
In the ORS 656.260 Managed Care Dispute of

Stuart C. Yekel, Claimant

Contested Case No: 06-203H

PROPOSED & FINAL ORDER

May 3, 2007

STUART C. YEKEL, Petitioner

SAIF CORPORATION, Respondent

Before David D. Lipton, Administrative Law Judge

In lieu of proceeding to hearing on March 6, 2007, the parties agreed to submit this matter to the undersigned Administrative Law Judge for a decision based upon the admitted exhibits and their written arguments. Claimant is represented by Phillip Garrow. The employer, Yekels Repair, and its insurer, SAIF Corporation, were represented by James Booth. The record closed on April 11, 2007.

Exhibits 1 through 37 were admitted.

ISSUE

Claimant appeals from the November 21, 2006 Administrative Order addressing reimbursement for medical treatment provided to Claimant by Kevin Johnson, D.C., Richard Koller, M.D. and for prescriptions billed by Third Party Solutions.

FINDINGS OF FACT

Claimant was compensably injured on June 24, 2004 when he fell backwards off of a step-stool. On June 27, 2004 he sought medical treatment. Thomas Combs, M.D. prescribed Toprol. Brad Ward, M.D. prescribed APAP/Codeine and Promethazine. Claimant filled these prescriptions at a Rite Aid Pharmacy. On August 4, 2004 Rite Aid's billing service, Third Party Solutions, submitted a bill to SAIF for the prescriptions.

Also on August 4, 2004, SAIF accepted the June 24, 2004 occurrence as a disabling injury consisting of a basil skull fracture and low back strain. Along with the Notice of Acceptance, SAIF advised Claimant of his enrollment in Oregon Health Systems, a managed care organization (MCO), and that his chiropractor, Kevin S. Johnson, D.C., is a member of that MCO. SAIF also advised Claimant of its pharmacy network (Restat) for filling his prescription medication.

Claimant returned to Dr. Ward on October 20, 2004 although SAIF had advised him that they would not authorize Claimant to see Dr. Ward. Claimant's treatment in Dr. Ward's office was paid on September 8, 2005 after a series of disallowances.

Claimant returned to Dr. Johnson on November 1 and November 4. Dr. Johnson billed SAIF for treating Claimant on those dates. SAIF disallowed his bill for that treatment.

A November 28, 2005 Notice of Closure awarded Claimant temporary disability benefits.

On March 30, 2006 Claimant was examined by Scott Spence, M.D. SAIF advised Claimant on April 17, 2006 that Dr. Spence was not a member of its MCO and would not pay for his treatment.

Dr. Spence had already referred Claimant to Richard Koller, M.D. for an examination in connection with Claimant's complaints of dizziness. Dr. Koller examined Claimant on April 20, 2006 and billed SAIF for his examination. SAIF disallowed the bill on May 18 for the reason that the referring doctor was not a member of its MCO. On May 30 SAIF disallowed Dr. Spence's bill, also for the reason that he was not a member of the MCO. SAIF continued to take this position with respect to Dr. Spence until sometime between August 17 and October 27, 2006 when it paid Dr. Spence's bill.

Dr. Spence had received authorization from Oregon Health Systems to serve as a temporary care provider on July 6, 2006.

On July 14, 2006 SAIF modified the Notice of Acceptance and reopened the claim accepting the additional conditions of mild, traumatic brain injury and post-concussive syndrome. The claim was again closed by an August 2, 2006 Notice of Closure which awarded Claimant permanent disability benefits.

Claimant's attorney wrote to the Medical Review Unit on September 29, 2006 concerning SAIF's disallowance of the bills from Claimant's medical providers. SAIF advised the Medical Review Unit of its position on October 16, 2006. SAIF supplemented its response on October 27 that subsequent to October 16 it had been advised that Dr. Spence was authorized to treat Claimant and had paid the bill for his services.

The Medical Review Unit's Administrative Order issued on November 21, 2006. By then, the disputed bills of Dr. Ward, Dr. Spence and Oregon Radiology had been paid and no issue remained as to those services. Remaining unpaid were bills for services from Dr. Johnson, Dr. Koller and Third Party Solutions. The Medical Reviewer determined that Dr. Johnson was not an attending physician at the time of his treatment of Claimant on November 1 and 4, 2004 and June 6, 2005, that Dr. Koller was not a member of the MCO panel and was not authorized to provide consultation services to Dr. Spence and that Third Party Solutions is not a medical provider and SAIF cannot be required to pay the bill it submitted for the prescriptions obtained at Rite Aid Pharmacy.

According to the Oregon Health Systems, Inc website, Dr Koller is presently a member of its panel of physicians.

SAIF is responsible to pay for treatment provided to Claimant prior to the date Claimant was advised of his enrollment in the MCO, for Dr. Koller's consultation and for prescriptions provided by Rite Aid Pharmacy and billed by Third Party Solutions up to the date that Claimant was advised of his enrollment in SAIF's pharmacy network.

OPINION AND CONCLUSION

Claimant protests that portion of the November 21, 2006 Administrative Order that denied reimbursement for treatment provided to Claimant by Kevin Johnson, D.C., Richard Koller, M.D. and billings by Third Party Solutions on behalf of Rite Aid Pharmacy.

An injured worker does not become subject to an MCO contract until receipt of notice of enrollment in the MCO or three days after the notice is sent, whichever comes first. ORS 656.245(4)(a). The obligation to pay for the treatment was fixed when the claim was accepted. ORS 656.245(4)(b)(C), ORS 656.247(4)(a).

SAIF has paid the physicians who treated Claimant prior to the date of acceptance, but has not paid for the prescriptions that Claimant was prescribed and filled at Rite Aid Pharmacy. SAIF contends that the billing entity, Third Party Solutions, is not a medical provider and should not be paid. However, with the exception of the Toprol prescribed by a Dr. Combs who does not otherwise appear in this file, the medication was prescribed by Dr. Ward and filled at a Rite Aid Pharmacy. The fact that a billing service is used for business efficiency should not insulate SAIF from its responsibility to pay for otherwise appropriate treatment, particularly where that treatment was provided prior to notice of Claimant's enrollment in SAIF's pharmacy network. Therefore I find that the bill from Third Party Solutions for prescriptions prescribed by Dr. Ward on June 27, 2004 should be paid.

SAIF's notice of Claimant's enrollment in the MCO advised Claimant that chiropractor Johnson was an authorized MCO provider and that Claimant did "not have to change physicians at this time." That information is inconsistent with ORS 656.005(12)(b)(B). However, SAIF never corrected that advice. The record does not reveal that SAIF ever advised Claimant that he could not treat with Dr. Johnson. On the other hand, there nothing in this record other than Dr. Johnson's billing to connect his treatment to the accepted injury. The claim was closed at the time of the treatment and there is no support for the provision of palliative care in November 2004 and June 2005. I therefore find that the decision that SAIF is not required to pay Dr. Johnson for treatment provided to Claimant on November 1 and November 4, 2004 and June 6, 2005 is correct.

With respect to Dr. Koller's examination of Claimant on referral from Dr. Spence, I find that it is appropriate that his services be paid. SAIF argues that there is no proof that Dr. Koller was a member of the MCO when he examined Claimant on April 20, 2006. However, SAIF's position has been inconsistent and dilatory with regard to the physicians involved in this case. For six months SAIF did not pay Dr. Spence. When they did, it was three months after he had been authorized to provide care to Claimant. They then paid the entire bill. Claimant has met the burden of proving that Dr. Koller is an MCO provider. SAIF has not persuaded me that he was not an MCO provider on April 20, 2006 nor that that is the criteria they follow. I therefore find that SAIF should pay for Dr. Koller's treatment of Claimant on April 20, 2006.

Claimant requests an award of penalties. I find that SAIF did not act unreasonably. SAIF relies on cases from the Office of Administrative Hearings to support its position regarding

Third Party Solutions. I do not find that SAIF's position with respect to Dr. Koller was unreasonable.

Claimant's attorney is entitled to a reasonable assessed fee. In determining the amount of a fee, I refer to the factors identified at OAR 438-015-0010(4). Having considered those factors, I find that a reasonable assessed fee is \$2000.00.

ORDER

IT IS HEREBY ORDERED that the November 21, 2006 Administrative Order is modified and SAIF is ordered to pay Dr. Koller for his treatment of Claimant on April 20, 2006 and to pay Third Party Solutions for the prescriptions Dr. Ward prescribed on June 27, together with an assessed attorney fee of \$2000.00.