
In the ORS 656.248 Medical Fee Dispute of

Dianne Rockholt, Claimant

Contested Case No: 07-126H

PROPOSED & FINAL ORDER

April 10, 2008

CLAIRE BARTON PHYSICAL THERAPY, Petitioner

SAIF CORPORATION, Respondent

Before Martha J. Brown, Administrative Law Judge

Pursuant to notice, a hearing was scheduled to be held on February 13, 2008 in Salem, Oregon before Administrative Law Judge Martha J. Brown. Prior to hearing, the parties requested that the matter be decided on the written record. The provider is Claire Barton Physical Therapy.¹ The employer, Thompsons Sanitary Service, and its insurer, the SAIF Corporation, are represented by their attorney, Thomas Nash. The record closed in this matter on March 12, 2008.

Exhibits 1 through 20 have been admitted into the record.

ISSUE

Payment for medical services rendered by the provider (Claire Barton Physical Therapy) from May 10, 2006 to August 25, 2006. The provider has appealed the Director's November 15, 2007 Administrative Order that held that claimant was not liable for physical therapy services provided from May 10, 2006 through August 25, 2006.

FINDINGS OF FACT

Claimant was compensably injured on April 11, 2006. Following the injury, claimant was referred by PA-C Ferguson to Claire Barton Physical Therapy for services.

On May 12, 2006, SAIF accepted the claim as a left sacroiliac joint strain and contusion.

On August 3, 2006, the provider wrote to SAIF and stated that it had not sent of a copy of claimant's treatment plan to SAIF because it was a new business and was unaware of the administrative rules. The provider asked SAIF to process claimant's claim for payment.

On October 4, 2007, the provider wrote to the Director to ask for review regarding the outstanding claims involving claimant.

On November 15, 2007, the Director issued its Administrative Order that found that SAIF was not liable for physical therapy services provided by Claire Barton from May 10, 2006

¹ Claire Barton submitted a written closing argument. However, in light of the fact that the provider was incorporated, yet not represented by counsel, during these proceedings, I conclude that the written argument cannot be considered. See ORS 9.320; *Donald L. Grant*, 49 Van Natta 250 (1997).

through August 25, 2006.

On November 19, 2007, the provider wrote to the Board to request a hearing. The provider stated that, although it did not send the treatment plan to SAIF within the seven days required by the administrative rule, it felt like SAIF was taking advantage of a loophole.

CONCLUSIONS OF LAW AND OPINION

The provider has appealed the Director's Order holding that SAIF was not liable for the physical therapy services provided from May 10, 2006 through August 25, 2006. SAIF argues that there is no error of law in the Director's Order, and the order is supported by substantial evidence in the record.

Pursuant to ORS 656.704, hearings regarding Department orders addressing medical services disputes are conducted by an Administrative Law Judge of the Workers' Compensation Board. In medical service and treatment disputes, an ALJ may modify the Department'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. ORS 656.372(2); OAR 4436-001-0225(2).

The medical reviewer found that, as defined by ORS 656.005(12)(b), PA-C Ferguson, who referred claimant for physical therapy, did not meet the statutory requirements to be an attending physician. Moreover, the reviewer found that, pursuant to ORS 656.250, a physical therapist shall not provide compensable services to injured workers except as allowed by a governing managed care organization (MCO) or as authorized by the worker's attending physician. In claimant's case, the reviewer found that she was not subject to an MCO contract.

In reviewing the Director's Administrative Order, I do not find any errors of law in the conclusion by the medical reviewer. Moreover, I conclude that the order is supported by substantial evidence in the record. Therefore, the Director's order must be affirmed.

ORDER

IT IS HEREBY ORDERED THAT the Director's Administrative Order dated November 15, 2007 is affirmed.