
In the ORS 656.327 Medical Treatment Dispute of

Pamela J. Panek, Claimant

Contested Case No: 10-039H

PROPOSED & FINAL ORDER

April 28, 2011

PAMELA J. PANEK, Petitioner
SAIF CORPORATION, Respondent

Before Steve Rissberger, Administrative Law Judge

Pursuant to notice, a hearing was scheduled in Portland, Oregon, on January 13, 2011, 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 unrepresented and appeared *pro se*. The employer, Oregon Health Sciences University (OHSU), and its workers' compensation insurer, SAIF, are represented by Jeff Gerner, attorney at law. Exhibits 1- 125 were received based on the agreement of the parties. The record closed on April 18, 2011, following the submission of written argument from both parties.¹

ISSUE

Treatment Dispute—Appropriate Treatment: Whether an in-patient rehabilitation program at the Life Healing Center in Santa Fe, New Mexico, is appropriate treatment for claimant within the meaning of ORS 656.327(1)(a)?

FINDINGS OF FACT

The Findings of Fact set forth in the February 10, 2010 Administrative Order on pages 1 through 6 are hereby adopted and incorporated by reference. *See Liberty Northwest Ins. Corp. v. Kraft*, 205 Or App 59, 62-63 (2006).

RULING ON EVIDENCE

Claimant submitted additional documents following the scheduled hearing date and asked that they be admitted into the evidentiary record. These additional documents included an opinion letter, authored by Virginia Terhaar, Ph.D, dated January 18, 2011 and a second opinion letter, authored by Lynn K. Friedman, M.D., on January 25, 2011. SAIF objected on the basis that these documents were not part of the record reviewed and considered by the Workers' Compensation Division (WCD) prior to its issuance of Administrative Order TX 09-1649.

In a treatment dispute under ORS 656.327(1)(a) the evidentiary record is created by the Director during WCD's administrative review process. No new medical evidence can be admitted at hearing. See OAR 436-001-0225(2) and OAR 436-010-0008(13). *See also Liberty Northwest and DCBS v. Mundell*, 219 Or App 358 (2008). Accordingly, SAIF's objections to Exhibits 126 and 127 are sustained. These opinion letters unfortunately were not available to

¹ Claimant did not submit a rebuttal argument in this case, though the record was left open for an additional period of time for her to do so.

WCD when the agency issued its administrative order. Thus, I cannot consider them here in assessing the legal sufficiency of WCD's order under a substantial evidence standard. However, I have retained marked copies of these documents in the hearing file in order to preserve claimant's rights should claimant choose to appeal this ruling.

CONCLUSIONS AND OPINION

At issue is the Workers' Compensation Division's (WCD) Administrative Order, TX 09-1549, which determined that a proposed inpatient treatment program located at the Life Healing Center in Santa Fe, New Mexico was not appropriate treatment for claimant within the meaning of ORS 656.327(1)(a). Claimant argues that WCD erred when it reached this decision and that a preponderance of persuasive medical opinion supports enrollment in the program. SAIF maintains that WCD's Administrative Order should be affirmed.

This is a treatment dispute arising under ORS 656.327. WCD's Administrative 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." ORS 656.327(2) Decisions by the director regarding medical disputes are subject to review under ORS Chapter 183. 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).

ORS 656.245(1) requires an insurer, here SAIF, to provide medical services for conditions caused in material part by claimant's workers' compensation injuries for such period as the nature of the injury or the process of recovery requires. Following a determination that a worker's condition is medically stationary, future medical services are limited to those provided for in ORS 656.245(1)(c). Claimant has been found to be permanently and totally disabled (PTD). Under ORS 656.245(1)(c)(A), she is entitled to any medical treatment that is otherwise appropriate and necessary. WCD is charged with the task of resolving disputes between claimant and SAIF about what treatment is appropriate.

Dr. Madnick, Dr. Friedman and Ms. Terhaar proposed that claimant enroll in a five week inpatient treatment program at the Life Healing Center in Santa Fe, New Mexico. The program is designed for patients with dual diagnoses. It has been suggested as a means of reversing claimant's worsening substance abuse and compulsive behaviors. (See Ex. 109.) In particular, Dr. Friedman stated that the combination of claimant's marijuana use, compulsive shoplifting and intermittent overeating threatened to sabotage the progress that claimant had made, thus far, and that "more intensive intervention" was needed in order to keep claimant "on track with her positive progress." (Ex. 108, p. 2.) SAIF objected to the treatment program, asserting that it was similar to the inpatient treatment proposal that had previously been determined to be inappropriate for claimant pursuant to an administrative order issued in September 2007. (See Exs. 98 and 111.)

WCD's medical reviewer, Susan Hudson, considered contrary opinions from three medical experts, Dr. Heck, Dr. Elder and Dr. Kjaer. Dr. Kjaer concluded that it was premature to enroll claimant in a residential treatment program, reasoning that her substance abuse problems needed to be treated successfully before her psychiatric problems could be fully addressed.

Dr. Heck, a physician who evaluated claimant at SAIF's request, essentially concurred with Dr. Kjaer. Dr. Heck found claimant had not cooperated with previous outpatient programs intended to address her substance abuse problems, including her extensive marijuana use. He opined further that claimant's shoplifting constituted "acting out behavior" rather than an addiction and that any treatment plan that labeled shoplifting as "addictive" tended to reinforce claimant's belief that she was not responsible for her actions. He concluded that a residential treatment program was unnecessary, and likely would prove unsuccessful, since claimant had failed to cooperate with previous outpatient treatment efforts and had failed to show either the resolve or the sense of personal responsibility necessary to address each of her addictive behaviors. Dr. Heck's assessment of claimant's condition was similar to one he made in 2007 when he also concluded that enrollment in a residential treatment program was contraindicated.

Henry Elder, M.D., a psychiatrist, evaluated claimant and reviewed her medical records at the request of WCD. Like Dr. Heck, Dr. Elder concluded that claimant was not sufficiently motivated to stop using drugs to justify admission in an intensive residential treatment program like the Life Healing Center program in New Mexico. He concluded further that claimant's chronic use of marijuana and benzodiazepines amounted to voluntary abuse of these substances, rather than a genuine chemical dependency. Dr. Elder stressed that claimant had engaged in behavior that had undermined outpatient treatment, and would likely undermine an inpatient program, as well. He listed these behaviors as skipping sessions, canceling sessions for non-therapeutic reasons, acting suicidal during hospital stays, ingesting mind altering substances prior to sessions, not keeping agreements with therapists and challenging her therapist's personal limits. In evaluating the merits of the Life Healing Program, Dr. Elder concluded that inpatient hospitalizations did not provide optimal settings for treating either borderline personality disorder problems or chemical dependency in the absence of patient motivation to achieve sobriety. Instead, he recommended that claimant undergo "Dialectal Behavior Therapy," coupled with an outpatient chemical dependency program, to be repeated or extended as often as necessary, in order to either bring about recovery or sufficient progress to make inpatient treatment a realistic option.

Although WCD's medical reviewer noted and considered the treatment recommendations of Dr. Madnick, Dr. Friedman and Ms. Terhaar in the agency's order of February 10, 2010, WCD's medical reviewer ultimately found the medical and mental health opinions offered by Dr. Heck, Dr. Elder and Dr. Kjaer to be more persuasive. In particular, WCD's February 10, 2010 administrative order stated: "[t]he director finds that while the program offered by the Life Healing Center may address some of the issues documented to impact Ms. Panek, the persuasive opinions of Dr. Heck and Dr. Elder, in agreement with Dr. Kjaer, establish that, in relation to workers' compensation, the in-patient program at the Life Healing Center is not appropriate at this time." (Ex. 122, p. 7.) This conclusion reasonably and logically followed from the medical opinion evidence presented to WCD. Further, the order's references to the recommendations made by claimant's treatment team, evinced meaningful and appropriate consideration of the

medical opinion evidence favoring claimant's enrollment in the treatment program, as well as the opinion evidence opposing it. Although claimant understandably disagrees, the agency's ultimate conclusion was reasonable and based on substantial evidence.

In sum, I am persuaded that WCD's Administrative Order of February 10, 2010, is supported by substantial evidence in the record. The Order should be affirmed.

ORDER

The Administrative Order TX 09-1649, issued on February 10, 2010, is affirmed without modification.