

In the Medical Services of
Jeffrey A. Sullins, Claimant
Contested Case No: 06-101H
PROPOSED & FINAL ORDER

February 20, 2007

JEFFREY A. SULLINS, Petitioner
SAIF CORPORATION, Respondent

Before Nicholas M. Sencer, Administrative Law Judge

Pursuant to notice, the hearing in the captioned matter was scheduled to convene on December 15, 2006 in Portland, Oregon before Administrative Law Judge Nicholas M. Sencer. Pursuant to stipulation, the case was submitted for decision based on MRU exhibits 1 through 16 and written closing argument. George J. Wall represents claimant. Mary Goebel Adams represents the employer, Gohman Mechanical, Inc., and its insurer SAIF Corporation. The record closed on January 24, 2007 upon my receipt of claimant's reply argument.

ISSUES

Claimant challenges the May 10, 2006 Order of the Medical Review Unit. The issue concerns the reimbursement of \$1,900.00 for home care expenses.

My review of the challenged Order is subject to ORS 656.327(2) and OAR 436-001-0225(2) which provide in essentially identical language, "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 of law. New medical evidence or issues may not be admitted or considered."

SUMMARY OF RELEVANT FACTS

Claimant sustained a compensable injury to his left knee on November 4, 2005. From November 4, 2005 through November 23, 2005, Malissa Cooper provided home health care for claimant. Ms. Cooper resides at the same address as claimant and is not licensed to provide medical services.

Claimant's attending physician is Tamara Simpson, M.D. On November 28, 2005, Dr. Simpson wrote on a physical status update form that claimant required assistance with activities of daily living from November 8, 2005 through November 23, 2005. Dr. Simpson also noted that Ms. Cooper provided these services for the subject dates as well as for the dates November 4, 2005 through November 7, 2005. (Ex 2).

CONCLUSIONS OF LAW AND OPINION

The parties agree that this dispute is governed by OAR 436-010-0210(3). That rule provides in relevant part, "Attending physicians may prescribe treatment or services to be carried out by persons not licensed to provide a medical service or treat independently only when such services or treatment is rendered under the physician's direct control and supervision. Reimbursement to a worker for home health care provided by a worker's family member is not

required to be provided under the direct control and supervision of the attending physician if the family member demonstrates competency to the satisfaction of the attending physician.”

Claimant argues that the subject administrative rule “is vague and overbroad, and that the rule is inconsistent with the purpose of ORS 656.245(1).” In support of his argument, claimant asserts that the rule does not define the terms “family member” or “licensed medical provider.”

For its part, the insurer argues that the Hearings Division lacks jurisdiction to determine the validity of an administrative rule and that, in the absence of the subject rule, there is no authority under Oregon Law for reimbursement of home care services provided by family member.

As I read OAR 436-010-0210(3), it appears fairly clear that attending physicians may prescribe treatment to be carried out by persons not licensed to provide a medical service only when such treatment is rendered under the direct control and supervision of that attending physician. The only exception to services provided outside of the direct control and supervision of the attending physician concerns home health care provided by a family member who demonstrates competency to the satisfaction of the attending physician.

In this case, the MRU concluded that Ms. Cooper was neither a licensed medical provider nor a family member. However, even if Ms. Cooper were deemed to be a family member, there is no evidence in the record that she demonstrated her competency to provide home health care services to claimant’s attending physician, Dr. Simpson. Thus, even if she were deemed to be a family member, claimant would not be entitled to reimbursement for Ms. Cooper’s home care services.

Claimant argues that the undefined term “family member” is vague. However, since claimant was relying on the status of Ms. Cooper as a family member to establish his entitlement to reimbursement, it was claimant’s burden of proof to establish the nature of that relationship. The only evidence in the record on this point is that, “on April 10, 2006, Mr. Sullins’ attorney called the Director indicating that Malissa Cooper is Mr. Sullins’ domestic partner.” (Ex 15, p 2). The unsupported assertion of claimant’s attorney does not constitute evidence of the relationship between Mr. Sullins and Ms. Cooper.

Given the absence of evidence concerning claimant’s relationship with Ms. Cooper, the Director’s conclusion that Ms. Cooper is not a family member is supported by substantial evidence in the record, or more precisely, the absence of contrary evidence in the record. Given claimant’s failure of proof on the family member issue, claimant’s assertion concerning the allegedly vague and overbroad nature of the subject rule is moot. Consequently, I conclude that the Director’s Order does not reflect an error of law.

Based on the foregoing, the Director’s Order will be affirmed.

ORDER

IT IS HEREBY ORDERED that the May 10, 2006 Order of the Medical Review Unit of the Workers’ Compensation Division is affirmed.