
In the Matter of an ORS 656.260 Managed Care Dispute of

Gilmore, Diana L., Claimant

Contested Case No: H01-102

PROPOSED & FINAL ORDER

March 1, 2002

DIANA L. GILMORE, Petitioner

THE MAY DEPARTMENT STORES, Respondent

Before John L. Shilts, Workers' Compensation Division Administrator

On June 7, 2001, claimant Diana L Gilmore, through her attorney, requested administrative review by the Medical Review Unit (MRU) of the Workers' Compensation Division (WCD) to resolve a medical service dispute. The dispute involved a decision by the self-insured employer that certain medical care was not reimbursable. On August 16, 2001, MRU issued administrative order MTX 01-892 finding the disputed services not reimbursable. Claimant appealed the decision to contested case. On December 19, 2001 Hearing Officer Paul Vincent conducted a telephone hearing in this matter. Petitioner, Diana L Gilmore (claimant), appeared through her attorney, Steven Schoenfeld. Respondent, self-insured employer The May Department Stores (insurer or May), appeared and was represented by its attorney, Kenna West. WCD waived appearance.

The record of this proceeding, consisting of a tape recording of the hearing, all evidence received, and all hearing papers filed, has been considered. The findings of fact and conclusions of law are based upon the entire record.

ISSUE

The issue presented is whether substantial evidence supports the agency's administrative order, MTX 01-892, issued on August 16, 2001.

EVIDENTIARY RULING

WCD Exhibits 1-23 were received without objection and admitted into evidence.

FINDINGS OF FACT

The parties did not challenge the findings of fact contained in MRU's Administrative Order. Having review the administrative record, I adopt the following findings of fact set forth in the Administrative Order:

Diana Gilmore sustained a compensable disabling knee injury on April 13, 2000.

On May 11, 2000, self-insured employer May notified claimant via letter of her enrollment in Vantage Onsite MCO (Vantage).

Claimant sought treatment from Paul Puziss, MD (Orthopedic Surgery), on May 24,

2000. Claimant received follow-up treatment from Dr. Puziss on June 9, 2000 and July 12, 2000. Dr. Puziss billed Vantage for the services.

Dr. Puziss was not a Vantage provider. Dr. Puziss has not agreed to follow Vantage's rules.

On August 10, 2000, May disapproved payment for Dr. Puziss services, indicating that Dr. Puziss was not an approved Vantage provider.

On July 10, 2000, May accepted the claim for a right knee contusion with patellofemoral tract inflammation.

I make the following supplementary findings of fact:

Dr. Puziss was aware of claimant's enrollment in an MCO at the time of claimant's first visit on May 24, 2000. (Ex. 2)

On March 20, 2001, claimant's attorney requested reimbursement for the bills outstanding from Dr. Puziss' office, stating that he interpreted Oregon "as allowing the claimant to treat outside the MCO, until her claim is accepted." (Ex. 7).

On April 25, 2001, May notified claimant's attorney that May did not agree with his interpretation of the Workers' Compensation Law and had denied the billings because claimant had sought treatment from a non-MCO physician after enrollment in an MCO on May 11, 2000. (Ex. 8).

CONCLUSIONS OF LAW

Absent an of error law, my standard of review is for substantial evidence. ORS 656.260(16). Substantial evidence exists to support a finding "when the record, viewed as a whole, would permit a reasonable person to make that finding." ORS 183.482. To determine whether substantial evidence exists, a Hearings Officer is required to:

"look at the whole record with respect to the issue being decided, rather than one piece of evidence in isolation. If an agency's finding is reasonable, keeping in mind the evidence against the finding as well as the evidence supporting it, there is substantial evidence. * * * For instance, and in the context which is likely frequently to occur in workers' compensation cases, if there are doctors on both sides of a medical issue, whichever way the [director] finds the facts will probably have substantial evidentiary support. [The Hearings Officer] would not need to choose sides. The difference between the 'any evidence' rule and the substantial evidence test * * * will be decisive only when the credible evidence apparently weighs overwhelmingly in favor of the finding and the [director] finds the other without giving a persuasive explanation." *Armstrong v. Asten-Hill Co.*, 90 Or App 200, 206 (1988).

In assessing whether findings are supported by substantial evidence, my task is not to substitute my judgment for that of MRU, but rather to decide whether the findings are reasonable in the light of countervailing as well as supporting evidence. *Reguero v. Teacher Standards and Practices*, 312 Or 402, 417-18 (1991).

Claimant argues that MRU erred in finding that a claimant is required to treat with an MCO prior to claim acceptance pursuant to ORS 656.245(4)(b). However, the court of appeals has determined that ORS 656.245(4)(b) does allow an insurer to immediately enroll an injured worker in an MCO, even prior to claim acceptance. In *SAIF Corporation v. Reid*, 160 Or App 383 (1999), Judge Wollheim, speaking for the majority, stated:

“When an insurer contracts with a certified MCO, the insurer can require an injured worker to receive all compensable medical treatment from the MCO. ORS 656.245(4)(a). For "initial or aggravation claims" an insurer can require an injured worker to immediately receive all medical treatment from the MCO. ORS 656.245(4)(b)(A). However, if the insurer gives notice to the worker that all treatment must be received from the MCO, then the insurer must guarantee that all reasonable and necessary medical treatment will be paid even if the claim is subsequently denied. If the claim is denied, the worker may receive medical treatment outside the MCO until the denial is reversed.” *Reid* at 385.

Claimant’s notice was mailed by the insurer on May 11, 2000. The physician whose bills are in dispute stated clearly in his first treatment report that he was aware of claimant’s enrollment in an MCO at the time the treatment was rendered. Under these circumstances, it is clear that claimant’s treatment with Dr. Puziss from May 24, 2000 onward was not reimbursable pursuant to ORS 656.245(4)(b).

ORDER

IT IS HEREBY ORDERED that MRU’s Administrative Order, MTX 01-892, is affirmed.

DATED this 1st day of March, 2002.

By: _____
Paul Vincent, Hearing Officer
Hearing Officer Panel