her notice of MCO enrollment and OHS's failure to respond gave her the right to assume that OHS granted her request.

Claimant assumed that OHS agreed that it was medically detrimental for her to switch physicians and that she was not subject to the MCO contract. However, her argument is misguided because the statute does not give claimant the authority to determine if changing physicians would be medically detrimental. Rather the statute gives that authority to the MCO by stating “if the [MCO] determines.” Claimant provided no evidence that OHS determined that discontinuing Dr. Gorman's care would be medically detrimental to the claimant. Therefore, MRU and the ALJ did not error in applying ORS 656.245(4)(a).

OHS's failure to respond to claimant's appeal requests does not provide basis for her argument either. OAR 436-015-0110(7) states that, “[i]f the MCO fails to issue a decision within 60 days, the MCO's initial decision is automatically deemed affirmed. The parties may immediately proceed as though the MCO had issued an order affirming the MCO decision.” Therefore, it was not reasonable for claimant to assume that OHS had granted her appeal, rather the rules provide for the opposite conclusion, the affirming of OHS's initial decision. MRU's order finding that claimant was subject to an MCO contract is supported by substantial evidence.

In her exceptions, claimant asserts that OHS authorized payment until at least July 15, 2002, referencing exhibit 10, a letter from OHS to Dr. Gorman. However, the letter does not directly authorize payment of the treatment, but rather states that “[s]ervices rendered more than seven days after the date of this letter shall not be compensable unless otherwise notified.” The date on the letter is July 7, 2002 and seven days later would be July 15, 2002. Claimant asserts that she assumed OHS had granted her request because at that point insurer had been paying Dr. Gorman's bills for more than two months since her original appeal. However, reading the entire letter marked as exhibit 10, OHS was looking into the possibility of Dr. Gorman becoming a temporary care provider, not giving him authorization to treat claimant. Follow-up letters sent August 9, 2002 to both Dr. Gorman and claimant clearly state that Dr. Gorman was not authorized to treat claimant.

Even though claimant asserts that she received verbal permission for each treatment Dr. Gorman provided, as ALJ Naugle found the record does not contain verification of authorizations from insurer for the disputed services. Therefore, ALJ Naugle was correct in concluding that MRU's finding, that Dr. Gorman did not have permission to provide the disputed services, was reasonable and supported by substantial evidence.

Claimant also asserts that ALJ Naugle failed to adequately address the issue that Dr. Robert Davis, claimant's MCO-approved attending physician, authorized Dr. Gorman's treatment of claimant via referrals. However, the prescriptions written by Dr. Davis prescribe chiropractic treatment but do not specifically refer claimant to Dr. Gorman for treatment.

Insurer and OHS provided claimant several notices of her enrollment in an MCO and that Dr. Gorman was not a member of that MCO. Insurer may pay for services outside of the MCO at its own discretion. However, just because insurer did pay for some services outside the MCO while claimant was enrolled in the MCO does not obligate or require insurer to pay for all services received outside the MCO.

ALJ Naugle did not address a statement in MRU's order regarding OAR 436-009-0015 where "[a]n injured worker is not liable to pay for any medical service related to an accepted compensable injury or illness or any amount reduced by the insurer A medical provider shall not attempt to collect payment for any medical service from an injured worker." In the order, MRU correctly stated the general rule but failed to apply the exceptions to the rule. For the following reasons I modify that portion of the order.

In the exceptions to the rule, OAR 436-009-0015(1)(d) provides that an injured worker may be liable to pay for medical services "[w]hen the injured worker seeks treatment outside the provisions of a governing MCO contract after insurer notification in accordance with OAR 436-010-0275." Claimant received three separate notices from the MCO and insurer that she was enrolled in an MCO and that Dr. Gorman was not a panel member of that MCO. However, claimant continued to seek treatment from Dr. Gorman. Therefore the exception in OAR 436-009-0015(1)(d) applies and claimant may be liable to pay for the services.

IT IS HEREBY ORDERED the March 13, 2007 Proposed and Final Order is affirmed as modified.