
In the Matter of the ORS 656.245 Medical Services Dispute of

Jamey T. Kadaja, Claimant

Contested Case No: H04-072

PROPOSED & FINAL ORDER

August 24, 2004

JAMEY T. KADAJA, Petitioner

SAIF CORPORATION, Respondent

Before Ella D. Johnson, Administrative Law Judge, Office of Administrative Hearings

HISTORY OF THE CASE

Claimant appeals the Administrative Order issued on April 8, 2004 by the Medical Review Unit (MRU) of the Workers' Compensation Division (WCD), Department of Consumer and Business Services (department or director). On June 16, 2004, the department referred the matter to the Office of Administrative Hearings (OAH). On July 21, 2004, Administrative Law Judge Ella D. Johnson conducted a contested case hearing by telephone from Salem, Oregon. Attorney at Law Jean M. Fisher represented petitioner Jamey T. Kadaja (claimant). Trial Counsel David Runner represented respondent SAIF Corporation (insurer). Claimant testified on his own behalf and the record closed on the date of hearing.

ISSUE

Whether insurer is liable for the chiropractic services provided by Geary J. Michaels, DC, on November 24, 2003 and for the physical therapy provided by Noel Vercoutare on November 25, 2003.

EVIDENTIARY RULINGS

WCD Exhibits 1-29 and insurer's Supplemental Exhibits A through G were admitted into the record without objection. Claimant's Supplemental Exhibit 27A was admitted over insurer's objection.

FINDINGS OF FACT

I adopt and affirm MRU's Findings of Fact as supplemented below:

(1) On October 24, 2003, claimant was compensably injured his back. (Ex. 4.) On October 29, 2003, claimant designated John O. Renquist DC as his attending physician. Dr. Renquist provided massage and adjustments. Dr. Renquist noted a waxing and waning of claimant's pain during the week he treated him. (Exs. A-G, 9.) Dr. Renquist was an authorized Oregon Health Systems (OHS) MCO panel provider. (Ex. 6.)

(2) On November 20, 2003, SAIF accepted the claimant's non-disabling claim for lumbosacral strain and enrolled him in the OHS MCO. SAIF told claimant that any medical care must be provided by an MCO designated attending physician but may be provided by his pre-injury physician if that physician agreed to accept the MCO's care requirements. (Exs. 5, 6.) SAIF sent a copy of the MCO enrollment letter to Dr. Renquist. (Ex. 7.)

(3) Claimant was unable to obtain services immediately from an OHS MCO panel provider and would not be scheduled for an appointment for one to two weeks out. (Ex. 27A; claimant's testimony.)

(4) On November 20, 2003, claimant designated Dr. Michels as his attending physician. (Ex. 2.) Dr. Michels authorized time-off and prescribed modified bed rest. (Exs. 4, 9.) Dr. Michels subsequently provided chiropractic manipulation to maintain continuity of care and continue his progress. (Ex. 27A.) Dr. Michels billed SAIF for the services provided on November 20, 21 and 24, 2003. (Ex. 8.) SAIF subsequently paid the billings for November 20 and 21, 2003 because the notice was not mailed to claimant until November 20, 2003. (Ex. 23.)

(5) On November 25, 2003, Dr. Michels prescribed physical therapy. (Ex. 10.) That same date, Vercoutare evaluated claimant for physical therapy (PT). (Ex. 9.) She billed SAIF for the services on December 1, 2003. (Ex. 12.)

(6) On November 26, 2003, SAIF warned claimant that he was required to treat within the MCO and notified him that the medical services provided by Dr. Michels would not be reimbursed because he was previously notified that he was enrolled in an MCO and copied Dr. Michels on the notice. (Ex. 11.) After that, Dr. Michels did not treat claimant. (Ex. 19.)

(7) Neither Vercoutare nor Dr. Michels are panel members of OHS. On December 8, 2003, SAIF notified claimant that his claim had been reclassified as disabling. (Ex. 13.) On January 9, 2004, SAIF notified Vercoutare that her billings would not be paid. (Ex. 14.) On January 15, 2004, SAIF notified DR. Michels that his billings would not be paid. (Exs. 15, 16, 17, 18.)

(8) On March 2, 2004, claimant requested review of the dispute by the director. (Ex. 19.) On April 8, 2004, MRU issued an Administrative Order, which found that SAIF was not liable for chiropractic services rendered by Dr. Michels on November 24, 2003 and not liable for PT services provided by Vercoutare on November 25, 2003. (Ex. 26.)

CONCLUSION OF LAW

Insurer is not liable for the chiropractic services provided by Geary J. Michaels, DC, on November 24, 2003 and for the physical therapy provided by Noel Vercoutare on November 25, 2003.

OPINION

This dispute arises under ORS 656.260 and 656.245(4), and therefore, jurisdiction lies

with the director. ORS 656.260(6). Claimant was enrolled in a managed care organization (MCO), and therefore, I review the administrative order for substantial evidence or error of law. ORS 656.260(16) and OAR 436-001-0225(4). 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 App 437 (1980) (In the absence of legislation adopting a different standard, the standard of proof in an administrative hearing is preponderance of evidence). Proof by a preponderance of evidence means that the factfinder is persuaded that the facts asserted are more likely true than false. *Riley Hill General Contractors v. Tandy Corp.*, 303 Or 390 (1989).

In its Administrative Order, MRU determined that insurer was not liable for the disputed palliative care sought after November 23, 2003 because the providers providing the care were not members of the MCO's panel. Claimant contends that the disputed palliative care is reimbursable because it would have been medically detrimental for him to wait for one to two weeks when an MCO panel physician was available to see him. In contrast, insurer contends that the statute required claimant to first present the issue to the MCO to make a determination that such a delay was medically detrimental. I find insurer's argument to be persuasive.

Pursuant to ORS 656.245(1)(a), an insurer is obligated to provide medical services that are materially related to a compensable condition for so long as the nature of the injury or the process of recovery requires. This obligation continues over the worker's lifetime. ORS 656.245(1)(b). However, pursuant to ORS 656.260(4), workers who are subject to an MCO contract must receive medical care from the MCO. That statute states in relevant part:

(a) Those workers who are subject to the contract shall receive medical services in the manner prescribed in the contract. Workers subject to the contract include those who are receiving medical treatment for an accepted compensable injury or occupational disease, regardless of the date of injury or medically stationary status, on or after the effective date of the contract. **If the managed care organization determines that the change in provider would be medically detrimental to the worker, the worker shall not become subject to the contract until the worker is found to be medically stationary, the worker changes physicians or nurse practitioners, or the managed care organization determines that the change in provider is no longer medically detrimental, whichever event first occurs.** * * * However, a worker may receive immediate emergency medical treatment that is compensable from a medical service provider who is not a member of the managed care organization.

(Emphasis added.)

In interpreting a statute, the court's, and thus my task, is to determine the legislative intent. ORS 174.020¹. In order to discern the legislative intent, the first level of analysis is to

¹ ORS 174.020 provides in pertinent part:

(1)(a) In the construction of a statute, a court shall pursue the intention of the legislature if possible.

examine both the text and context of the statute. *PGE v. Bureau of Labor and Industries*, 317 Or 606, 610 (1993). The text of the statute is the best evidence of the legislature's intent. *Hadley v. Cody Hindman Logging*, 144 Or App 157 (1996). In applying the foregoing method of analysis to ORS 656.245(1)(c)(J) and OAR 436-010-0290(1)(e), I find that I need go no further than to examine the plain meaning. The statute specifies that, once a worker is enrolled in an MCO, all of the workers' medical care is to be provided through the MCO. Further, the statute specifies that it is the MCO that makes the determination concerning whether it would be "medically detrimental" for the worker to change physicians.

Here, claimant did not present the problem he was having obtaining treatment to the MCO and the MCO never made a determination that it would be medically detrimental for him to change providers at that time. Consequently, claimant can not now claim that the delay in obtaining treatment was medically detrimental because, frankly, that was not his decision. The statute does provide that a worker may receive immediate emergency care that is compensable from a medical service provider who is not a panel member. However, claimant does not make that argument nor did he present any evidence that it was emergency care that he sought. Accordingly, finding no basis for modifying the administrative order, I affirm.

ATTORNEY FEES

Claimant has not prevailed in a contested case hearing, and therefore, is entitled to no attorney fee. ORS 656.385(1).

ORDER

IT IS HEREBY ORDERED that:

The Administrative Order dated April 8, 2004 is affirmed.