

In the Matter of the ORS 656.260 Managed Care Organization Dispute of

Linda Thompson-Springer, Claimant

Contested Case No: 03-084

PROPOSED AND FINAL ORDER

September 10, 2004

LINDA THOMPSON-SPRINGER, Petitioner

SAIF CORPORATION, Respondent

Before Catherine P. Coburn, Administrative Law Judge, Office of Administrative Hearings

HISTORY OF THE CASE

Claimant appeals an Administrative Order on Reconsideration issued on May 28, 2003 by the Medical Review Unit (MRU) of the Workers' Compensation Division (WCD) Department of Consumer and Business Services (director or the department). On July 2, 2003, the department referred the matter to the Office of Administrative Hearings (OAH). The matter was initially assigned to Administrative Law Judge (ALJ) Paul Vincent and later transferred to ALJ Catherine P. Coburn. Petitioner Linda Thompson-Springer¹ (claimant) is represented by attorney James L. Edmundson. Respondent SAIF Corporation (insurer) is represented by attorney David Runner. Respondent Oregon Health Systems Managed Care Organization (MCO) is represented by attorney Arden J. Olsen. The department is represented by Assistant Attorney General Carol Parks.²

On February 16, 2004, claimant filed an Amended Subpoena Duces Tecum requesting the testimony of Ramona St. George, President of Oregon Health Systems, Incorporated as well as discovery of the Oregon Health Systems Managed Care Organization (OHS or MCO) contract and other documents. On March 1, 2004, the MCO filed a Motion to Quash. On March 30, 2004, I held a pre-hearing telephone conference and on April 26, 2004, I issued an Interim Order Allowing the Motion to Quash. Claimant preserves the discovery issue for appeal.

On August 4, 2004, I conducted a contested case hearing. Claimant testified on her own behalf and the record closed on the date of hearing.

ISSUE

Whether MRU incorrectly determined that insurer is not liable for an August 22, 2000 consultation with Walter Carlini, MD.

¹ Claimant has changed her name to Linda Springer.

² WCD waived appearance at hearing.

EVIDENTIARY RULINGS

WCD Exhibits 1 through 66 were admitted into the record without objection. OHS's Supplementary Exhibit 67³, a redacted copy of the MCO contract, was admitted into the record over claimant's objections which are preserved for appeal.

FINDINGS OF FACT

I adopt and incorporate the findings of fact contained in the May 28, 2003 Administrative Order with the following supplementation:

(1) On June 15, 1998, claimant suffered a back injury while working as a casino custodian. (Ex. 1.) On July 7, 1998, insurer accepted a right thoracic strain and enrolled claimant in OHS MCO. (Exs. 2, 3, 4 and 18.) The MCO enrollment notice stated:

You may seek care from one of the following:

A physician who is a member of the MCO.

Your designated primary care physician if he or she agrees to certain requirements: A medical doctor or doctor of osteopathy who is designated on your health insurance and is a family, general or internal medicine physician who has treated you prior to your injury.

A provider who is not a member of Oregon Health Systems if he or she agrees to certain requirements: A physician who is not a member of the MCO may be appropriate if you reside outside the county service areas for Oregon Health Systems, or if provider access is limited in your area. Please call your claims adjuster if you think you meet one of these exceptions.

(Emphasis in the original.) (Ex.4-1.)

(2) On May 27, 1999, attending physician Allen Goodwin, MD declared claimant's condition medically stationary and insurer closed the claim on June 15, 1999. (Exs. 15, 16 and 17.)

(3) On August 22, 2000, claimant held a consultation appointment with Dr. Carlini on referral from Danijela Marjanovic, MD, for evaluation of headaches and back pain. (Exs. 20 and

³ Exhibits 9 and 67 are identical except for Ex. 67-1.

21.) Dr. Marjanovic was not claimant's attending physician for the accepted back condition and was not an MCO panel member. (Exs. 35, 37 and 40; testimony of claimant.)

(4) Dr. Carlini was an MCO panel member and was not claimant's attending physician. (Ex. 40; testimony of claimant.)

(5) Dr. Carlini submitted a bill for \$280 to insurer. (Ex. 22.) On September 20, 2000, insurer requested information from Dr. Carlini and on September 26, 2000, he replied, requesting payment. (Exs. 24 and 25.) On October 6, 2000, and on December 20, 2000, insurer notified Dr. Carlini's office that it declined to pay the bill. (Ex. 26.) Beginning in August 2001, claimant made three payments totaling \$50. (Ex. 28.) On February 19, 2002, Dr. Carlini's office notified claimant's attorney that the remaining \$230 was unpaid and on March 1, 2002, claimant requested administrative review. (Ex. 24.) Claimant has since paid the bill in full. (Testimony of claimant.)

CONCLUSION OF LAW

MRU correctly determined that insurer is not liable for an August 22, 2000 consultation with Walter Carlini, MD.

OPINION

The director exercises jurisdiction over MCO disputes. ORS 656.704(3)(a) and ORS 656.260(6). I review for substantial evidence and error of law. ORS 656.260(16). The burden of proving a fact or position rests with the proponent. ORS 183.450(2); *Harris v. SAIF*, 292 Or 683 (1982). 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 contrary legislation, the standard of proof in administrative hearings is preponderance of evidence). 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).

Pursuant to ORS 656.245(1)(a), an insurer is obligated to provide medical services that are materially related to the compensable injury for so long as the process of recovery requires. This obligation continues for the injured worker's lifetime. ORS 656.246(1)(b). The legislature has authorized insurers to provide medical services to injured workers through MCOs. ORS 656.245(4)(a) provides in part:

(4) "Notwithstanding subsection (2)(a) of this section, when a self-insured employer or the insurer of an employer contracts with a managed care organization certified pursuant to ORS 656.260 for medical services required by this chapter to be provided to injured workers:

(a) Those workers who are subject to the contract shall receive medical services in the manner prescribed in the contract.

MRU determined that the disputed medical consultation is not reimbursable. Claimant first contends that the administrative order is not supported by substantial evidence because insurer denied payment based on a violation of the MCO contract, and the record does not contain a full copy of the contract. Claimant next contends that the disputed medical consultation is reimbursable because Dr. Carlini was an MCO panel member and claimant planned to designate him as her attending physician. Finally, claimant contends that she was deprived of her right under ORS 656.245(2)(a) to choose an attending physician because she lacks access to the unredacted MCO contract. Claimant's objections to my ruling on the Motion to Quash are preserved for appeal.

Insurer, joined by the MCO, disagree with claimant's contentions, and further contend that Dr. Carlini's appeal of the payment denial was untimely. Insurer and MCO next contend that the disputed medical consultation is not reimbursable because it was not causally related to the accepted condition. Finally, insurer and MCO contend that the disputed consultation is not reimbursable because it was not authorized by attending physician and it was not authorized by an MCO panel member.

Timeliness

Insurer and the MCO contend that claimant is barred from seeking reimbursement because her appeal of the denial was untimely.

OAR 436-009-0008(2)(a) provides in pertinent part:

For all MCO enrolled claims where a party disagrees with an action or decision of the MCO, the aggrieved party shall first apply to the MCO for dispute resolution within 30 days pursuant to OAR 436-015-0110. When the aggrieved party is a represented worker, and the worker's attorney has given notice of representation, the 30 day time frame begins when the attorney receives written notice or has actual knowledge of the dispute.

MRU determined that claimant is not barred from challenging the denial of payment. Claimant was represented by counsel, who became aware of the nonpayment on February 19, 2002 and requested administrative review on March 1, 2002. Inasmuch as claimant's attorney requested review within 30 days of his notice, I find that it was timely. However, this determination is not dispositive.

Causal Relationship

Insurer and the MCO contend that the disputed medical service is not reimbursable because it is not causally related to the accepted condition. Claimant consulted with Dr. Carlini concerning headaches and back pain while the accepted condition was right thoracic strain.

Pursuant to ORS 656.245(1)(c)(H), medical services after the medically stationary date

are not reimbursable with certain exceptions including diagnostic services. Medical services that are necessary to diagnose the extent of the compensable condition are reimbursable. *See Counts v. International Paper Company*, 146 Or App 768 (1997). Here, claimant's accepted thoracic strain became medically stationary in May 1999. Subsequently, Dr. Marjonovic referred claimant to Dr. Carlini for evaluation of headaches and back pain. Based on the record, I find that the disputed bill qualifies for reimbursability as a diagnostic medical service. However, this determination does not resolve the dispute.

Authorization

Pursuant to ORS 656.245(2)(a), an injured worker may choose an attending physician. OAR 436-010-0220(2) provides in pertinent part:

Except for emergency services, or otherwise provided for by statute or these rules, all treatments and medical services must be authorized by the injured worker's attending physician or authorized nurse practitioner to be reimbursable.

Claimant contends that she was deprived of the right to choose an attending physician because, without access to the full text of the MCO contract, she does not know how to choose an attending physician whose treatment will be reimbursable through the MCO. I find this argument unpersuasive. The MCO enrollment provided notice for choosing an attending physician and obtaining reimbursable medical services. Contrary to the MCO instructions, claimant sought treatment from Dr. Marjonovic who was not the attending physician for the workers' compensation claim and was not an MCO panel member. Dr. Marjanovic referred claimant for consultation to Dr. Carlini who is an MCO panel member. Claimant consulted with Dr. Carlini, resulting in the disputed bill.

Based on the record, I conclude that the bill for Dr. Carlini's consultation is not reimbursable for two reasons. First, it was not authorized by claimant's attending physician as required by OAR 436-010-0220(2). Second, it was not authorized by an MCO panel member in violation of the MCO contract. Accordingly, I affirm the Administrative Order on Reconsideration.

ORDER

IT IS HEREBY ORDERED that:

The Administrative Order dated May 28, 2003 is affirmed.