
In the ORS 656.245 Medical Services Dispute of

Suzanne M. Gatch, Claimant

Contested Case No: 06-151H

FINAL ORDER

June 11, 2007

KATHERINE L. KNOWLES, LMT, Petitioner

SUZANNE M. GATCH, Respondent

Before John L. Shilts, Workers' Compensation Division Administrator

Petitioner Katherine L. Knowles, LMT, on her own behalf, timely filed exceptions to Workers' Compensation Board Administrative Law Judge Kate Donnelly's January 22, 2007 Proposed and Final Order. Respondent employer, through attorney William H. Replogle, and respondent claimant, through attorney Van B. Quan, timely responded to the exceptions.¹ This matter comes before the director for a final order. The issue is liability for payment of massage therapy services. I affirm.

I adopt the ALJ's findings of fact.

At issue is liability for payment of massage therapy services provided by Ms. Knowles to claimant from May 4, 2004 through June 22, 2004. The Medical Review Unit, by its September 11, 2006 Administrative Order, found that CIS is not liable because Ms. Knowles did not prepare a treatment plan as required by the rules, and that claimant is also not liable under the rules. ALJ Donnelly found that substantial evidence supports MRU's order. ALJ Donnelly further found that equitable estoppel does not apply and Ms. Knowles should have been familiar with the requirements of the workers' compensation rules.

Ms. Knowles' first argument is that a treatment plan was submitted in the form of signed chart notes, as allowed by OAR 436-010-0230(4)(a). Employer and claimant respond that the requirements of the rule were not met. OAR 436-010-0230² provides, in part:

“(4) (a) Except as otherwise provided by an MCO, ancillary services including but not limited to physical therapy or occupational therapy, by a medical service provider other than the attending physician, authorized nurse practitioner, or specialist physician shall not be reimbursed unless prescribed by the attending physician, authorized nurse practitioner, or specialist physician and carried out under a treatment plan prepared prior to the commencement of treatment and sent by the ancillary medical service provider to the attending physician, authorized nurse

¹ Ms. Knowles submitted a reply to employer's response. Employer objected to the reply as untimely. Under OAR 436-001-0246(2), a reply to a response must be filed within 10 days of the date the response was filed. Employer's response was filed on February 14, 2007. Ten days later was February 24, 2007, a Saturday. To be timely, a reply must have been filed by Monday, February 26, 2007. Ms. Knowles' reply was filed March 5, 2007, and is therefore not considered.

² As adopted by WCD Admin. Order 04-055, effective April 1, 2004.

practitioner, or specialist physician, and the insurer within seven days of beginning treatment. The treatment plan shall include objectives, modalities, frequency of treatment, and duration. The treatment plan may be recorded in any legible format including, but not limited to, signed chart notes. Treatment plans required under this subsection do not apply to services provided pursuant to ORS 656.245(2)(b)(A).”

Under the rule, massage therapy is not reimbursable unless it is prescribed by the attending physician and carried out under a treatment plan. Here, Dr. Hill prescribed the massage therapy. (Ex. 12-5.) At issue is whether the requirements for a treatment plan were met.

A treatment plan must be prepared prior to the treatment; must be sent by the provider to the attending physician and the insurer within seven days of beginning treatment; and must include objectives, modalities, frequency of treatment, and duration. It may be in any legible format including chart notes. It does not need to be included in a single, signed document. *SAIF v. Ross*, 191 Or App 212 (2003), *on reconsideration* 192 Or App 200 (2004). However, the services are not reimbursable until all elements of a treatment plan have been submitted. 192 Or App at 202.

The record contains copies of chart notes for visits between February 3, 2004 and September 28, 2004. However, chart notes alone are not enough unless they contain all of the required elements. The notes in the record are compiled on three pages and include several dates per page. Only the last of the three pages is signed. Each individual note is very abbreviated. None of the notes include objectives, frequency, or duration of treatment. In addition, there is no evidence that a treatment plan, in whatever form, containing all of the required elements was sent to the attending physician and the insurer within seven days of beginning treatment. Under the terms of the rule, CIS is therefore not required to reimburse Ms. Knowles for the services. Substantial evidence in the record supports MRU’s order in that respect.

Ms. Knowles argues that she was not aware of the requirement for a treatment plan and she provided the services in good faith. In addition, she had been paid for her services from October 2002 until claimant’s claim was first closed in April 2004, and CIS did not cite the lack of a treatment plan as the reason for stopping payment. While it may seem unfair that CIS’ denial of payment is now being upheld for a different reason, MRU is obligated to apply the requirements of the rule as written, even if Ms. Knowles was unaware of the those requirements. *Aetna Casualty & Sur. Co. v. Blanton*, 139 Or App 283, 287-88 (1996).

Ms. Knowles contends that CIS should be retroactively liable because claimant’s claim was later reopened and the compensable conditions were retroactively reinstated. It is not necessary to address this argument in great detail, however, because CIS would still not be liable in the absence of a treatment plan meeting the requirements of the rule.

Ms. Knowles next argues that claimant should be liable for the services under OAR 436-009-0015(1)(c) because she had been declared medically stationary on April 8, 2004, her claim was closed on April 28, 2004, and she continued to seek Ms. Knowles’ services. Claimant

responds that she was not medically stationary at the time she received the massage therapy, so the exception in OAR 436-009-0015(1)(c) does not apply.

OAR 436-009-0015³ provides, in part:

“(1) An injured worker shall not be liable to pay for any medical service related to an accepted compensable injury or illness or any amount reduced by the insurer pursuant to OAR chapter 436. A medical provider shall not attempt to collect payment for any medical service from an injured worker, except as follows:

“* * * * *

“(c) When the injured worker seeks palliative care that is either not compensable or not authorized by the insurer or the director pursuant to OAR 436-010-0290, after the worker has been provided notice that the worker is medically stationary * * *.”

Claimant’s claim was initially accepted for cervical spine strain. That condition was determined to be medically stationary as of April 8, 2004, and the claim was closed on April 28, 2004. By Settlement Stipulation approved on September 15, 2004, the parties agreed that insurer’s initial acceptance would be amended retroactively to the date of injury, October 18, 2002, for disabling cervical strain combined with preexisting cervical degenerative changes at the C5-6 level. Insurer issued a modified notice of acceptance on October 14, 2004. In May 2006 the parties agreed that insurer would accept left C6 radiculopathy combined with preexisting cervical degenerative changes at C5-6, retroactive to October 18, 2002. The parties further agreed that claimant had been medically stationary since March 7, 2005.

The massage therapy services in dispute were provided from May 4, 2004 through June 22, 2004. Not all of claimant’s accepted conditions were medically stationary at the time the services were provided. Accordingly, the exception in OAR 436-009-0015(1)(c) does not apply, and claimant is not liable for the services.

IT IS HEREBY ORDERED the January 22, 2007 Proposed and Final Order is affirmed. Neither CIS nor claimant are liable for payment of massage therapy services provided to claimant by Katherine L. Knowles, LMT between May 4, 2004 and June 22, 2004.

³ As adopted by WCD Admin. Order 04-054, effective April 1, 2004.