

In the ORS 656.260 Managed Care Dispute of

Damian Arevalo-Orozco, Claimant

Contested Case No: 08-009H

AMENDED FINAL ORDER

April 29, 2009

DAMIAN AREVALLO-OROZCO, Petitioner

SAIF CORPORATION, Respondent

Before Cory Streisinger, Director Dept. of Consumer and Business Services

I issued the Final Order in this matter on November 12, 2008. The issue was whether either insurer or claimant, who was covered by an MCO, should be liable for the cost of physical therapy services provided to claimant by a non-MCO provider. I found claimant was not responsible for any of the costs and that insurer was liable for a portion of the costs.

Insurer filed a motion to reconsider. No other party filed a response to this motion. Insurer argues it is not liable for the disputed charges because they were provided by a non-MCO provider without authorization. ORS 656.245(4).¹ I now reverse my prior order in part and, except as specifically noted below, I adopt and affirm my prior order.

FACTUAL SUMMARY

Except as specifically noted, I adopt the factual findings in the Resolution Team (RT) order. Claimant suffered compensable injuries. Insurer enrolled claimant in an MCO.

An MCO nurse practitioner referred claimant to a non-MCO physical therapist. Insurer issued a series of Explanation of Benefits (EOB) forms to the therapist refusing to pay the charges because the therapist was not an MCO provider.

Claimant sought administrative review of insurer's refusal to pay. The RT ruled insurer was not liable for these charges because claimant's treatment violated the MCO contract.

Claimant sought review of the RT order. Administrative Law Judge (ALJ) Jenny Ogawa

¹ ORS 656.245(4) states in 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. . . . A worker becomes subject to the contract upon the worker's receipt of actual notice of the worker's enrollment in the managed care organization, or upon the third day after the notice was sent by regular mail by the insurer or self-insured employer, whichever event first occurs. . . . “

affirmed the RT Administrative Order. ALJ Ogawa also found claimant might be liable for some of the charges because she concluded insurer's EOB's gave claimant notice he was receiving unauthorized services. ORS 656.245(4); OAR 436-009-0015(1), 0015(1)(d).²

CONCLUSIONS OF LAW

As this is a managed care dispute, I may modify the RT order only if it is not supported by substantial evidence or reflects an error of law. ORS 656.260(16); OAR 436-001-0225(2). Substantial evidence supports a finding when the record, viewed as a whole, would permit a reasonable person to make that finding. *Fred Meyer, Inc. v. Hayes*, 325 Or 592, 594 (1997).

Workers covered by an MCO contract are required to receive care under the terms of the contract. ORS 656.245(4)(a). The care for which the disputed charges were incurred was provided by a non-MCO provider, in violation of the MCO contract.

In my prior order I found insurer liable for charges incurred before insurer sent the EOB's. On reconsideration, I find that ruling erroneous because there is substantial evidence in the record supporting the RT's and the ALJ's conclusions that insurer should not be liable for any of the charges. I therefore reverse my prior final order only as to insurer's liability for the charges for the period from December 4, 2006 through January 5, 2007.

A worker is ordinarily not liable for expenses for treatment for accepted injuries. One exception is where the worker seeks treatment from a non-MCO provider after the MCO notifies the worker about treatment requirements. OAR 436-009-0015(1)(d). I find no evidence in the record supporting ALJ Ogawa's factual conclusion that claimant received insurer's EOB's. Claimant is therefore not responsible for any charges.

IT IS HEREBY ORDERED

My November 12, 2008 final order is affirmed in part and reversed in part. That portion of the order which found claimant not liable for any of the charges and that insurer was not liable

² OAR 436-009-0015 provides in part:

“(1) An 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 according to OAR chapter 436. A medical provider shall not attempt to collect payment for any medical service from an injured worker, except as follows:

* * * * *

(d) When the injured worker seeks treatment outside the provisions of a governing MCO contract after insurer notification in accordance with OAR 436-010-0275”

for charges incurred after January 5, 2007 is affirmed. That portion of the order which found insurer liable for the charges for the period of December 4, 2006 through January 5, 2007 is reversed. The December 18, 2007 RT order is affirmed. The June 25, 2008 ALJ order is affirmed in part and reversed in part. That portion of that order which found insurer not liable for any charges is affirmed. That portion of the ALJ order which found claimant might be liable for some of the charges is reversed.

DATED this 24th day of April, 2009.