

In the ORS 656.248 Medical Fee Dispute of  
**Mary Guillen, Interpreter**  
Contested Case No: 10-177H  
**CORRECTED PROPOSED & FINAL ORDER**  
March 21, 2011  
MARY GUILLEN, Petitioner  
SAIF CORPORATION, Respondent  
Before Douglas C. Crummé, Administrative Law Judge

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Pursuant to notice, the Board held a hearing in this matter on February 16, 2011, in Salem, Oregon. Mary Guillen, an interpreter, appeared personally. An attorney did not represent her. Jesse O'Bryant, Trial Counsel, represented the employer, SG Enterprises, and the insurer, SAIF Corporation. The Administrative Law Judge is Douglas Crummé. The Workers' Compensation Division's (WCD's) record consists of Exhibits 1 through 53, which are admitted here. The hearing record closed on the date of hearing.

### ISSUES

Ms. Guillen challenges the WCD's October 18, 2010, Administrative Order holding that insurer is not liable to Ms. Guillen for her bill for interpreter services on August 23, 2010.

### CONCLUSIONS OF LAW AND OPINION

The WCD's Administrative Order held that SAIF is not liable to Ms. Guillen for her bill for interpreter services for claimant Ramiro Huerta at a scheduled medical arbiter's examination pursuant to ORS 656.268(7)(a). The WCD found that Ms. Guillen went to the examination location to provide Spanish –English interpretation pursuant to agreement with the WCD. Mr. Huerta failed to attend the examination. As a consequence, Ms. Guillen did not provide any interpretation. Nevertheless, she billed SAIF for her time in going to the exam. SAIF declined to pay the bill pursuant to OAR 436-009-0125. That section provides,

“You may not bill any amount for interpreter services or mileage when the patient fails to attend the appointment, e.g., cancelled appointments or no-show appointments.”

Ms. Guillen requested Administrative Review with the WCD. In its October 18, 2010, Administrative Order, the WCD concluded that it was bound by OAR 436-009-0125 and held that SAIF was not liable for Ms. Guillen's bill.

Ms. Guillen does not dispute the WCD's finding that Mr. Huerta has been enrolled in a managed care organization. Therefore, the Board may only modify the WCD's Administrative Order “if it is not supported by substantial evidence in the record or if it reflects an error of law.” ORS 656.260(16); OAR 436-001-0225(2).

Ms. Guillen does not dispute WCD's pertinent findings of fact. She argues though that the WCD's decision reflects error of law on the grounds that OAR 436-009-0125 is unfair and unlawfully discriminates against interpreters as a class.

Ms. Guillen's argument that OAR 436-009-0125 is unfair is not persuasive. The rule simply makes the interpreter bear her costs where the claimant fails to attend the appointment. The interpreter has the opportunity though to incorporate those costs of doing business into her "usual fee" to the general public that the interpreter must charge in workers' compensation cases under OAR 436-009-0140. The interpreter has the opportunity to determine whether such Workers' Compensation business is profitable enough under the maximum payments that OAR 436-009-0155 allows that the interpreter wants to engage in such business.

Ms. Guillen's argument that OAR 436-009-0125 unlawfully discriminates against interpreters as a class is also not persuasive. Ms. Guillen did not cite a particular provision under which she contends OAR 436-009-0125 constitutes unlawful discrimination. Assuming she is raising an argument under Article I, section 20 of the Oregon Constitution, that section provides,

"No law shall be passed granting to any citizen or class of citizen privileges, or immunities, which, upon the same terms, shall not equally belong to all citizens."<sup>1</sup>

Ms. Guillen argues that OAR 436-009-0125 denies a privilege to interpreters that it grants to physicians because WCD's rules allow physicians to bill workers' compensation insurers when claimants fail to attend medical appointments. Assuming that the WCD's rules so provide and that interpreters and physicians are two separate classes under Article I, section 20,<sup>2</sup> OAR 436-009-0125 nevertheless does not deny a privilege to interpreters that is granted to physicians. The privilege at issue under OAR 436-009-0125 is the right to bill for interpreter services. The rule does not allow anyone, including interpreters and physicians, to bill for interpreter services where the claimant fails to attend the appointment.

Where an agency has the authority to adopt rules and does so, it must follow those rules and cannot ignore them. *SAIF Corp. v. Eller*, 189 Or App 113, 119 (2003); *Casualty and Surety Co. v. Sue A. Blanton, D.C.*, 139 Or App 283, 287 (1996). Other than her argument that OAR 436-009-0125 unlawfully discriminates against interpreters as a class, Ms. Guillen does not argue that WCD lacked authority to adopt that rule.

In light of these factors, the record does not prove that the Board should modify the WCD's Administrative Order. Rather, that Order should be affirmed.

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<sup>1</sup> A "class" under Article I, section 20, is a group that exists by virtue of antecedent personal or social characteristics. It is not a group that only the challenged law defines. See *State ex rel Borisoff v. Workers' Comp. Board*, 104 Or App 603 (1990); *Willard E. Sworden, Dcd.*, 56 Van Natta 2467 (2004).

<sup>2</sup> OAR 436-009-0110(3) provides that "interpreter" does not include a medical provider.

**ORDER**

**IT IS THEREFORE ORDERED** that the WCD's October 18, 2010, Administrative Order is affirmed.