

In the ORS 656.245 Medical Services Dispute of

Sanchez, Maria , Claimant

Contested Case No: HH02-031

PROPOSED & FINAL ORDER

October 3, 2002

MARIA SANCHEZ , Petitioner

PACIFIC EMPLOYERS INSURANCE, Respondent

Before John L. Shilts, Workers' Compensation Division Administrator

HISTORY OF THE CASE

Claimant appeals an administrative order issued on February 7, 2002 by the Medical Review Unit (MRU) of the Workers' Compensation Division (WCD), Department of Consumer and Business Services (director or department). On August 21, 2002, Hearing Officer Paul Vincent conducted a hearing in this matter. Petitioner Maria Sanchez (claimant), *pro se*, failed to appear. Respondent Pacific Employers Insurance (insurer) was represented by attorney Brad Scheminske. No witnesses testified and the record closed on the date of hearing.

The record of this proceeding, consisting of all evidence received, and all hearing papers filed, has been considered. The findings of fact set out below are based upon the entire record.

ISSUE

Pursuant to the Notice of Hearing, the issue is whether Pacific Employers Insurance, through ACE-USA (ACE), is liable for disallowed medical services provided to Maria G Sanchez by Dr. Hanes, from May 18, 2001 through May 31, 2001 under ORS chapter 656 and OAR chapter 436.

EVIDENTIARY RULINGS

WCD Exhibits 1 through 32 were received into the record without objection.

FINDINGS OF FACT

1. Claimant was compensably injured on October 26, 2000. The claim was accepted for the conditions of left shoulder strain on December 20, 2000. (Ex. 4). A Modified Notice of Acceptance on February 21, 2001, accepted "a head contusion to the periauricular area with resulting post-traumatic headache, cervical strain and left shoulder strain. (Ex. 6).
2. On May 7, 2001, claimant was examined by attending physician Bruce Williams, MD. Claimant signed a change of attending physician form listing Dr. Williams as her attending physician on that date.
3. On May 18, 2001, claimant was examined by Coby L. Hanes, DC. Dr. Hanes began

providing chiropractic treatment to claimant for the accepted condition. Dr. Hanes provided chiropractic manipulation, hot packs, ice, massage, and interferential electrical stimulation through May 30, 2001.

4. On May 23, 2001, Dr. Williams again saw claimant. His chart notes authorized a referral to Dr. Hanes but did not address objectives, modalities, frequency or duration of chiropractic care.
5. On June 1, 2001, Dr. Williams prescribed “chiropractic therapy” for claimant’s “neck and shoulder” and authorized “12 visits (started 5/18/01).” (Ex. 14). On June 20, 2001, Dr. Williams authorized “continue[d] chiropractic therapy for an additional 4 weeks.” (Ex. 15).
6. Dr. Hanes billed the insurer for chiropractic treatment provided on May 18, 2001; May 21, 2001; May 23, 2001; May 24, 2001; May 29, 2001; May 30, 2001; June 1, 2001; June 5, 2001; June 6, 2001; June 11, 2001; June 14, 2001; June 19, 2001; June 25, 2001; June 27, 2001; July 6, 2001; July 16, 2001. (Ex. 5).
7. On August 7, 2001, insurer’s service company notified Dr. Hanes that services from 5-10-01 through 5-30-01 were disallowed on the grounds that Dr. Williams had not referred the worker to Dr. Hanes prior to 6-1-01. Services provided after that date were reimbursed. (Ex. 22).
8. Dr. Hanes requested a review by the Workers’ Compensation Division, Medical Review Unit (MRU) of the disputed billings. (Exs. 24-25).
9. On February 7, 2002, MRU issued an administrative order finding that insurer is not liable for medical services provided by Dr. Hanes from May 18 through May 30, 2001.

CONCLUSIONS OF LAW AND REASONING

Jurisdiction lies with the director. ORS 656.245(6). The burden of proving a fact or position falls upon the proponent. ORS 183.450(2). As petitioner, claimant bears the burden of proving by a preponderance of evidence that the administrative order is incorrect. *Cook v. Employment Div.*, 47 Or 437 (1982) (In the absence of legislation adopting a different standard, the standard of proof in an administrative hearing is preponderance of evidence).

Where respondent failed to appear at hearing after being duly notified of the time of the hearing, and her failure to appear is not due to circumstances beyond her reasonable control, I may issue default order upon a showing of a *prima facie* case made upon the record. OAR 137-003-0670. Here, claimant was notified by mail and by telephone of the hearing date. Claimant failed to appear and offered no explanation of any circumstances that would constitute circumstances beyond her reasonable control. Therefore, I find that a default order is appropriate.

MRU determined that the disputed treatment was not compensable because the treatment

provided by Dr. Hanes was not properly authorized by Dr. Williams. The relevant portion of the order states:

OAR 436-010-0230(3)(c) requires all chiropractic care provided by someone other than the attending physician to be provided under a treatment plan that contains objectives, modalities and frequency and duration of care. It must be completed by the provider prior to the start of treatment, and must be signed by the attending physician within 30 days of the start of treatment. An initial copy of the plan must be provided to the attending physician and insurer within seven days of the start of care. The plan can be contained in chart notes.

Dr. Hanes' chart note of May 18, 2001, lists objectives and modalities, but does not list frequency and duration of care. Further, Dr. Williams did not sign Dr. Hanes' treatment plan. Dr. Williams' order of June 1, 2001 also does not provide all four required elements. It listed duration of care, but not objectives, modalities or frequency. Given the lack of a required treatment plan, the director concludes unpaid chiropractic care provided by Dr. Hanes from May 18 through May 30, 2001 is not reimbursable. Ace is not liable. (Ex. 30 at 2-3).

The director's conclusions are supported by the record submitted. Therefore, I find that respondent made a *prima facie* case on the record establishing that the disputed treatment is not compensable pursuant to OAR 436-010-0230(3)(c). Accordingly, insurer is not liable for the disputed treatment.

ORDER

IT IS HEREBY ORDERED that:

The Administrative Order dated February 7, 2002 is affirmed.

DATED this _____ day of October 2002.

Paul Vincent
Hearing Officer
Hearing Officer Panel