

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

Contested Case No: 06-026H

PROPOSED & FINAL ORDER

June 30, 2006

DEBORAH L. GOTTHARDT, Petitioner
TRI-COUNTY METRO TRANS, Respondent

Before Aliza Bethlahmy, Administrative Law Judge, Workers' Compensation Board

The above-entitled matter was heard by the undersigned Administrative Law Judge in Portland, Oregon, on May 15, 2006. Claimant appeared and was represented by George Wall. The employer, Tri-Met Inc., and its processing agent, Sedgwick Claims Mgmt Svcs., were represented by Thad Hettle. There was no appearance by Gina Bullock, DPM. Exhibits 1 through 27 were received into evidence. Counsel for the insurer offered proposed exhibits 9A through 15C. The matter was held open for ten (10) days to give the parties the opportunity to determine out if the offered exhibits were a part of the record before the Workers' Compensation Division. The record closed June 2, 2006, with the receipt of claimant's response to the offer of proof concerning offered exhibits 9A through 15C.

Exhibits

Exhibits 1 through 27 were received into evidence at the May 15, 2006 hearing. The supplemental insurer-proposed exhibits 9A through 15C are excluded because none of the proposed additional exhibits were part of the record before the Workers' Compensation Division. OAR 536-001-0225(2) provides that new medical evidence may not be admitted or considered by the ALJ. Based on that specific rule, offered exhibits 9A through 15C are excluded.

Stipulations

The parties stipulated that a Claim Disposition Agreement concerning Deborah Gotthardt was approved on March 17, 2004.

ISSUES

This case is a Medical Services dispute. The Director found that Tri-County Metropolitan Transportation was not liable for medical services Dr. Bullock provided claimant from October 19, 2002 to July 16, 2004. Claimant has withdrawn the penalties and fee issues.

FINDINGS OF FACT

Claimant was a bus driver for Tri-Met. On September 5, 2002, claimant was seen by Dr. Kisor, her primary care physician, for a diabetes follow-up appointment. During the course of that appointment, the physician noted that claimant continued to have severe spurring of the left calcaneus with irritation of the Achilles area. Dr. Kisor had previously referred claimant to the Broadway Foot Clinic for evaluation of the heel spur but claimant had not yet made the

appointment. Dr. Kisor again referred claimant to the Broadway Foot Clinic for investigation and treatment of the left heel spur.

Pursuant to Dr. Kisor's referral, Dr. Bullock, Podiatrist, saw claimant on September 20, 2002. Claimant gave the physician a five-year history of left heel pain. Dr. Bullock referred claimant to physical therapy, advised Dr. Kisor that she would keep the physician updated on claimant's progress and noted her appreciation for the referral. See exhibit 3, pg 1.

A form 801 was completed on November 15, 2002. Dr. Kisor was identified as the regular doctor and Broadway Foot Clinic was identified as the medical provider who first treated the injury/illness. On December 20, 2002 the processing agent denied the compensability of claimant's left heel condition.

Claimant was next seen by Dr. Kisor on January 30, 2003. At that time, Dr. Kisor noted that claimant continued to be plagued by a heel spur and wanted to see Dr. Weintraub for the heel spur. See exhibit 10. Claimant had a March 6, 2003 appointment with Dr. Kisor for a variety of issues. The chart note contains a notation that claimant had continued to see Dr. Bullock and a physical therapist for the heel spur. At the March 6, 2003 appointment, Dr. Kisor opined that claimant had a cervical sprain and wanted claimant to add physical therapy for the cervical sprain to the physical therapy she was undergoing for the heel spur. See exhibit 12, pg 1.

Pursuant to a February 23, 2004 Stipulation and Order, claimant's left heel condition, primarily diagnosed as a left heel retrocalcaneal bursitis and associated exostosis, was accepted as a disabling injury claim. On March 17, 2004, claimant was sent a letter advising that she was now enrolled in Providence MCO.

Claimant was treated by Dr. Bullock of the Broadway Foot Clinic for her left heel condition. Sedgwick Claims Management Services has not paid Dr. Bullock for the services she provided claimant between October 19, 2003 and July 16, 2004 for claimant's left heel condition.

Dr. Bullock never submitted a treatment plan for the care, including surgery, which she provided for claimant's left heel condition.

CONCLUSIONS OF LAW AND OPINION

This case presents a Medical Services dispute. The subject of the dispute is the January 11, 2006 Order which found that Tri-Met was not liable for medical services Dr. Bullock provided claimant for the period from October 19, 2002 through July 16, 2004.

The scope of review in this case is controlled by OAR 436-001-0225(2), which provides, in part, that in medical service and medical treatment disputes under ORS 656.245, 656.247(3)(a) and 656.327, the Administrative Law Judge may modify the Director's Order only if it is not supported by substantial evidence in the record or if it reflects an error on law.

The Director concluded that Dr. Kisor was not claimant's attending physician for purposes of the Workers' Compensation claim. In her affidavit, claimant contended that Dr. Kisor was her primary care physician and that Dr. Kisor referred claimant to Dr. Bullock for the left heel problem. However, as previously stated, the scope of review in this case is a substantial evidence review.

The "substantial evidence" review requires evidence that "a reasonable mind would employ to support a conclusion." See *Ruiz v Employment Division*, 83 Or App 609(1987) citing *Cook v Employment Division* 47 Or App 437, rev den 290 Or 157(1980). Substantial evidence does mean more than a scintilla of evidence. As the court said in *Armstrong v Asten-Hill Co.*, 90 Or App 200(1988), "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." *Id at 206*.

I conclude that there is substantial evidence to support the Director's conclusion that Dr. Kisor was not claimant's attending physician. ORS 656.005(12)(b) defines an "attending physician" as a doctor or physician who is primarily responsible for the treatment of a worker's compensation injury. While Dr. Kisor did refer claimant to Dr. Bullock for the left heel problem, Dr. Kisor also reported that she was unaware that a Workers' Compensation claim was involved.

Dr. Bullock was the physician who authorized time loss and discussed changes in claimant's work and which bus claimant should drive. There is substantial evidence to support the conclusion that, for purposes of the workers' compensation claim, Dr. Kisor was not claimant's attending physician.

Furthermore, the statutes currently do not permit a podiatrist to be an attending physician for a workers' compensation claim and the rules require that such physicians prepare a treatment plan prior to commencing treatment. See ORS 656.245(2)(b) and ORS 656.005(12)(b), OAR 436-010-230(4)(a). The record does not contain any evidence that a treatment plan was prepared prior to the start of the treatment. There was no order from an authorized attending physician and no treatment plan as required by rule. The Director concluded that Tri-Met was not liable for the care provided by Dr. Bullock for the period from October 19, 2002 through July 16, 2004. The Director's opinion is supported by substantial evidence. The Director's Order is affirmed.