

In the ORS 656.260 Managed Care Dispute of

Roger W. Phillips, Claimant

Contested Case No: 11-051H

¹AMENDED PROPOSED & FINAL ORDER

September 9, 2011

ROGER W. PHILLIPS, Petitioner

SAIF CORPORATION, Respondent

Before Jenny Ogawa, Administrative Law Judge

Pursuant to notice, a hearing was scheduled for July 15, 2011, in Salem, Oregon, before Administrative Law Judge Ogawa. Claimant is represented by attorney Robert Carlson. The employer, Mid Valley Healthcare, and its insurer, SAIF Corporation, are represented by Trial Counsel Tom Harrell. Exhibits 1 through 35 were received into evidence at hearing. The record closed at the conclusion of the hearing on July 15, 2011.

ISSUE

1. Whether claimant's request for administrative review was timely.
2. Whether the Medical Section Resolution Team (MRT) of the Workers' Compensation Division (WCD) has jurisdiction to review the issue of SAIF's nonpayment of physical therapy services.

FINDINGS OF FACT

Claimant is responsible for the infrastructure of the employer's telecommunication systems. He sustained a compensable left foot condition in June 2008. (Ex. 1). SAIF accepted left plantar fasciitis. In September 2008, SAIF enrolled claimant into the Oregon Health System (OHS) MCO.

Claimant's foot condition required prolonged treatment. In December 2009, Dr. Thrall diagnosed recalcitrant left plantar fasciitis and left hip pain secondary to altered gait from the plantar fasciitis. He advised claimant to proceed with the treatment recommended by Dr. McNabb. (Ex. 3-3).

Dr. McNabb, a podiatrist, referred claimant to physical therapy (PT). (Ex. 4). Claimant sent Dr. McNabb's prescription for PT to SAIF. (Ex. 5). OHS precertified the physical therapy by Rebound Physical Therapy.² (Exs. 11, 31³). Claimant was approved for two visits per week for a total of 16 visits. From December 7, 2009 through February 21, 2010, claimant received physical therapy for his foot and hip. (Ex. 6).

¹ This order has been amended to reflect the proper caption of ORS 656.260

² The MRT referred to Rebound Physical Therapy as "Samaritan Medical Clinics" and as "Samaritan Health Services." For purposes of consistency, the name Rebound PT is used in this order.

³ The MRT obtained information that the first SAIF adjuster was okay with the MCO's precertification, but the new SAIF adjuster was "unhappy with the PT referral." (Exs. 11-2, 31).

On January 25, 2010, Dr. Thrall signed SAIF's concurrence letter (from a different claims adjuster) stating that PT was not warranted at this time. (Ex. 12).

SAIF issued Explanation of Benefits (EOBs) to Rebound on: February 9, March 5, March 25, March 31, April 1 and May 20, 2010. (Ex. 13). SAIF paid the January 27, 2010 treatment, but not the others on the ground the services were not authorized by the attending physician.

On August 27, 2010, the parties settled the case through mediation. Claimant was represented at the mediation. The Board approved the settlement documents DCS and CDA—on September 2010. (Exs. 20, 21). No unpaid medical bills were listed in the DCS. (Ex. 35-4).

In August 2010, claimant became aware that Samaritan Choice, his private health insurance, had paid the PT bills minus the co-pays. Claimant paid the co-pays in August 2010. (Exs. 23, 30). Claimant later learned that Rebound PT (in November 2010) refunded payment to Samaritan Choice. Rebound continued to bill claimant. (Exs. 24, 30). Claimant made partial payments on October 20, 2010 and in December 2010. (Exs. 23, 33-2). Rebound never told claimant that it had not billed SAIF nor that SAIF refused payment. (Claimant's testimony).

On February 22, 2011, claimant was informed that the unpaid PT bills were scheduled to go to collections. On February 23, 2011, claimant requested administrative review of the unpaid PT bills. (Ex. 23-1). In his request, claimant attached a December 3, 2010 bill from Rebound PT. (Ex. 23, pp. 4-7). WCD received claimant's letter on February 28, 2011. (Ex. 24). SAIF disputed the bills on the grounds that: (1) the services were not authorized by the attending physician; (2) the treatment was excessive and ineffectual; and (3) the request was untimely, as evidenced by Dr. Thrall's January 2010 chart note and claimant's payments. (Ex. 29). The MRT dismissed claimant's request for review as untimely. (Ex. 33).

CONCLUSIONS OF LAW AND OPINION

The MRT listed the underlying issue as whether SAIF was liable for physical therapy (PT) services. Because this matter arises under ORS 656.248(12) and OAR 436-009-0008 regarding the nonpayment of medical bills, the scope of review is *de novo*. OAR 436-001-0225(1).

Relying on OAR 436-009-0008, and based on when the EOBs issued and on claimant's partial payments, the MRT determined that claimant was aware of the nonpayment of the medical bills no later than October 20, 2010. Because the MRT received claimant's request for administrative review on February 28, 2011, the MRT concluded that claimant's request was untimely and dismissed the matter.

At the time the disputed medical services were rendered, OAR 436-0090008(2) (Admin. Order No. 09-054) stated:

The medical provider, worker, or insurer may request review by the director in the event of a dispute about either the amount of a fee or non-payment of bills for medical services on a compensable injury. The following time frames and conditions apply to requests for administrative review before the director under this rule:

(b) For all claims not enrolled in an MCO, or for disputes which do not involve an action or decision of the MCO, the aggrieved party must request administrative review by the director within 90 days of the date the party knew, or should have known, there was a dispute over the provision of medical services. Absent a showing of good cause, the date a medical provider should have known is the date the provider received payment or was notified the bill would not be paid. The date the insurer should have known is the date action on the bill was due under OAR 436-009-0030. Filing a request for administrative review under this rule may also be accomplished in the manner prescribed in OAR chapter 438, division 005.

The "knew or should have known" provision in subsection (2)(b) implicitly requires some form of notice to claimant that there was a dispute over the nonpayment of medical bills. See *Sandra D. Ellis*, 14 CCHR 126 (2009) (request for administrative review timely because SAIF failed to provide the claimant notice of the 90-day time limitation). Some form of formal notice would be consistent with sections (2)(a)⁴ and (2)(b)(B) that requires notice be given to the claimant's attorney or to the medical provider. See *Tony M Larson*, 12 CCHR 250 (2007) (actual knowledge of a dispute did not occur until SAIF gave notice to the attorney that it would not pay the bill).

In *David Weitzman*, 16 CCHR 257 (2010), the claimant's attorney wrote a letter in May 2009 in which he withdrew a request for hearing challenging the insurer's claim denial and

⁴ OAR 436-009-0008(2)(a) states:

For all MCO enrolled claims where a party disagrees with an action or decision of the MCO, the aggrieved party shall first apply to the MCO for dispute resolution within 30 days pursuant to OAR 436-015-0110. When the aggrieved party is a represented worker, and the worker's attorney has given written notice of representation, the 30 day time frame begins when the attorney receives written notice or has actual knowledge of the dispute. Administrative review by the director must be requested within 60 days of issuance of the MCO's final decision under the MCO's dispute resolution process. If a party has been denied access to the MCO dispute process or the process has not been completed for reasons beyond a party's control, the party may request director review within 60 days of the failure of the MCO process. If the MCO does not have a process for resolving fee and billing disputes, the insurer shall advise the medical provider or worker that they may request review by the director.

This subsection (2)(a) is inapplicable here because the medical services dispute does not result from a decision by the MCO.

expressed an intent to pursue payment of outstanding medical bills pursuant to ORS 656.247. In December 2009, the claimant's attorney sent the insurer unpaid medical bills and requested payment under ORS 656.247. Six days later, the insurer's attorney responded that because its denial was final, the employer was under no obligation to pay the remaining balance of claimant's medical bills. The MRT determined that the May 2009 letter indicated claimant had knowledge there was a dispute regarding nonpayment of medical bills, and thus dismissed claimant's December 2009 request for review as untimely. The Director reversed, relying on prior decisions in *Harry W. Lucas*, 15 CCHR 221 (2010) (the submission of a bill was not the equivalent of knowledge there was a dispute; rather, there was not knowledge of a dispute until the claimant or his attorney had information the medical bills would not be paid) and in *Tony M Larson*, *supra*. The Director concluded that the insurer did not know there were unpaid bills until December and that the insurer's December letter denying payment constituted notice of a dispute. *Id.* at 258, 259.

Here, claimant had a history with SAIF regarding delays in getting bills paid or getting reimbursed. He had been diligent in prompting Rebound to obtain MCO precertification and approval of the PT. He thought SAIF had approved the PT before he agreed to do the PT. Claimant, thus, reasonably believed SAIF would pay the PT bills.

Rebound initially billed SAIF. SAIF had disallowed the bills, per the EOBs, by May 20, 2010. SAIF did not provide the EOBs to claimant or to his attorney, nor did Rebound PT inform claimant that SAIF had refused payment. (Claimant's testimony). Presumably, Rebound PT subsequently billed Samaritan Choice, who then paid the bills on July 13, 2010.

Around the time of the August 27, 2010 mediation, claimant knew that Samaritan Choice had paid the PT bills. (Exs. 30, 34). The DCS was approved on September 10, 2010. Claimant understood that his hip condition and current left foot condition, as well as conditions not accepted by SAIF, were included in the DCS. He understood that outstanding bills were to be listed in DCS, but that no unpaid medical bills were listed in DCS. So, he thought the PT bills were paid or were going to be paid. SAIF argues that, because the bills had been otherwise paid, they were not "unpaid bills" that were required to be included in the DCS. *See Floyd D. Gatchell*, 48 Van Natta 467, 468 n. 2 (1996). SAIF, thus, did not consider the bills denied or in dispute, although it had not paid the bills. The bills were not "unpaid," but that does not mean that claimant had notice or knowledge that SAIF had denied them.

When considered as a whole, there is sufficient ambiguity in this record regarding whether and when claimant should have known that SAIF was not going to pay the disputed PT bills. Arguably, claimant's information (in August 2010) that his private health insurance paid the bills may have constituted knowledge that SAIF had not paid the bills. But, he may have also wondered when SAIF would pay them. In addition, at the time of August 2010 mediation, claimant and/or his attorney ought to have known that SAIF had not paid the PT bills. Claimant's attorney had told claimant to pay the co-pays since Samaritan Choice had paid the bills. Claimant may not have expected Samaritan Choice to obtain a refund (which it did on November 17, 2010) from Rebound PT. Nevertheless, Samaritan Choice's actions are not pertinent to the issue of claimant's knowledge. From SAIF's perspective, the PT bills were not

subject to the DCS because the bills had been "otherwise partially or fully reimbursed." But, SAIF's perspective is not relevant to what claimant knew or should have known.

After the DCS, Rebound PT billed claimant monthly.⁵ Claimant made partial payments to protect his credit rating. When Rebound notified claimant that it was going to send the bills to collection if the balance was not paid in full, this prompted claimant to request MRT review.

Based on this record, SAIF did not notify claimant that there was a dispute regarding payment of the PT bills or that claimant had 90 days to request MRT review. Claimant had a reasonable belief that SAIF would eventually pay for the PT that had been approved by the MCO for his accepted foot condition. SAIF may have considered the bills denied, but did not notify claimant that they had been denied. Rather, prior to SAIF's March 15, 2011 letter to the MRT, there was no written documentation or communication from SAIF to claimant that it would not pay the PT bills. Claimant's request for administrative review was therefore timely.

Because the MRT dismissed the request for review as untimely, the MRT did not address the merits of the parties' dispute. Among SAIF's reasons for denying the medical bills was its contention that the services were excessive and ineffectual. That issue is within MRT's purview. SAIF also asserted that the MRT lacked jurisdiction due to the DCS. Remand of this case is necessary for the MRT to determine in the first instance whether it has jurisdiction over the dispute and, if so, whether SAIF is liable for the disputed medical services.

ORDER

IT IS HEREBY ORDERED that the April 8, 2011 Administrative Order of Dismissal is set aside, and this matter is remanded to the MRT for decision on the merits.

⁵ Claimant only submitted a December 3, 2010 bill into the record. (Exs. 23-4, 33-2).