

In the ORS 656.245 Medical Services of

Juvenal Gonzalez, Claimant

Contested Case No: 09-132H

FINAL ORDER

March 12, 2010

JUVENAL GONZALEZ, Petitioner

MATRIZ ABSENCE MANAGEMENT, Respondent

Before John Shilts, Workers' Compensation Division Administrator

The original dispute in this matter concerned the refusal by Matrix Absence Management (administrator) to pay for physical therapy services provided by Marquis Physical Therapy (therapist). That dispute was resolved by the Workers' Compensation Division's Resolution Team (RT) through an Administrative Order of Reconsideration issued on July 8, 2009. The only issue remaining is the effect of a finding in that order that the worker, Juvenal Gonzalez (claimant) might be liable for the fees under OAR 436-009-0015(1)(c).¹

Claimant sought review only of that portion of the order stating he might be liable for the costs. Administrative Law Judge (ALJ) Kirk Spangler heard the case on the record. ALJ Spangler issued a Proposed and Final Order of Dismissal on January 6, 2010. That order found there was no justiciable controversy and dismissed the matter.

Claimant seeks director's review of the ALJ's order. I affirm that order.

FACTUAL SUMMARY

I adopt the facts as found by the ALJ and the RT. Claimant suffered a compensable injury which administrator accepted and claimant was determined medically stationary. Claimant consulted Dr. Power who prescribed physical therapy in order to determine claimant's work capabilities and restrictions. The therapist provided services on multiple dates under a treatment plan Dr. Power approved. The administrator declined to pay the physical therapy fees. On review, RT concluded the physical therapy fees were not compensable because Dr. Power had failed to submit a fully completed request for palliative care to the administrator. OAR 436-010-0290(1)(a).² The reviewer also found the care was not compensable as curative care under ORS

¹ 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 A medical provider must not attempt to collect payment for any medical service from an injured worker, except as follows:

* * * *

- (c) When the injured worker seeks palliative care that is either not compensable or not authorized by the insurer . . . after the worker has been provided notice that the worker is medically stationary.

² OAR 436-010-0290 provides in part:

- (1) When the worker's attending physician believes that palliative care is appropriate to enable the worker to continue current employment or a current vocational training program, the attending physician must first submit a written request for approval to the insurer.

- (a) The request must:

- (A) Describe any objective findings;
(B) Identify by ICD-9-CM diagnosis, the medical condition for which palliative care is requested;
(C) Detail a treatment plan which includes the name of the provider who will render the care, specific treatment modalities, and frequency and duration of the care, not to exceed 180 days;

656.245(1)(c)(L) or as care from an ancillary provider under OAR 436-010-0230(4)(a).

The issue of claimant's potential liability for the costs arose in response to an inquiry from claimant's attorney. RT had issued an order in this case on May 8, 2009. That order made no statement about claimant's potential liability. Claimant's attorney asked for reconsideration of the order. In her reconsideration request, claimant's attorney asserted, apparently intending to refer to OAR 436-009-0015,³ that an injured worker is not liable for the costs of services related to a compensable injury. In response, on reconsideration, the RT reviewer addressed the issue of claimant's potential liability for the costs under OAR 436-009-0015. That rule generally provides that a worker is not liable for the costs of medical services associated with an accepted compensable injury. However a worker can be liable if they obtain palliative care without prior approval from the insurer. The reconsideration order states under this pre-approval requirement/exception that claimant "may be liable for the services."

CONCLUSIONS OF LAW

The statement in RT's order concerning claimant's possible liability is without foundation, legal authority, or legal effect. The medical provider whose billings were at issue was not a party to the proceedings. There was no evidence that provider was attempting to obtain payment from claimant. The relevant parties were not joined in the action and there was no actual dispute before RT on this issue. RT therefore could not issue a binding decision on this question.

As claimant's possible liability was the only issue on review, ALJ Spangler correctly determined no justiciable controversy was presented. An adjudicative body may only render a decision where there is a justiciable controversy. This requires that there must be an actual, legal controversy between the parties before the body, based on existing facts, rather than speculation about future events. If these matters are lacking, the adjudicative body would be issuing an advisory opinion, which is unauthorized and not binding. *Pendleton School Dist. 16R v. State*, 345 Or 596, 604 (2009), *mod. on other grounds*, 347 Or 344 (2009). The ALJ therefore properly dismissed the request for hearing.

IT IS HEREBY ORDERED ALJ Spangler's January 6, 2010, Proposed and Final Order of Dismissal is affirmed. RT's July 8, 2009, Administrative Order of Reconsideration remains in effect.

(D) Explain how the requested care is related to the compensable condition; and

(E) Describe how the requested care will enable the worker to continue current employment, or a current vocational training program, and the possible adverse effect if the care is not approved.

³ Counsel's June 5, 2009, letter actually refers to OAR 436-010-0290, which addresses the procedure for obtaining care after a worker is medically stationary.