

In the Medical Service Dispute of
Tammie D. Jimenez, Claimant

Contested Case No: 06-198H

ORDER ON REMAND

September 20, 2007

TAMMIE D. JIMENEZ, Petitioner

SAIF CORPORATION, Respondent

Before Jenny Ogawa, Administrative Law Judge

Claimant appealed the Director's Review and Order issued on November 9, 2006 by the Medical Review Unit (MRU) of the Workers' Compensation Division (WCD), Department of Consumer and Business Services (Director). Pursuant to notice, a hearing was scheduled for August 30, 2007, in Salem, Oregon, before Administrative Law Judge Ogawa. Claimant was not present, but was represented by attorney Michael Gilbertson. The employer, B&E4 LLC, and its insurer, SAIF Corporation, are represented by Trial Counsel Thom Nash. The WCD waived appearance. The record closed at the conclusion of the hearing.

WCD Exhibits 1 through 34 were received into evidence without objection. The parties also agreed that Exhibit 31A—the October 10, 2006 MRU Administrative Order, MMS 06-0885—should be admitted, because the MRU relied on that order in reaching its decision in this case. At hearing, SAIF withdrew its August 24, 2007 submission of Exhibits 1 through 8. Claimant then submitted Exhibits 2 through 8 of SAIF's exhibits. Because of the disposition of this case, the question of the admissibility of proposed Exhibits 2 through 8 is not addressed.

At issue was claimant's liability for medical services provided by Silverton Hospital on October 24, 2005.

Claimant sustained a compensable injury on May 27, 2004. On August 17, 2004, SAIF initially accepted the claim for tendonitis of the right lateral epicondyle and right rotator cuff tendonitis. (Ex. 2). Also on that date, SAIF enrolled claimant into the Oregon Health Systems, an MCO. (Ex. 3). SAIF closed the claim on January 12, 2005. (Ex. 4).

On October 18, 2005, Dr. Zakaib performed right shoulder surgery at Silverton Hospital. The surgery was to treat acromioclavicular (AC) joint arthritis and chronic impingement syndrome. (Exs. 7, 8, 9, 14).

On October 24, 2005, claimant went to the Silverton Hospital Emergency Department for nausea and vomiting. Claimant was examined, lab tests were conducted, and she was prescribed medications. (Ex. 15). Silverton Hospital billed SAIF for the ER visit. SAIF disapproved payment because the treating provider was not in the MCO, and because the ER visit was for complications due to the noncompensable October 18, 2005 surgery. (Exs. 17, 32).

On July 21, 2006, claimant requested the MRU to review SAIF's refusal to pay for her surgery. (Ex. 24). Thereafter, the MRU requested SAIF to provide "all relevant medical information." (Ex. 25). In its August 4, 2006 Specification of Disputed Medical Issues, SAIF

responded that the disputed medical service was disapproved because the service was “for a new/omitted condition which the worker has asked for acceptance and a decision is pending.” (Ex. 26). On August 30, 2006, SAIF provided medical records to the MRU. (Exs. 29, 30).

The MRU bifurcated the dispute between the surgery and the October 24, 2005 ER visit. On October 10, 2006, the MRU found that the OHS contract required pre-certification of the surgery in order to be reimbursable and that Dr. Zakaib, an OHS participating provider, did not seek pre-certification for the surgery. The MRU, thus, found SAIF not liable for the surgery. The MRU also found that, pursuant to OAR 436-009-0015(1), claimant was not liable for the surgery services because she followed the directions of her attending physician and received care as directed. (Ex. 31A). The MRU order was not appealed, and is final.

The MRU issued its second order on November 9, 2006. The MRU found that the services provided by Silverton Hospital on October 24, 2005 were for postoperative complications related to the October 18, 2005 surgery. Relying on its October 10, 2006 order, the MRU concluded that since SAIF was not liable for the surgery, it was also not liable for the medical services provided on October 24, 2005. (Ex. 33). The MRU did not address claimant’s liability for the services. Claimant requested a hearing on this order. (Ex. 34).

Claimant relies on ORS 656.245(4)(b)(D) to assert that she is not liable for medical services provided outside the MCO. Claimant contends that she was not subject to the MCO contract because SAIF was required, but failed, to send her a new notice of MCO enrollment when it subsequently accepted the right shoulder impingement syndrome and the right shoulder bursitis conditions.¹ SAIF argues that ORS 656.245(4)(b)(D) applies when there is no claim acceptance, at all. SAIF further argues that since claimant was enrolled in the MCO for “this claim” which included the new/omitted conditions, ORS 656.245(4)(b)(D) was inapplicable. The MRU did not address the parties’ arguments whether ORS 656.245(4)(b)(D) applied. The record shows that the issue was raised.

SAIF initially accepted the claim for tendonitis of the right lateral epicondyle and right rotator cuff tendonitis. (Ex. 2). Claimant’s attorney wrote to SAIF on June 1, 2006 to request interim compensation on the impingement claim, back time loss, and payment of the impingement surgery. (Ex. 22). On June 29, 2006, SAIF responded regarding the medical bills and stating that time loss authorization had not been received.² (Ex. 23). On July 21, 2006, claimant requested medical review on the ground that the impingement surgery was preauthorized. (Exs. 22, 24). In its August 4, 2006 Specification of Disputed Medical Issues, SAIF responded that the disputed medical service was disapproved because the service was “for a new/omitted condition which the worker has asked for acceptance and a decision is pending.” (Ex. 26). SAIF sent the MRU copies of the August 17, 2004 Notice of Acceptance and the

¹ In *Thomas Yoney*, 7 CCHR 29 (2002), the Director determined that there was no statutory requirement, under ORS 656.245(4)(b)(D), that the insurer issue a new notice of MCO enrollment upon acceptance of additional medical conditions. *Id.* at 31.

² SAIF referenced its Explanation of Benefits (EOB). The EOB for the October 24, 2005 services explained that they were disallowed because the treating provider was not MCO enrolled. (Ex. 17-4).

January 12, 2005 Updated Notice of Acceptance at Closure for the accepted conditions of “tendinitis right lateral epicondyle and right rotator cuff tendinitis.” (Ex. 27). This combined information raised the issue of claimant’s liability for medical services obtained outside the MCO for unaccepted conditions.³

The MRU found that Dr. Zakaib, an OHS participating provider, performed arthroscopic subacromial decompression and distal clavicle excision on October 18, 2005 at the Silverton Hospital. The MRU also found that, on October 24, 2005, Dr. Brown treated claimant at the emergency department of Silverton Hospital, and recommended that claimant follow up with her primary care physician. In addition, the MRU found that the medical services provided on October 24, 2005 were to treat complications resulting from the October 18 surgery.

The MRU concluded that SAIF was not liable for the October 24, 2005 medical services based on its earlier order that SAIF was not liable for the October 18, 2005 surgery. The MRU did not find whether Dr. Brown was an OHS participating provider and/or whether claimant sought treatment outside the MCO. It did not address SAIF’s initial assertion that the disputed medical services were for a new/omitted condition, which had not yet been accepted or denied. Those findings are necessary to determine whether ORS 656.245(4)(b)(D) applied. *See Sheryl J. Burtch*, 10 CCHR 225 (2005). That is a determination for the MRU to make in the first instance.

OAR 436-001-0170(5) provides that: “Where appropriate, the administrative law judge may remand a dispute to the director for further administrative action.” Because the MRU did not address the applicability of ORS 656.245(4)(b)(D), remand is appropriate. Therefore, this matter should be remanded to the MRU.

IT IS THEREFORE ORDERED that claimant’s appeal of the MRU Order dated November 9, 2006 is remanded pursuant to OAR 436-001-0170(1) for further consideration.

³ After the MRU issued its October 2006 administrative order regarding the surgery, SAIF then raised the new defense that since it was not liable for the surgery, it should also not be liable for complications arising from the surgery. (Ex. 32).