

In the Medical Services of

Be Richards, Claimant

Contested Case No: 07-059H

PROPOSED & FINAL ORDER

August 24, 2007

BE RICHARDS, Petitioner

LIBERTY NW INSURANCE CORPORATION, Respondent

Before Darren L. Otto, Administrative Law Judge

A hearing was convened and concluded in the above entitled matter on August 7, 2007 in Portland, Oregon before Administrative Law Judge Darren L. Otto of the Workers' Compensation Board. Claimant was not present but was represented by her attorney Scott McNutt, Jr. The employer, Wild Oats Market, and its insurer, Liberty Mutual, were represented by their attorney Meg M. Carman. Exhibits 1 through 62 were received into evidence.

ISSUES

Claimant appeals the April 27, 2007 Administrative Order on Reconsideration which found the insurer not liable for chiropractic services provided from September 8, 2006 through September 28, 2006 and October 23, 2006 through December 14, 2006. The issue is whether the Director's decision was not supported by substantial evidence in the record or reflected an error of law.

FINDINGS OF FACT

On April 6, 2006, claimant injured her cervical spine, upper back, and left shoulder when she tripped over a box and fell to the floor while working for the employer (Exs. 1 & 2). On that same day, she sought chiropractic care from Michael J. Arnot, D.C., who treated claimant for injuries and referred her to Paul Puziss, M.D., for further evaluation (Exs. 7 & 11). Dr. Puziss wrote treatment plans referring claimant back to Dr. Arnot on April 22, 2006, May 7, 2006, and August 7, 2006 (Ex. 10, pgs. 9, 12 & 16). The last treatment plan authorized chiropractic care until September 6, 2006 (Ex. 10-16).

Initially, the insurer accepted claimant's cervical strain, thoracic strain, and left shoulder strain as a disabling industrial injuries (Ex. 9). Subsequently, that Notice of Acceptance was modified to include claimant's left shoulder rotator cuff tear (Ex. 53).

On December 20, 2006, the insurer sought Director review, alleging that chiropractic care from Dr. Arnot was ineffective from April 6, 2006 through December 14, 2006 and the insurer should not be liable for those 86 chiropractic visits (Ex. 46). On March 23, 2007, an Administrative Order determined that the insurer was not liable for medical services provided by Dr. Arnot from September 8, 2006 through September 28, 2006, nor from October 23, 2006 through December 14, 2006 (Ex. 54). The Director's Order was based on a finding that the evidentiary record contained no treatment plans for chiropractic treatment after September 6, 2006 (Ex. 54-2).

Dr. Arnot requested reconsideration of that Administrative Order and, on April 11, 2007, the Order was abated for additional information (Ex. 57). Dr. Arnot subsequently submitted into evidence treatment plans from Dr. Puziss dated September 7, 2006, October 2, 2006, November 7, 2006, December 8, 2006, January 9, 2007, February 6, 2007, and March 26, 2007 (Ex. 58). None of those treatment plans, however, was prepared prior to the commencement of treatment from September 8, 2006 through September 28, 2006 or from October 23, 2006 through December 14, 2006 and sent to the insurer within seven days of beginning treatment. *Id.*

On April 27, 2007, an Administrative Order on Reconsideration affirmed the earlier decision that the insurer was not liable for chiropractic services provided from September 8, 2006 through September 28, 2006 and from October 23, 2006 through December 14, 2006 (Ex. 60).

FINDINGS OF ULTIMATE FACT

Dr. Puziss did not prepare any treatment plans prior to the commencement of treatment from September 8, 2006 through September 28, 2006 or from October 23, 2006 through December 14, 2006 which were sent to the insurer within seven days of beginning treatment.

CONCLUSIONS OF LAW AND OPINIONS

The scope of review of the Director's Administrative Order is limited by OAR 436-001-0025(2) which provides that "the administrative law judge may modify the director's order only if it is not supported by substantial evidence in the record or if reflects an error of law. New medical evidence of issues may not be admitted or considered."

Both parties agree that Dr. Puziss was claimant's attending physician. Pursuant to OAR 436-010-0220(2), all treatment and medical services must be authorized by the attending physician to be reimbursable. OAR 436-010-0230(4)(a) further provides that ancillary services by a medical service provider other than attending physician will not be reimbursed unless prescribed by the attending 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 and the insurer within seven days of beginning treatment. The treatment plan shall include objectives, modalities, frequency of treatment, and duration. *Id.* The treatment plan may be recorded in any legible format including, but limited to, signed chart notes. *Id.*

Dr. Puziss complied with the requirements of OAR 436-010-0230(4)(a) when he sent to the insurer treatment plans dated April 22, 2006, May 7, 2006, and August 7, 2006 (Ex. 10, pgs. 9, 12 & 16). The treatment plans which Dr. Arnot provided to the Director after its March 23, 2000 Administrative Order was abated, however, did not comply with the requirements of that rule. Under *Aetna Casualty & Insuranty Co. v. Blanton*, 139 Or App 283 (1996), strict compliance with OAR 436-010-0230(4)(a) is required. The treatment plans from September 7, 2006 through December 2006 provided by Dr. Arnot to the Director were not prepared prior to the commencement of treatment from September 8, 2006 through September 28, 2006 or from October 23, 2006 through December 14, 2006 and were not sent to the insurer within seven days

of beginning treatment during those periods. Therefore, the Director correctly concluded that the insurer was not liable for chiropractic treatment provided by Dr. Arnot from September 8, 2006 through September 28, 2006 or from October 23, 2006 through December 14, 2006, and its Administrative Order on Reconsideration will be approved.

ORDER

IT IS HEREBY ORDERED that the April 27, 2007 Administrative Order on Reconsideration is approved in its entirety.