

In the ORS 656.260 Managed Care Dispute of

William Meier, Claimant

Contested Case No: 11-033H

FINAL ORDER

January 17, 2012

WILLIAM MEIER, Petitioner

SEDGWICK CMS, Respondent

Before John Shilts, Workers' Compensation Division Administrator

William Meier (claimant) challenges orders by the Workers' Compensation Division's Resolution Team (RT) and Administrative Law Judge (ALJ) Kathryn A. Poland finding claimant is enrolled in a managed care organization (MCO). Those orders found claimant's challenge to Sedgwick Claims Management Services' (insurer's) refusal to approve surgery is premature because claimant has not completed the MCO internal review process. I affirm both orders.

FACTUAL SUMMARY

I adopt the facts as found in the Administrative Order and restate them here in part for clarity. Claimant has an accepted compensable condition. On August 16, 2006 insurer sent claimant a written notice that it was enrolling him in an MCO. That notice was sent to claimant and one of his physicians but not to his attorney or his other treating physicians. Claimant's attorney received the notice on February 5, 2009.

On May 19, 2010, Dr. Brett submitted a request to perform a C4-7 anterior discectomy and fusion. When insurer did not respond to the request, claimant filed this dispute. On March 8, 2011 RT issued an Administrative Order on Remand, number DTMX 11-0205. That order found that claimant was enrolled in the MCO, and that the MCO had not completed its internal pre-certification and dispute resolution process. The order dismissed the dispute without prejudice. The matter went to hearing and ALJ Poland issued a Proposed and Final Order on October 3, 2011. ALJ Poland affirmed RT's order.

Claimant and insurer also previously litigated the MCO enrollment issue in another dispute. That dispute originated from insurer's denial of a request for payment for several providers. That dispute resulted in an Administrative Order on Remand, number MS 10-0213, issued on March 8, 2010, finding claimant was enrolled in the MCO. Claimant challenged that order, which resulted in a Proposed and Final Order in Workers' Compensation Board case number 10-00061H, issued by Administrative Law Judge Rissberger on April 15, 2011, and a Final Order of the director issued on August 1, 2011. Those orders found claimant was enrolled in the MCO. Claimant has appealed the final order in that case to the Court of Appeals.

CONCLUSIONS OF LAW

In a managed care dispute under ORS 656.260 I may only modify the administrative order if it is not supported by substantial evidence, or 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 of the MCO enrollment to his attorney or all of his providers, as required by administrative rule. OAR 436-010-0275(4) states that the insurer must 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. Claimant does not deny he was notified of the 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.

The wording of OAR 436-010-0275 also supports this interpretation. Section (8) of that rule establishes the requirements for when enrollment is complete. That section states the enrollment notice is complete ". . . when the notice includes all required information . . ." The rule does not establish notice to providers or attorneys as a condition of completing enrollment.

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 of MCO enrollment to all of a worker's medical providers, 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 prior version of OAR 436-010-0275 was applied 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

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.

requirements for MCO enrollment and that enrollment is accomplished if those requirements are met. 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 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, 2011 Administrative Order on Remand and the October 3, 2011 Proposed and Final Order are affirmed.

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.”