

In the Medical Services of
Joann L. Goodsell, Claimant
Contested Case No: 06-152H
PROPOSED & FINAL ORDER

March 8, 2007

JOANN L. GOODSELL, Petitioner
OIGA FOR FREMONT INDEMNITY CO., Respondent
Before Robert Pardington, Administrative Law Judge

Pursuant to notice, a hearing was scheduled in the above-captioned matter for December 22, 2006, in Portland, Oregon, before Administrative Law Judge (ALJ) Robert Pardington. Claimant is represented by attorney Christopher Moore. The employer, Mittleman Jewish Community Center, and Public Risk Consultants, are represented by attorney Patrick Gilroy.

Prior to hearing, the parties agreed to submit the matter on the record with written closing arguments. The record closed when no reply brief was submitted by February 26, 2007.

Exhibits 1 through 24 are hereby admitted.

ISSUE

Compensability (reimbursability) of medical services (physical therapy from May 15, 2006 through June 7, 2006).

FINDINGS OF FACT

I adopt the Findings of Fact set forth in the September 11, 2006 Administrative Order. *See Liberty Northwest Ins. Co. v. Kraft*, 205 Or App 59 (2006) (substantial evidence review does not contemplate that the reviewing body will make additional or supplemental findings of fact).

CONCLUSIONS OF LAW AND OPINION

In this medical service dispute, the ALJ may modify the Director's order only if it is not supported by substantial evidence in the record or if it reflects an error of law. OAR 436-001-0225(2).

For every compensable injury, the insurer shall "cause to be provided" medical services for conditions caused in material part by the injury, for such period as the nature of the injury or the process of the recovery requires. ORS 656.245(1)(a). After a worker's condition becomes medically stationary, only certain enumerated medical services are compensable, including:

"With the approval of the insurer or self-insured employer, palliative care that the worker's attending physician referred to in [ORS 656.005\(12\)\(b\)\(A\)](#) prescribes and that is necessary to enable

the worker to continue current employment or a vocational training program.” ORS 656.245(1)(c)(J).

OAR 436-010-0290 requires that the worker’s attending physician must first submit a written request for approval (of palliative care) to the insurer. The request must:

“(A) Describe any objective findings; (B) Identify by ICD-9-CM diagnosis, the medical condition for which palliative care is requested; (C) Detail a treatment plan which includes the name of the provider who will render the care, specific treatment modalities, and *frequency and duration of the care*, not to exceed 180 days; (D) Explain how the requested care is related to the compensable condition; and (E) Describe how the requested care will enable the worker to continue current employment, or a current vocational training program, and the possible adverse effect if the care is not approved.” (Emphasis added); OAR 436-010-0290(1)(a).

Here, the Director found that claimant’s attending physician, Dr. Colorito, submitted a palliative care request on November 4, 2005 for physical therapy to be done once or twice per week for a duration of six to eight weeks. (*See Exs. 2, 22-3*). The Director further found that the carrier approved Dr. Colorito’s November 4, 2005 request on January 30, 2006, and that the carrier’s authorization of physical therapy was for two times per week for six to eight weeks, starting on January 30, 2006, or until March 30, 2006. (*See Exs. 6, 22-3*).

In actuality, claimant apparently did not begin physical therapy until March 7, 2006, and treated on that date, and again two days later, on March 9, 2006. (*See Exs. 7, 8-1*). There is no record of any therapy appointments between March 9, 2006 and May 15, 2006. (*See Ex. 7*). The carrier later allowed the treatments for “no more than 8 weeks *from the first date of treatment*,” (emphasis added) which would have extended the authorization to May 2, 2006.¹ (*See June 2, 2006 letter to Dr. Colorito, Ex. 12*).

Consistent with this timeline, the employer acknowledges that its physical therapy authorization ultimately extended to May 4, 2006 (using the start and end dates of March 9, 2006 and May 4, 2006). (*See Employer/carrier’s Closing Argument at 3, 4*). Accordingly, the Director’s order is modified as set forth in the paragraph above. Nevertheless, May 15, 2006 (the starting date of the *disputed* services) was beyond even that eight-week period.

The Director concluded that to be reimbursable, additional physical therapy beyond the authorized eight-week period of time (including services for the disputed period from May 15, 2006 through June 7, 2006) would require an additional palliative care request that complied with the administrative rule, OAR 436-010-0290. (*Ex. 22-3*). There are no further palliative care requests from the attending physician in the record.

Claimant references her January 12, 2007 affidavit, submitted as Exhibit 24. In that

¹ (Eight weeks, each including seven days, so 56 days after March 7, 2006, or May 2, 2006).

affidavit, she states that it was her impression that Dr. Colorito's physical therapy (palliative care) request did not contain a specific "end date." (Ex. 24). Claimant also notes that the only time limitation contained in the administrative rule is that the treatment plan must not exceed 180 days. OAR 436-010-0290(1)(a)(C).

However, I find that the *Director's* finding that Dr. Colorito's palliative care request, and the carrier's authorization of that request, *did* contain such a time limitation; *i.e.*, a maximum of eight weeks, is supported by substantial evidence. (See Exs. 2, 6, 12, 22-3).

After reviewing the record, I find that the Director's decision is supported by substantial evidence and is not inconsistent with the applicable statutes and administrative rules. OAR 436-001-0225(2). Accordingly, the September 11, 2006 Administrative Order is affirmed as modified above.

IT IS SO ORDERED.