

In the Managed Care Dispute of  
**Deborah L. Gotthardt, Claimant**

Contested Case No: 06-026H

**FINAL ORDER**

November 22, 2006

DEBORAH L. GOTTHARDT, Petitioner  
TRI-MET CORPORATION, Respondent

Before John L. Shilts, Workers' Compensation Division Administrator

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On June 30, 2006, Administrative Law Judge (ALJ) Aliza Bethlahmy, of the Hearings Division of the Workers' Compensation Board, issued a Proposed and Final Order (Order) in this matter. Petitioner (claimant) through her attorney, George J. Wall, submitted exceptions to the Order on July 11, 2006. Respondent (employer), through its attorney, Thaddeus J. Hettle, filed a response to claimant's exceptions on July 25, 2006. Claimant filed a reply on August 4, 2006. This matter comes before the director for a final order. The issue is whether employer is liable for the cost of the medical bills from Gina Bullock, a podiatrist. The scope of this review is limited to substantial evidence and errors of law. I affirm the June 30, 2006 Order.

I adopt the ALJ's Findings of Fact.

Claimant alleges, through her exceptions, that the ALJ's Proposed and Final Order contains an error of law. Claimant argues that she was not required to comply with the workers' compensation laws and administrative rules while her claim was in denied status. Employer's response contains two arguments in opposition to claimant's arguments: 1) she is barred from raising the legal issue because she did not raise the issue before the ALJ; and 2) the position is contrary to current case law. In her reply, claimant reasserted her argument made at hearing that Kimberly Kisor, M.D. was the attending physician and not Dr. Bullock. This discussion will be limited to the arguments raised through the exceptions process.

Employer first raises the procedural argument that claimant is barred from arguing that she was not required to comply with workers' compensation statutes and administrative rules during the time the claim was denied because she did not raise the "issue" before the ALJ. Nevertheless, employer concedes that claimant raised this "issue" in the original Request for Director Review. The issue, in this case, is whether the employer is liable for the cost of the podiatrist bills. Whether or not the claimant was required to comply with the statutes and administrative rules during the time the claim was denied is an argument against requiring the employer to pay those medical bills. The argument was raised in the original request for review. Therefore, the argument has been preserved in the record and may be addressed.

Regarding the merits of the case, claimant relies on *SAIF v. Reid*, 160 Or App 383 (1999), for the legal principle that during the time a claim is in denied status, the claimant is not required to abide by any of the workers' compensation laws. Claimant's reliance on *SAIF v. Reid* is misplaced because it is not applicable to this case. In *Reid*, the court gave deference to an interpretation by the Department of Consumer and Business Services' (DCBS) that the specific administrative rule adopted by DCBS was not applicable during the pendency of a *defacto*

denial. Here, claimant is attempting to broaden the application of *Reid* to allow injured workers to disregard **all** of the requirements, including the Oregon Revised Statutes and all administrative rules, during the time a claim is in denied status. The court rejected that argument in *SAIF v. Jensen*, 183 Or App 439 (2002). There, the court found that ORS 656.245(2)(b)(A), which limits the number of visits for which a chiropractor may be an attending physician, applied even during the timeframe when a claim is denied. *Id* at 445. This case is similar to *SAIF v. Jensen*. Dr. Bullock did not qualify as an attending physician pursuant to ORS 656.005(12)(b). The denied status of the claim did not exempt claimant from the statutory requirements.

Claimant's second argument is that Dr. Kisor was her primary physician and therefore, the attending physician. MRU and the ALJ determined otherwise. Despite claimant's affidavit, both MRU and the ALJ based their determination, in part, on the following facts: 1) Dr. Kisor indicated that she did not know that a workers' compensation claim was involved; 2) Dr. Kisor was only marginally involved in the treatment of claimant's foot condition; and 3) Dr. Bullock, not Dr. Kisor, authorized time loss and discussed claimant's job duties and the impact of those duties on claimant's injury. There is, therefore, plausible documentary evidence to support MRU's determination that Dr. Bullock was the physician primarily responsible for claimant's foot condition.

Having concluded that Dr. Bullock was the physician primarily responsible for treating claimant's foot condition, we must apply the Oregon Revised Statutes to this case to determine whether Dr. Bullock's bills are reimbursable. Pursuant to ORS 656.245(2)(b) and 656.005(12)(b), podiatrists are not authorized to be attending physicians and can only provide compensable medical services for 30 days from the date of injury without a referral from an attending physician. Claimant was not exempt from application of the workers' compensation laws when the claim was in denied status and there was no order from an authorized attending physician for the treatment by Dr. Bullock. MRU concluded that the employer was not liable for the period from October 19, 2002 through July 16, 2004. The order issued by MRU is supported by substantial evidence and does not contain any errors of law. Therefore, the director's order and the ALJ's proposed order are affirmed.

### **ATTORNEY FEES**

Claimant has not prevailed in a contested case hearing and is not entitled to an attorney fee. ORS 656.385(1).

### **ORDER**

IT IS HEREBY ORDERED that the Proposed Order dated June 30, 2006 and the Administrative Order dated January 11, 2006 are affirmed.