

In the ORS 656.260 Managed Care Dispute of

William Meier, Claimant

Contested Case No: 10-061H

FINAL ORDER

August 1, 2011

WILLIAM MEIER, Petitioner

SEDGWICK CMS, Respondent

Before John Shilts, Workers' Compensation Division Administrator

Claimant William Meier (claimant) seeks director review of a Proposed and Final Order that found he was properly enrolled in a managed care organization (MCO). I affirm that order and the preceding Administrative Order containing the same finding.

FACTUAL SUMMARY

Claimant suffered a compensable injury in 2003 that insurer Sedgwick Claims Management (insurer) accepted. In August, 2006, insurer provided claimant with written notice that it was enrolling him in the Providence MCO. Claimant received treatment from three providers, Dr. Pham, Dr. Cherveney, and Ms. McBean. Insurer refused to pay for those services. Claimant requested review of insurer's refusal to pay. The Workers' Compensation Division Resolution Team issued an Administrative Order on Remand on March 8, 2010. That order found insurer did not have to pay for the services provided by Dr. Cherveney and Ms. McBean because claimant had not followed the MCO's procedures for obtaining treatment. Insurer was ordered to pay Dr. Pham.

Claimant requested a hearing. He argued the MCO procedures should not be controlling. He contended insurer did not properly enroll him in the MCO because insurer did not provide written notice of the enrollment to claimant's attorney or to all of claimant's medical providers. Administrative Law Judge Steve Rissberger reviewed the matter on the written record and issued a Proposed and Final Order on April 15, 2011. That order found claimant had been properly enrolled in the MCO under the controlling statute and affirmed the Administrative Order on Remand. Claimant requested this review.

CONCLUSIONS OF LAW

This is a managed care dispute under ORS 656.260. I may only modify the administrative order if substantial evidence does not support it or if it is based on an error of law. ORS 656.260(16); OAR 436-001-0225(2).

Claimant contends he should not be subject to the MCO's procedural requirements for obtaining treatment because insurer did not provide notice to his attorney of the MCO

enrollment, as required by administrative rule. OAR 436-010-0275(4) requires that an insurer provide notice to a worker's attorney and medical providers when it enrolls the worker in an MCO.¹

Claimant's argument fails because he was legally and properly enrolled consistent with statutory requirements. ORS 656.245(4)(a) provides that "[a] worker becomes subject to the [MCO] 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 occurs first." Although the administrative rule may impose additional notice requirements, the statute specifies that a worker is enrolled when an insurer meets the statute's notice requirements. Evidence was presented at the hearing that insurer did mail claimant notice of his MCO enrollment. Claimant did not provide evidence the notice was not mailed or that he did not receive the notice. Substantial evidence therefore supports the conclusion claimant had notice of the enrollment. The statutory requirements for MCO enrollment were met.

This issue was previously addressed in *In re Adrian Guzman*, 10 CCHR 459 (2005). That decision addressed the effect of an insurer's failure to provide notice to all of a worker's medical providers of MCO enrollment as required under OAR 436-010-0275(4). The decision concludes that enrollment is effective when the statutory notice requirements are met.

Claimant contends *Guzman* should not be controlling here because a different version of OAR 436-010-0275 was in effect when the events occurred that were under dispute in that decision. The relevant events in *Guzman* occurred in 2003. At that time, the rule required notice to medical providers, but not to workers' attorneys.² The language in the rule requiring notice to attorneys was added in 2005. WCD Admin. Order No. 05-052, eff. April 1, 2005. The change in the rule's language does not affect the underlying principle applied in *Guzman*. That decision found that ORS 656.245(4)(a) establishes the requirements for MCO enrollment and that, if those requirements are met, enrollment is accomplished. That principle applies here as well.

Claimant further contends insurer's action in giving him written notice of the MCO enrollment without providing notice to his attorney constitutes improper contact by insurer with a represented worker, in violation of ORS 656.331.³ Nullification of the MCO enrollment is not the specified remedy for a violation of this statute. The consequence for violating the attorney

¹ OAR 436-010-0275(4) provides in part:

"When the insurer is enrolling a worker in an MCO, the insurer must simultaneously provide written notice to the worker, the worker's representative, all medical service providers, and the MCO of enrollment."

² In 2003, OAR 436-010-0275(4) stated, in part:

"When the insurer is enrolling a worker in an MCO, the insurer shall simultaneously provide written notice to the worker, all medical service providers, and the MCO of enrollment." WCD Admin. Order No. 02-061, eff. November 1, 2002.

³ ORS 656.331 provides in part:

"(1) Notwithstanding any other provision of this chapter, if an injured worker is represented by an attorney and the attorney has given written notice of such representation:

* * * * *

(b) An insurer or self-insured employer shall not contact the worker without giving prior or simultaneous written notice to the worker's attorney if the contact affects the denial, reduction, or termination of the worker's benefits."

notice requirement is a civil penalty for intentional or repeated violations. OAR 436-060-0015(2); *In the Matter of the Compensation of Patty Hall*, 51 Van Natta 620 (1999); *In the Matter of the Compensation of Linda D. Santacruz*, 44 Van Natta 803 (1992).

IT IS HEREBY ORDERED the March 8, 2010 Administrative Order on Remand and the April 15, 2011 Proposed and Final Order are affirmed.