

In the ORS 656.260 Managed Care Dispute of

Damian O. Arevallo-Orozco, Claimant

Contested Case No: 08-009H

PROPOSED & FINAL ORDER

June 25, 2008

DAMIAN O. AREVALLO-OROZCO, Petitioner

SAIF CORPORATION, Respondent

Before Jenny Ogawa, Administrative Law Judge

Claimant appealed the Director's Review and Order issued on December 18, 2007 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 April 14, 2008, in Salem, Oregon, before Administrative Law Judge Ogawa. Claimant is represented by attorney Lourdes Sanchez. The employer, Employer's Overload, and its insurer, SAIF Corporation, are represented by Trial Counsel Bill Blitz. Because this matter involved a medical service dispute, notice of hearing was also mailed to Marquis Physical Therapy and to Managed Healthcare Northwest. These parties, as well as WCD, waived appearance. WCD Exhibits 1 through 24 were received into evidence. Prior to the scheduled hearing, the parties agreed to submit this matter on the documentary record. The record closed on May 26, 2008, following unrecorded telephone closing argument.

ISSUES

Whether SAIF was liable for the physical therapy provided by Mr. Marquis, who was not an MCO provider.

FINDINGS OF FACT

The following facts are taken from the MRU's administrative order. Claimant sustained a compensable right arm injury on October 13, 2005. SAIF accepted the claim for left forearm flexor tendon laceration. SAIF enrolled claimant in the CareMark MCO on October 20, 2005. The enrollment letter advised claimant that Legacy Meridian Park Hospital was not an authorized CareMark MCO provider and that he change doctors and select a CareMark member to treat his injury. The enrollment letter also stated:

“After you have selected an attending physician or authorized nurse practitioner, that physician or authorized nurse practitioner must either provide all medical treatment or agree to refer you to an MCO provider for any specialized treatment, including physical therapy. **Care you receive that is not ordered by your attending physician or authorized nurse practitioner or care provided that is by non-panel member providers (without MCO approval) will not be reimbursed.**” (Ex. 2-2) (emphasis in original).

SAIF sent the enrollment letter to claimant, Legacy Meridian Park Hospital, and CareMark.

On November 9, 2006, claimant's condition became medically stationary. Thereafter, claimant began treating with Cheryl Goodrich, NP, who was an MCO provider. Ms. Goodrich referred claimant to Marquis Physical Therapy. Claimant received physical therapy from Mr. Marquis from December 4, 2006 through March 15, 2007. (Ex. 7). Mr. Marquis is not an MCO provider.

In its "Explanation of Benefits" (EOB) regarding nonpayment of services by Marquis Physical Therapy, SAIF stated that payment was disallowed because the provider was not MCO enrolled. In 2007, SAIF issued such EOBs on January 5, 30, February 9, 13, 16, March 5, 22, 27, and April 5. (Ex. 8).

CONCLUSIONS OF LAW AND OPINION

This is a managed care dispute arising under ORS 656.260. The MRU order "may be modified only if it is not supported by substantial evidence in the record or reflects an error of law. No new medical evidence or issues shall be admitted. *** Decisions by the director regarding medical disputes are subject to review under ORS 656.704." ORS 656.260(16); OAR 436-001-0225(2)¹.

ORS 656.245(4) provides in material part:

"Notwithstanding subsection (2)(a) of this section, when a self-insured employer or the insurer of an employer contracts with a managed care organization certified pursuant to ORS 656.260 for medical services required by this chapter to be provided to injured workers:

(a) Those workers who are subject to the contract shall receive medical services in the manner prescribed in the contract. Workers subject to the contract include those who are receiving medical treatment for an accepted compensable injury or occupational disease, regardless of the date of injury or medically stationary status, on or after the effective date of the contract." ***

"Insurers or self-insured employers who contract with a managed care organization for medical services shall give notice to the workers of eligible medical service providers and such other information regarding the contract and manner of receiving medical services as the director may prescribe."

The MRU concluded that an MCO contract violation occurred because claimant was subject to the MCO requirement that he receive treatment from authorized providers. Because Mr. Marquis was not an authorized MCO provider, the MRU determined that SAIF was not liable for the physical therapy provided by Mr. Marquis. (Ex. 23).

¹ OAR 436-001-0225(2) states: "In medical service and medical treatment disputes under ORS 656.245, 656.247(3)(a), and 656.327, and managed care disputes under ORS 656.260(16), 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."

Claimant contends that he detrimentally relied, in good faith, that he had been referred by Ms. Goodrich, an authorized MCO provider, to an authorized MCO provider for physical therapy. And, thus, he should not be liable for the physical therapy. Claimant relies on the following language in the MCO enrollment letter:

“After you have selected an attending physician or authorized nurse practitioner, that physician or authorized nurse practitioner must either provide all medical treatment or agree to refer you to an MCO provider for any specialized treatment, including physical therapy.” (Ex. 2-2).

SAIF argues that this provision either required that Ms. Goodrich provide the physical therapy treatment or that she refer claimant to an MCO physical therapist. Because neither requirement was satisfied, SAIF argues that the MRU reached the correct conclusion. I agree.

SAIF’s MCO enrollment letter required claimant to select an attending physician or authorized nurse practitioner who was a member of CareMark Comp MCO to treat his injury. Claimant was also notified that “care you receive that is not ordered by your attending physician or authorized nurse practitioner or care provided that is by non-panel medical providers (without MCO approval) will not be reimbursed.” (Ex. 2). Claimant became subject to the terms of the MCO contract on October 20, 2005.

Claimant began receiving physical therapy from Mr. Marquis on December 4, 2006. On January 5, 2007, SAIF issued an EOB for dates of service of December 4, 6, and 8, 2006 for that physical therapy. The EOB indicated that payment was disallowed because claimant was not treating with an MCO provider. Claimant, thus, knew that SAIF was not paying Mr. Marquis because he was not an MCO provider. Nevertheless, Ms. Goodrich continued to prescribe and Mr. Marquis continued to provide physical therapy. Ms. Goodrich, as an MCO provider, was required to comply with the rules, terms and conditions of the MCO contract. ORS 656.260. Thus, Ms. Goodrich should have referred claimant to an MCO physical therapist. However, her failure to do so was not a misrepresentation upon which claimant relied on to his detriment. By January 5, 2007, claimant had been informed that Mr. Marquis was not an MCO provider. Thus, claimant’s detrimental reliance argument fails.

The MCO contract required that claimant’s authorized nurse practitioner refer him to an MCO provider for physical therapy. The contract also stated that care provided by a non-panel MCO provider would not be reimbursed. Based on the terms of the MCO contract, the MRU did not err in concluding that an MCO contract violation occurred because claimant did not receive physical therapy from an MCO provider. Accordingly, MRU’s order is affirmed.

Claimant also argued that he should not be liable for the physical therapy, if SAIF is also not liable. OAR 436-009-0015(1) provides that “[a]n injured worker is not liable to pay for any medical service related to an accepted compensable injury or illness or any amount reduced by the insurer A medical provider shall not attempt to collect payment for any medical service from an injured worker.” OAR 436-009-0015(1)(d) is one of the exceptions to the rule and provides that an injured worker may be liable to pay for medical services “[w]hen the injured worker seeks treatment outside the provisions of a governing MCO contract after insurer

notification in accordance with OAR 436- 010-0275.” Here, SAIF notified claimant that he was enrolled in an MCO and that Mr. Marquis was not a panel member of the MCO. However, claimant continued to receive physical therapy from Mr. Marquis. Thus, the exception in OAR 436-009-0015(1)(d) applies. Therefore, claimant may be liable for the physical therapy. *Pamela K. Orender*, 12 CCHR 166 (2007).

Because claimant received physical therapy from an unauthorized MCO provider and because the therapy was not provided in the manner prescribed in the MCO contract, as required by ORS 656.245(4)(a), the MRU did not err in concluding SAIF was not liable for the physical therapy provided by Mr. Marquis from December 4, 2006 through March 15, 2007.

ORDER

IT IS THEREFORE ORDERED that the MRU’s order dated December 18, 2007 is affirmed.