

In the ORS 656.245 Medical Services of

Marcos Hernandez, Claimant

Contested Case No: 08-357H

PROPOSED & FINAL ORDER

May 29, 2009

MARCOS HERNANDEZ, Petitioner

SAIF CORP., Respondent

Before Chuck Mundorff, Administrative Law Judge

Hearing in this matter was scheduled to convene on March 13, 2009, in Eugene, Oregon before Administrative Law Judge Chuck Mundorff. Claimant is represented by attorney, Lourdes Sanchez. The employer, Jason Schrock & Paul Zehr-Smith Seed Services, and its insurer, the SAIF Corporation, are represented by attorney Mary Goebel Adams. The parties requested that the matter be decided on the documentary record in lieu of hearing and there were no recorded proceedings. The record closed on April 30, 2009, following receipt of claimant's waiver of a Reply argument.

Exhibits

By letter submission, Workers' Compensation Division (WCD) submitted exhibits 1-23 for inclusion in the record. Neither party objected to any of the proposed exhibits and they are admitted into this record.

ISSUES

Claimant appeals the Administrative Order MS 08-1440 which held that physical therapy which claimant received from September 30, 2007 through October 23, 2007, was not compensable palliative treatment.

FINDINGS OF FACT

I adopt the findings of fact from the Administrative Order. I do not make additional findings of fact as this is substantial evidence review of a medical services dispute under ORS 656.245, ORS 656.248(12), and OAR 436-001-0225(2).

CONCLUSIONS AND OPINION

The director's Order concluded that claimant's attending physician did not meet the requirements of OAR 436-010-0290(a) through (e) and as such, held that SAIF was not liable for the payment for the services provided on the above dates by TAI Gateway Physical Therapy. (Ex. 22-3).

On review, claimant does not argue that the attending physician did, in fact, meet those requirements, only that if the Order is upheld, that claimant is not liable for the payment of those services individually pursuant to OAR 436-009-0015. That rule says 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:

(a) When the injured worker seeks treatment for conditions not related to the accepted compensable injury or illness;

(b) When the injured worker seeks treatment that has not been prescribed by the attending physician or authorized nurse practitioner, or a specialist physician upon referral of the attending physician or authorized nurse practitioner. This would include, but not be limited to, ongoing treatment by non-attending physicians in excess of the 30-day/12-visit period or by nurse practitioners in excess of the 90-day period, as set forth in ORS 656.245 and OAR 436-010-0210;

(c) When the injured worker seeks palliative care that is either not compensable or not authorized by the insurer or the director under OAR 436-010-0290, after the worker has been provided notice that the worker is medically stationary;

The rule provides that the worker will not be liable for payment of medical bills for treatment of an accepted condition with the above noted exceptions. Here the director specifically found that Dr. Perez did not provide a treatment plan, explain how the requested care related to the compensable condition, nor explained how the requested care would enable claimant to continue working.

There is no 827 in the file indicating that Dr. Perez is the attending physician for the accepted workers' compensation and it should be noted that Dr. Swan was the attending physician at the time of closure. (Ex. 5). It is not clear that the requested care was related to the accepted condition as the accepted condition was "left parascapular sprain" and the diagnosis at the time of referral was "strain of chest." (Ex. 6).

In light of the above, I find that the exceptions of the rule apply in this case. It is not clear that Dr. Perez was the attending physician, nor that the treatment was directed to an accepted condition and finally that it was not authorized by the carrier prior to treatment after being medically stationary.

ORDER

The Director's Order is affirmed.