
In the Matter of the Administrative Dismissal of the Appeal of

Jurgen K. Schmidt, Claimant

Contested Case No: 06-082H

PROPOSED & FINAL ORDER

October 2, 2006

JURGEN K. SCHMIDT, Petitioner

SAIF Corporation, Respondent

Before Gilah Tenenbaum, Administrative Law Judge

This matter came on for hearing and the record was closed on August 30, 2006. Claimant was present and not represented by an attorney. Employer and SAIF Corporation were represented by attorney Debra Ehrman.

ISSUES

Claimant appeals from the Workers' Compensation Division's (WCD) Order of April 7, 2006, which dismissed as untimely his challenges to SAIF's refusal to pay for certain medical services rendered from May 12, 2002 through March 12, 2004. (ex. 51)

The providers involved are Parkway Pharmacy, Surgi-Center Cascade, Mercy, Rehab Medicine of Eugene (Dr. MacRitchie), NW Spine Group and Dr. Van Pett.

EVIDENCE

Exhibits 1-52 were admitted at hearing. Post hearing, on my own motion, and for completeness of the record, I also take administrative notice of and consider all the exhibits offered and admitted in companion case 05-02642: 1-20, 4A-4F, 5A, 6A-65 and 12A-12C.

I supplement the record with the September 14, 2005, two-page letter from Ms. Love at MRU to attorney Fisher, as exhibit 35A, and Ms. Fisher's September 15, 2005, letter to Judge Myzak, admitted as exhibit 35B.

From the records of the Workers' Compensation Board, I take administrative notice of the following facts:

On October 29, 2002, claimant requested a hearing challenging a de facto denial by SAIF; it was assigned WCB case number 02-08178. On January 31, 2003, claimant filed a supplemental request for hearing challenging SAIF's January 29, 2003 denial. On March 12, 2003, claimant requested a hearing challenging SAIF's March 6, 2003 denial; it was assigned WCB case number 03-01912. He filed a supplemental request for hearing based on SAIF's alleged unreasonable refusal to pay certain medical bills on a diagnostic basis. The bills in question were the same bills addressed in the Division's March 28, 2003 Order. On October 26, 2004, an Administrative Law Judge for the Workers' Compensation Board signed an Order dismissing cases 02-08178 and 03-01912

based on claimant's withdrawal of those requests for hearing. That Order was not appealed.

FINDINGS OF FACT

Claimant was compensably injured in 1999. He has an accepted cervical strain. (ex. 2) The claim was closed without an award of permanent disability in November 2000. (ex. 4)

On July 17, 2002, claimant consulted Dr. Van Pett for neck complaints, on referral from Dr. Steven Goodwin. Claimant was found to have a congenital fusion at C5-6 and a disc bulge and degeneration at C6-7. Claimant consulted Dr. MacRitchie on August 26, 2002 for the same complaints. On referral from Dr. MacRitchie, claimant obtained a home traction unit and was to attend further physical therapy. The initial physical therapy evaluation was on September 6, 2002, and he was discharged from physical therapy on September 25, 2002. In 2002, claimant also consulted Dr. Allen Goodwin. He saw Dr. MacRitchie on October 25 and November 25, 2002.

On October 29, 2002, claimant filed a claim for a C6-7 disc bulge or herniation. SAIF denied the C6-7 disc claim on January 29, 2003. Claimant filed an occupational disease claim involving the same condition on January 31, 2003.

Claimant's then-attorney was aware of the dispute regarding claimant's bills for treatment in 2002 no later than January 7, 2003. On January 8, 2003, claimant, through his attorney, asked the Division to require SAIF to pay certain bills of Dr. Allen Goodwin, Dr. Steven Goodwin and Mercy Medical Center, all incurred during the period of May and June 2002. By Order dated March 28, 2003, the Division order SAIF to pay the bills of Dr. Allen Goodwin and Mercy as compensable diagnostic services, but ruled that SAIF did not have to pay for Dr. Steven Goodwin's June 27, 2002 services.

During 2002 and until at least April 2003, claimant was represented by attorney Jensen. In January 2003, attorney Jensen sought assistance from the Division to require SAIF to pay for his 2002 consultations and treatments as diagnostic services; she knew that SAIF had refused payment. There is no evidence as to whether claimant was represented by an attorney between April and August 2003. He was represented by attorney Fisher from August 20, 2003, to May 4, 2006. (ex. 33) Claimant returned to Dr. MacRitchie on February 2, 2004.

In January, 2005, claimant demanded that SAIF pay the bills from Dr. MacRitchie and Dr. Van Pett, and a variety of other providers, asserting that the bills were for treatment for the accepted condition, not the admittedly non-compensable C6-7 disc condition. Claimant requested a hearing in April 2005. SAIF responded in May 2005, addressing some of the bills listed and indicating it would respond further in the future. Apparently, there was no resolution. Under case number 05-02642, the matter was set for hearing in July 2005 before Judge Myzak; the parties agreed to submit the matter for a decision based on the written record. SAIF then raised a jurisdictional issue because the issue of payment of the bills had not been submitted to WCD. On August 22, 2005, Judge Myzak deferred this hearing.

On August 25, 2005, claimant's counsel first requested that WCD review the bills at issue. The services at issue were provided to claimant by Parkway Pharmacy, Surgi-Center Cascade, Mercy, Rehab Medicine of Eugene, NW Spine Group and Dr. Van Pett during 2002-2004.

By Order dated April 7, 2006, the Director dismissed the claimant's challenge to non-payment of the bills as (generally) untimely. Claimant requested a hearing challenging that Order; it was assigned WCB case number 06-00082H.

As to each provider, with the exception of Northwest Spine for services on April 15, 2003, and Dr. Van Pett, SAIF notified the provider at the time of its non-payment or reduced payment to the provider, that the provider had ninety days to challenge any payment dispute¹. As to Northwest Spine for services on April 15, 2003, the record contains no evidence that services were rendered on that date. (There were services rendered on April 14, but it appears that SAIF paid for those services after auditing. (ex. 29-1-2)

As to Dr. Van Pett's billing for services rendered on July 17, 2002, the record contains a report of that consultation, but no evidence of billing. SAIF's position before the Division was that the services were not properly billed, which would leave a zero balance payable. The Division concluded that SAIF had no liability for any billing for that consultation. Although it did not expressly find that Dr. Van Pett had not billed or had not billed properly for the services, the Division inferentially made that finding by noting that SAIF correctly deducted a ten percent reduction of the bill every thirty days after the bill was not timely submitted.

ULTIMATE FINDINGS OF FACT

Claimant's former attorney, Ms. Fisher, had actual knowledge of SAIF's dispute of the 2002-2004 bills in question no later than January 2005.

Claimant, through counsel, sought review of SAIF's refusal to pay or reduction of the amount paid more than ninety days after SAIF advised the relevant providers of its decision and their right to appeal.

The medical providers in question were each provided appropriate notice of their right to appeal for SAIF's non-payment or reduced payment decision. There is no evidence that any of the medical providers in question ever requested that WCD review SAIF's decision.

OPINION AND CONCLUSIONS OF LAW

The Board's review of the Director's Dismissal Order is de novo. OAR 436-001-0225(1). The record is not limited to the record reviewed by the MRU. OAR 436-001-0240(2) and (3).

The rule that the Director relied on in dismissing claimant's challenge to SAIF's

¹ SAIF's Explanations of Benefits (EOB) were provided as follows:

Rehab Medicine of Eugene: (ex. 17-2-6); Mercy: (ex. 20-1-2-3); Parkway: (ex. 21-1-2-3); NW Spine: (ex. 29-3); S. Eugene-Cascade: (ex. 32-1-2).

decisions is OAR 436-009-0008(2), which provides:

The medical provider, injured worker, or insurer may request review by the director in the event of a dispute about either the amount of a fee or non-payment of bills for medical services on a compensable injury. The following time frames and conditions apply to requests for administrative review before the director under this rule:

(b) For all claims not enrolled in an MCO, ...the aggrieved party must request administrative review by the director within 90 days of the date the party knew, or should have known, there was a dispute over the provision of medical services. This time frame only applies if the aggrieved party other than the insurer is given written notice that they have 90 days in which to request administrative review by the director. **When the aggrieved party is a represented worker, and the worker's attorney has given written notice of representation, the 90 day time frame begins when the attorney receives written notice or has actual knowledge of the dispute. ... (Emph. added.)**

The ninety day time period may not be extended.

Most of the Director's Order is focused on the time gap between when SAIF notified the medical providers of their right to appeal SAIF's non-payment or reduced payment for services; the Director presumes that the medical providers are the aggrieved parties. "Aggrieved" party is not defined in the rules, so I look to the dictionary definition of the word.

1. Feeling distress or affliction. 2. Treated wrongly; offended. 3. *Law*. Treated unjustly by a decision of the court or other legal authority. American Heritage Dictionary of the English Language

In this case, the medical providers are not the complaining, or aggrieved parties; claimant is the aggrieved party, as he is the one who claims that the Director's decision is unfair. As there is no evidence that claimant or his counsel received written notice of the appeal rights, I conclude that the relevant time frame is the time between claimant's counsel's actual notice that the bills were disputed and the time she requested that the Director review the refusals to pay or reduced payments by SAIF.

With respect to the bills at issue in this case, claimant's former attorneys have been aware of SAIF's dispute of the bills in question for several years. Claimant argued that certain 2002 bills were compensable as diagnostic services; he prevailed in part on that argument. Claimant next took, then abandoned, a position that his treatment was for a compensable condition at C6-7. Claimant now takes the position that the services in question are compensable related to his accepted cervical strain. Although the basis for seeking payment has changed, claimant's attorneys have long been aware that SAIF has disputed payment for these services.

In January 2005, claimant submitted the unpaid bills in question along with some bills

that had already been paid. Assuming *for the sake of argument* that each theory of liability “starts the clock running” anew, claimant’s counsel was actually aware of SAIF’s dispute of the bills in question no later than April 26, 2005, when Ms. Fisher filed a request for hearing regarding these bills².

The Director found that attorney Fisher first submitted the bills in question for MRU review in November 2005. However, I conclude that she did so under cover letter of August 25, 2005 to WCD, which is not in the record but is referred to in a September 14, 2005 letter from the MRU to Ms. Fisher, according to SAIF’s counsel’s September 22, 2005 letter. (ex. 36). The period April 26 to August 25, 2005 is 121 days, more than the 90 days allowed for challenging SAIF’s refusal to pay the contested bills. Based on the Division’s November 17, 2005, letter to attorney Fisher, it may be that the MRU did not consider the matter to be submitted for review until November because the submission was incomplete. Using the November 2005 date, the request for MRU review was made many months beyond the ninety day deadline.

Finally, if the medical providers are considered to be the “aggrieved” parties in this matter, as the Director assumed, the time limit for requesting MRU review of the non-payments or reduced payments had passed years before.

With respect to Dr. Van Pett, there is no evidence that she billed for her services of July 2002 or in what form or format she did so. Pursuant to OAR 436-009-0010(2), “All medical providers shall submit bills to the insurer... on a current UB92 or CMS 1500 form.” There being no evidence that she did so, I find the MRU decision denying SAIF’s liability for her bill to be correct.

In summary, under any standard of review, and regardless of who is considered to be the aggrieved party, I conclude that the Director’s Order dismissing claimant’s request for review to be correct.

ORDER

The Director’s Administrative Dismissal Order of April 7, 2006, is affirmed.

² I actually conclude that Ms. Fisher was aware of SAIF’s dispute of any and all bills for cervical treatment months before that, when she was pursuing the compensability of (and inferentially, payment for) the C6-7 condition. Ms. Jensen, claimant’s previous counsel, was obviously aware of the challenge to bills from that period, pursued as diagnostically compensable.