
In the ORS 656.260 Managed Care Dispute of

Stuart C. Yekel, Claimant

Contested Case No: 06-203H

FINAL ORDER

November 16, 2007

STUART C. YEKEL, Petitioner
SAIF CORPORATION, Respondent

Before Cory Streisinger, Director, Department of Consumer and Business Services

Insurer, through its attorney James Booth, timely filed exceptions to Workers' Compensation Board Administrative Law Judge (ALJ) David D. Lipton's April 24, 2007 Proposed and Final Order. Claimant, through his attorney Philip H. Garrow, timely responded. The issue is liability for medical services. I reverse and adopt this final order in place of the proposed order.¹

I adopt the findings of fact made by the Medical Review Unit (MRU) in its November 21, 2006 Administrative Order.

The issues are whether insurer is liable to pay for medical services provided to claimant by Kevin S. Johnson, DC and Richard Koller, MD, and whether insurer is liable to pay Third Party Solutions for prescription medications claimant obtained from Rite Aid Pharmacy. MRU determined that insurer was not liable for services provided by Dr. Johnson or Dr. Koller, and that insurer was not liable to pay Third Party Solutions for the prescription medications.

ALJ Lipton affirmed as to insurer's liability to pay for Dr. Johnson's services. ALJ Lipton reversed as to insurer's liability to pay for Dr. Koller's services and to pay Third Party Solutions.

Insurer disputes the ALJ's conclusions as to Third Party Solutions and Dr. Koller. Insurer first argues that ALJ Lipton appears to have engaged in a *de novo* review of MRU's administrative order, while the statute and rules provide that medical service and managed care disputes are to be reviewed for substantial evidence and errors of law.

An order on administrative review in a managed care dispute may be modified at hearing only if it is not supported by substantial evidence in the record or reflects an error of law. New medical evidence or issues may not be admitted or considered. ORS 656.260(16); OAR 436-001-0225(2).

As to Third Party Solutions, MRU reasoned that Third Party Solutions is not a provider or vendor of medical services and did not follow the requirements for billing insurers for medical treatment. In reversing MRU, ALJ Lipton reasoned that the fact that a pharmacy uses a billing

¹ Neither party has disputed the ALJ's conclusion with regard to insurer's liability to pay Dr. Johnson for services provided on November 1, 2004, November 4, 2004, and June 6, 2005. Therefore that issue has not been reviewed and I adopt and affirm that portion of the proposed order regarding Dr. Johnson's services.

service should not insulate an insurer from its obligation to pay for otherwise compensable medical services.

Insurer argues that MRU's order was consistent with the director's previous decisions involving prescription billing companies and that ALJ Lipton did not support his reasoning with statute or rule and did not indicate how MRU's order was not supported by substantial evidence or contained an error of law.

Claimant responds that the ALJ's conclusion that the use of a billing service does not insulate insurer from its obligation to provide medical treatment is correct. According to claimant, MRU's conclusion otherwise is based on an interpretation of the rules, not substantial evidence. Claimant points out that insurer uses a prescription service. Further, claimant contends, the director's previous decisions are not final and do not control.

The ALJ did not state whether or why he found MRU's conclusion to reflect an error of law. I find it does not. MRU's conclusion is consistent with prior orders. In the matters of *Kathryn A. Ping*, 10 CCHR 242 (2005)² and *Tim J. Vandehey*, 10 CCHR 247 (2005),³ the insurer was not required to reimburse the third party pharmacy biller because under the rules insurers are required to pay medical providers and the third party did not qualify as a medical provider; the third party did not bill using the correct form; and the third party billed without regard to the pharmacy's usual rate. The statute and rules require insurers to pay "vendors" and "providers" of medical services, not third parties.⁴ Third party billers do not fit the definition of "medical

² Affirmed by per curiam opinion, *Working Rx, Inc. v. Liberty Northwest Ins. Corp.*, ___ Or App ___ (Oct. 17, 2007).

³ Appeal still pending at the Court of Appeals; *Working Rx, Inc. v. SAIF Corp.* (A129915).

⁴ ORS 656.248 provides, in relevant part:

“* * * * *

“(2) Medical fees equal to or less than the fee schedules published under this section shall be paid when the vendor submits a billing for medical services. * * *

“(3) In no event shall a provider charge more than the provider charges to the general public.

“* * * * *

“(12) When a dispute exists between an injured worker, insurer or self-insured employer and a medical service provider regarding either the amount of the fee or nonpayment of bills for compensable medical services, * * * the injured worker, insurer, self-insured employer or medical service provider shall request administrative review by the director. * * *”

See also OAR 436-009-0010(2) (“All medical providers shall submit bills to the insurer * * * on a current UB92 or HCFA/CMS 1500 form, except for: * * * (b) Pharmacy billings, which shall be submitted on the most current NCPDP form[.]”); 436-009-0010(7) (“The medical provider shall bill their usual and customary fee charged to the general public. The submission of the bill by the medical provider shall serve as a warrant that the fee submitted is the usual fee of the medical provider for the services rendered. The department shall have the right to require documentation from the medical provider establishing that the fee under question is the medical provider's usual fee

provider”⁵ or “medical service provider.”⁶ Further, the fact that insurer chooses to contract with a prescription service does not mean insurer is required to pay Third Party Solutions. MRU’s conclusion that insurer is not liable to pay Third Party Solutions is consistent with current cases, and does not reflect an error of law.

As to Dr. Koller’s services, MRU concluded that SAIF is not liable for the April 20, 2006 examination because even though Dr. Spence referred claimant to Dr. Koller for consultation, ORS 656.260(4)(g)⁷ requires a primary care physician to refer the worker within the MCO for any specialized treatment, and Dr. Koller was not on the MCO’s panel. ALJ Lipton concluded that it is appropriate that Dr. Koller’s services be paid, finding that claimant met his burden of proving that Dr. Koller is an MCO provider and that insurer did not persuade him that Dr. Koller was not an MCO provider at the time of the consultation.

Insurer argues that ALJ Lipton reexamined the evidence and made independent findings, rather than inquire as to whether MRU’s order was supported by substantial evidence. Further, insurer argues that ALJ Lipton’s conclusion appears to be based on new evidence, and renews its objection to exhibit 37.

Claimant responds that there is no evidence whether Dr. Koller was an MCO panel member at the time of the disputed services. According to claimant, MRU’s conclusion in that regard is not supported by substantial evidence.

The ALJ did not state whether or why he determined that MRU’s conclusion was not supported by substantial evidence in the record. Rather, he weighed the evidence before him and made an independent determination.

charged to the general public.”); 436-009-0040(1) (“Medical fees shall be paid at the provider’s usual and customary fee or in accordance with the fee schedule whichever is less.”). The rules in effect at the time the services were provided, in this case June 27, 2004, apply. OAR 436-009-0003(1). The rules were adopted effective April 1, 2004, WCD Admin. Order No. 04-054.

⁵ OAR 436-010-0005(29) provides, “‘Medical Provider’ means a medical service provider, a hospital, medical clinic, or vendor of medical services.”

⁶ OAR 436-010-0005(28) provides, “‘Medical Service Provider’ means a person duly licensed to practice one or more of the healing arts.”

⁷ ORS 656.260(4) provides,

“The director shall certify a health care provider or group of medical service providers to provide managed care under a plan if the director finds that the plan:

“* * * * *

“(g) Authorizes workers to receive compensable medical treatment from a primary care physician who is not a member of the managed care organization * * * if that primary care physician agrees to refer the worker to the managed care organization for any specialized treatment, including physical therapy, to be furnished by another provider that the worker may require * * *.”

Claimant submitted to the ALJ exhibit 37, a listing of providers printed from Oregon Health Systems' Web page on February 21, 2007. Dr. Koller's name is on the list. Insurer objected to the exhibit based on lack of relevance or lack of foundation. Insurer argues the list does not indicate whether Dr. Koller was on the MCO panel on April 20, 2006.⁸

I find that exhibit 37 is not new medical evidence and is therefore admissible. However, I agree with insurer that it is not relevant.

The issue is not whether Dr. Koller is currently on the MCO panel. Rather, the issue is whether insurer had an obligation to pay for Dr. Koller's services at the time they were provided. Exhibit 37 does not show that Dr. Koller was on the MCO panel at the relevant time. I am not persuaded by claimant's evidence and arguments that MRU's conclusion with regard to Dr. Koller's services should be modified.

Claimant has not prevailed in this matter. Accordingly, his attorney is entitled to no fee. ORS 656.385(1).

IT IS HEREBY ORDERED the April 27, 2007 Proposed and Final Order is adopted and affirmed as to Dr. Johnson's services but is otherwise not adopted. The November 21, 2006 Administrative Order is affirmed. Insurer is not liable to pay for Dr. Johnson's services of November 1, 2004, November 4, 2004, and June 6, 2005. Insurer is not liable to pay for Dr. Koller's services of April 20, 2006. Insurer is not liable to pay Third Party Solutions for prescriptions filled on June 27, 2004.

⁸ Insurer indicated in its closing argument that Dr. Koller became part of the MCO in November 2006.