

In the ORS 656.260 Managed Care Dispute of

**William Meier, Claimant**

Contested Case No: 10-061H

**PROPOSED & FINAL ORDER**

April 15, 2011

WILLIAM MEIER, Petitioner

FRED MEYER STORES, INC., Respondent

Before Steve Rissberger, Administrative Law Judge

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Pursuant to notice, a hearing was scheduled in Portland, Oregon, on July 16, 2010, before Administrative Law Judge Rissberger. Prior to hearing, the parties informed the Hearings Division that they would be submitting this case based on the written record. Claimant is represented by Edward Hill, attorney at law. The employer, the Fred Meyer Stores, and its workers' compensation insurer, Sedgwick CMS, are represented by Bruce L. Byerly, attorney at law. Exhibits 1-44 were received based on the stipulation of the parties. The record closed on April 14, 2011, following the submission of written argument from both parties, and a written inquiry from the ALJ regarding the issues to be decided in this case.

**ISSUE**

**Managed Care Dispute—MCO Enrollment—Adequate Notice:** Whether claimant was provided with adequate notice regarding his enrollment in the Providence Managed Care Organization (MCO) under ORS 656.245(4)(a).

**FINDINGS OF FACT**

The Findings of Fact set forth in the March 8, 2010 Administrative Order on pages 1 through 2 are hereby adopted and incorporated by reference. *See Liberty Northwest Ins. Corp. v. Kraft*, 205 Or App 59, 62-63 (2006).

**CONCLUSIONS AND OPINION**

At issue is the Workers Compensation Division's (WCD) factual determination in its Administrative Order on Remand, dated March 8, 2010, that claimant was enrolled in the Providence MCO pursuant to ORS 656.245. Claimant argues that he was never effectively enrolled in the Providence MCO because a letter notifying claimant of this event was never sent to claimant's legal counsel. Sedgwick argues that claimant became subject to the MCO contract as a result of claimant's actual notice of this event. If claimant prevails with regard to the issues disputed at hearing, he also requests an award of assessed attorney fees.

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). In conducting a substantial evidence review, I look to the whole record with respect to the issue being decided. "If an agency's finding is reasonable, keeping in mind the evidence against the

finding as well as the evidence supporting it, there is substantial evidence. *Kraft*, 205 Or App at 62, citing *Armstrong v. Asten Hill Co.*, 90 Or App 200, 206 (1988).

WCD's Administrative Order on Remand contained the following factual finding: "On August 16, 2006, Sedgwick enrolled Mr. Meier in Providence MCO, a MCO." (Ex. 36, p. 1) Claimant asserts that this factual finding was erroneous, because it was not supported by substantial evidence. Claimant's challenge is key to a portion of WCD's order, and the managed care dispute between the parties, because WCD found that medical services that claimant received from Dr. Cherveney were not reimbursable—in part—because Dr. Cherveney did not pre-certify his planned care with Providence MCO.

Claimant cites portions of OAR 436-010-0275 in support of his challenge. OAR 436-010-0275 provides that when an insurer enrolls a worker in an MCO, "the insurer must simultaneously provide written notice to the worker, the worker's representative, all medical service providers and the MCO of enrollment." Claimant contends that the notice sent to him was defective because a copy was not simultaneously sent to his attorney, Edward Hill, who began representing claimant on September 12, 2003. Claimant acknowledges in his written argument that notice was sent to him, his employer and Dr. John Bauer.

The difficulty with claimant's argument here is that he fails to address relevant statutory language contained in ORS 656.245(4)(a). The statute, among other things, sets standards for when a worker becomes subject to contractual limitations and services of a managed care organization. The relevant portion provides that an injured 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."<sup>1</sup> To the extent that the more specific language contained in ORS 656.245(4)(a) conflicts with the provisions of OAR 436-010-0275, the statutory language must take precedent.

The Administrator of WCD addressed a similar issue in *Adrian Guzman*, 10 CCHR 459 (2005). There, the relevant issue was whether a worker was subject to a MCO contract even though the insurer did not provide notice to some of the claimant's treating physicians. An ALJ from the Office of Administrative Hearings found that the worker was not subject to the MCO contract because the insurer had failed to fully comply with the requirements of OAR 436-010-0275. However, the Administrator reversed the ALJ's ruling, holding that a worker becomes subject to an MCO contract upon the worker's receipt of actual notice of enrollment in the MCO, or upon the third day after the notice was mailed as provided by ORS 656.245(4)(a). In

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<sup>1</sup> 3 ORS 656.245(4)(a) provides, in part: "(4) 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\*\*\*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 occurs first."

*Guzman*, the Administrator specifically found that the “worker’s enrollment status is not conditioned upon the insurer providing notice to the medical providers as required by the administrative rules.” 10 CCHR at 460.

Here, the evidence submitted at hearing indicates that a letter notifying claimant of his enrollment in an MCO was sent to him on August 16, 2006. (Ex. 1.) Copies of the notification letter were sent to his employer and Dr. Bauer on the same date. (Ex. 1, p. 3.) Claimant did not argue that he failed to receive the notification letter. Thus, I am persuaded that claimant had “actual notice” of his enrollment in an MCO within the meaning of ORS 656.245(4)(a). Pursuant to my reading of the statute, this was sufficient to make claimant subject to the MCO contract. I am not persuaded that Sedgwick’s failure to also send copies of the notification letter to claimant’s legal counsel, or to other physicians besides Dr. Bauer, had the effect of nullifying his enrollment in the MCO or making this enrollment incomplete, despite the language of OAR 436-010-0275. The director rejected a similar argument in *Guzman*, holding—in effect—that an insurer’s compliance with the notice requirements of ORS 656.245(4)(a) was sufficient to render a worker subject to an MCO, even if the insurer failed to comply with the additional notification requirements contained in the director’s administrative rule at OAR 436-010-0275.

Accordingly, I am persuaded that the administrator’s factual finding—determining that claimant was enrolled in an MCO—was supported by substantial evidence. Claimant raised no other grounds for his challenge of the administrative order. The director’s administrative order on remand, issued on March 8, 2010, should be sustained without modification.

### **ORDER**

The Administrative Order issued on March 8, 2010 is affirmed without modification.