

In the ORS 656.245 Medical Services of

Juvenal Gonzalez, Claimant

Contested Case No: 11-032H

PROPOSED & FINAL ORDER

June 27, 2011

JUVENAL GONZALEZ, Petitioner

MARQUIS PHYSICAL THERAPY AND SPINE REHABILITATION, Respondent

Before Jenny Ogawa, Administrative Law Judge

Pursuant to notice, a hearing was scheduled for June 7, 2011, in Salem, Oregon, before Administrative Law Judge Ogawa. The claimant, Juvenal Gonzalez, was not present, but is represented by Lourdes Sanchez. The medical provider, Marquis Physical Therapy & Spine Rehabilitation, is represented by Aaron Clingerman. The WCD waived appearance. Exhibits A-E and 1 through 7 were received into evidence at hearing. The record closed at the conclusion of the hearing on June 7, 2011, following recorded closing argument.

ISSUE

1. Whether the February 2, 2011 Administrative Order of Dismissal was erroneously issued by the Medical Section Resolution Team (MRT).
2. Whether claimant is personally liable for medical services rendered, from February 12, 2008 through March 13, 2008, by Marquis Physical Therapy & Spine Rehabilitation (Marquis).

FINDINGS OF FACT

Claimant sustained a compensable low back injury on May 9, 1996. The employer closed the claim on January 14, 2000, finding claimant medically stationary on October 30, 1999. (Ex. C-1).

Marquis provided physical therapy to claimant from February 12 through March 13, 2008. The employer did not pay on the ground that the services were not related to the compensable injury. On March 16, 2009, claimant requested administrative review. On May 8, 2009, the MRT issued its Administrative Order (MS 09-0586) finding the employer not liable for the disputed medical services. (Ex. A). On reconsideration, the MRT again concluded that the employer was not liable for the disputed physical therapy services. The MRT also found that claimant may be liable for the medical services. (Ex. C-5). Claimant appealed. Determining that the MRT's statement, that claimant might be personally liable for the disputed medical services, was "unfortunate *dictum*," ALJ Spangler concluded there was not presently a justiciable controversy and dismissed the matter on January 6, 2010. (Ex. D). The Director affirmed. (Ex. E).

On September 15, 2010, Marquis requested claimant to pay the balance of \$1,149.32. (Ex. 1). On December 12, 2010, claimant requested administrative review, stating that the matter was "ripe for a decision clarifying that he is not liable for the services as the medical provider did

not follow proper MCO procedures concerning palliative care.” (Ex. 2). On February 4, 2011, the MRT issued an Administrative Order of Dismissal. The MRT concluded that “[s]ince the director has reviewed this same matter in the past, he will not open review for the same matter again. The director will take no further action on your request for review.” (Ex. 4). Claimant requested reconsideration, asserting that the director had not reviewed the matter in the past and requesting that the administrative review process continue. (Ex. 5). The MRT responded via a February 28, 2011 letter that claimant’s request for reconsideration was denied. (Ex. 6). Claimant filed a request for hearing.

CONCLUSION OF LAW

This matter was referred by the Workers’ Compensation Division (WCD) to address claimant’s March 4, 2011 Request for Hearing in which he appealed the February 4, 2011 Administrative Order of Dismissal issued by the Medical Section Resolution Team (MRT). The underlying controversy entails whether claimant is liable for medical services rendered, from February 12, 2008 through March 13, 2008, by Marquis Physical Therapy & Spine Rehabilitation (Marquis). That medical services dispute is subject to the evidentiary limitations under ORS 656.245 and ORS 656.327. OAR 436-001-0225(2). Here, however, the issue is whether the MRT should have reviewed the medical services issue rather than dismissing the matter. Because the appropriateness of the MRT’s dismissal is at issue, the standard of review is *de novo*. OAR 436-001-0225(1).

On reconsideration of the MRT’s May 8, 2009 order, claimant raised the issue of his liability for the medical services performed by Marquis. In doing so, claimant was essentially requesting the MRT to issue an advisory opinion. Rather than recognizing that it did not have the authority to do such,¹ the MRT found that the exception in OAR 436-009-0015(1)(c) “may apply and [claimant] may be liable for the services.” (Ex. C-5). ALJ Spangler reversed, correctly determining that the MRT’s statement was “unfortunate *dictum*.” The Director affirmed, stating that the MRT’s statement was “without foundation, legal authority, or legal effect.” The Director explained that Marquis was not a party to the proceeding nor was there evidence that Marquis was attempting to obtain payment from claimant. Although not expressly holding, the Director acknowledged that ALJ Spangler should not have dismissed the matter as it pertained to the MRT finding the employer not liable for the medical services. Accordingly, the Director otherwise ordered that MRT’s January 8, 2009 Administrative Order on Reconsideration remain in effect. (Ex. E).

Part of the problem in this case is the Director’s pronouncement in his 2010 order that MRT’s January 2009 Administrative Order on Reconsideration remained in effect. (Ex. E-2). That may have likely been in response to ALJ Spangler’s outright dismissal of the matter. Before MRT, the original issue and decision, was whether the employer was liable for the disputed medical services. The parties did not dispute that portion of the MRT’s decision, and claimant only asked ALJ Spangler to address the issue of his personal liability. ALJ Spangler should have only dismissed that portion of the MRT’s order regarding the issue of claimant’s personal

¹ An advisory opinion is unauthorized and not binding. *See Brown v. Oregon State Bar*, 293 Or 446, 449 (1982).

liability for the disputed medical services. The Director remedied that inadvertence by stating (somewhat incompletely) that the MRT's order remained in effect, because the MRT was correct in concluding that the employer was not liable for the medical services. Nevertheless, the Director concluded that MRT could not issue a binding decision on the question of claimant's possible liability for the medical services.

When Marquis attempted to obtain payment from claimant in September 2010, claimant then requested administrative review. At that point, the issue of claimant's liability for the medical services became a justiciable controversy. *See Brown v. Oregon State Bar*, 293 Or at 449.² Accordingly, the MRT erred in dismissing this matter rather than addressing the issue of claimant's personal liability for the disputed medical services.

Therefore, this matter is remanded to the MRT to address the following arguments raised by the parties regarding the merits:

1. Whether claimant is liable for the disputed medical services rendered, from February 12, 2008 through March 13, 2008, by Marquis Physical Therapy & Spine Rehabilitation;
2. Whether the exception in OAR 436-009-0015(1)(c) applies;
3. Whether claimant had been provided notice that he was medically stationary; and
4. Whether the principles of an implied contract apply to the issue of whether Marquis should be paid by claimant for the medical services performed.

ORDER

IT IS THEREFORE ORDERED that the MRT's February 4, 2011 Administrative Order of Dismissal is set aside and the matter is remanded to the MRT for administrative review.

² As the Court explained in *Brown*:

"Justiciability is a vague standard but entails several definite considerations. A controversy is justiciable, as opposed to abstract, where there is an actual and substantial controversy between parties having adverse legal interests. * * * The controversy must involve present facts as opposed to a dispute which is based on future events of a hypothetical issue. * * * A justiciable controversy results in specific relief through a binding decree as opposed to an advisory opinion which is binding on no one." *Id.* at 449.