

1 **EVIDENTIARY RULINGS**

2 WCD Exhibits 1 through 59 were received into the record without objection. Pursuant to
3 OAR 137-003-0605, claimant’s Supplementary Exhibits 4A through 54 were received over
4 insurer’s timeliness objection.

5 **FINDINGS OF FACT**

6 I adopt and affirm the findings of fact contained in the Administrative Order dated July
7 20, 2001 with the following supplementation:

8 On February 26, 1999, claimant filed an occupational disease claim while working as a
9 mosaic assembler. (Ex. 1). In December 1999, insurer accepted a disabling claim for right wrist
10 and forearm strain. (Ex. 2). In January 2000, attending physician Theresa A. Langdon, MD
11 referred claimant to a chiropractor. (Exs. 4-1 and 9). Jerry F. Gerhart, DC provided chiropractic
12 services to claimant during the disputed period from May 4, 2000 through August 25, 2000.
13 (Exs. 10-1 and 10-4).

14 In a chart note dated April 18, 2000, Dr. Langdon discussed claimant’s condition and
15 noted that claimant had seen a chiropractor “which seems to have helped somewhat” and that
16 claimant would follow up with the chiropractor on a p.r.n. basis.” (Ex. 9A). On the same day,
17 Dr. Langdon wrote a letter to insurer identifying herself as claimant’s attending physician,
18 discussing the medically stationary status, an independent medical examination, claimant’s
19 differential diagnoses, and a wrist brace. Dr. Langdon also noted, “Claimant is also going to
20 seek treatment with a chiropractor, as she has found this to be beneficial in the past.” (Ex. 9).

21 On June 29, 2000, Dr. Langdon wrote a chart note discussing claimant’s medical
22 condition, work status, and referral for a surgical evaluation. Dr. Langdon also noted that
23 claimant continued to see a chiropractor and authorized 12 chiropractic visits. (Ex. 11A). On
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1 the same day, Dr. Langdon wrote on a prescription pad “continue chiropractic Tx for carpal
2 tunnel syndrome 12 visits.” (Ex. 11).

3 On August 23, 2000, insurer wrote to Dr. Langdon requesting information regarding the
4 referral to a hand specialist and the referral for chiropractic treatment. (Ex. 13). On August 25,
5 2000, Dr. Langdon wrote a prescription for six visits for chiropractic treatment, (Ex. 14). On
6 August 27, 2000, insurer sent a notice to Dr. Gerhart reading, “Please provide the treatment plan
7 pursuant to OAR 436-010-00234(3)(a).” (Ex. 15). On October 18, 2000, Dr. Gearhart’s office
8 wrote to insurer asking for guidance in complying with Oregon administrative rules. (Ex. 19).
9 On November 8, 2000, insurer notified Dr. Gearhart’s office that the treatment was not rendered
10 in compliance with OAR 436-010-00230(3)(a). (Ex. 22). On November 16, 2000, Dr. Langdon
11 wrote a letter referring claimant to Dr. Gearhart for chiropractic care and specifying treatment
12 objectives, modalities, frequency and duration. (Ex. 24).

13 **CONCLUSIONS OF LAW AND REASONING**

14 Jurisdiction lies with the director. ORS 656.327(2) and OAR 436-010-0008(1)(a). I may
15 modify the administrative order only if it is not supported by substantial evidence in the record or
16 reflects an error of law. ORS 656.273(2) and OAR 436-001-0225(3). The burden of proving a
17 fact or position falls upon the proponent. ORS 183.450(2). As petitioner, insurer bears the
18 burden of proving by a preponderance of evidence that the proposed surgery is inappropriate.
19 *Cook v. Employment Div.*, 47 Or 437 (1982) (In the absence of legislation adopting a different
20 standard, the standard of proof in an administrative hearing is preponderance of evidence).

21 Pursuant to ORS 656.245(1), an insurer is obligated to provide medical services that are
22 materially related to a compensable condition for so long as the nature of the injury or the
23 process of recovery requires. This obligation continues over the injured worker’s lifetime. ORS
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1 656.245(1)(b). However, pursuant to ORS 656.327(1), an insurer is not responsible to provide
2 medical treatment that is excessive, inappropriate, ineffectual or violates administrative rules.

3 Pursuant to its delegated authority, the director has promulgated administrative rules to
4 facilitate the orderly provision of medical services to injured workers. ORS 656.726(4) and
5 OAR 436-010-0002. OAR 436-010-0230 defines the parameters for provision of medical
6 services and treatment guidelines. OAR 436-010-0230(3)(a) and (b) specify the requirements for
7 reimbursable ancillary medical treatment including chiropractic treatment. OAR 436-010-
8 0230(3) (a) and (b) provide:

9 “(a) Except as otherwise provided by the MCO, ancillary services
10 including, but not limited to, physical therapy or occupational
11 therapy by a medical service provider other than the attending
12 physician shall not be reimbursed unless carried out under a
13 written treatment plan prescribed by the attending physician prior
14 to the commencement of treatment. The medical service provider
15 shall provide an initial copy of the treatment plan to the attending
16 physician and the insurer within seven days of the beginning of
17 treatment. A copy of the treatment plan signed by the attending
18 physician shall be provided to the insurer by the medical provider
19 within 30 days of the beginning of treatment. The treatment plan
20 shall include objectives, modalities, frequency of treatment and
21 duration. The treatment plan may be recorded in any legible
22 format including, but not limited to, signed chart notes. Treatment
23 plans required under this section do not apply to services provided
24 pursuant to ORS 656.245(2)(b)(A).”

“ (b) Medical services prescribed by an attending physician and
provided by a chiropractor, naturopath, acupuncturist, or podiatrist
shall be subject to the treatment plan requirements set forth in
(3)(a) of this rule.”

20 Claimant contends that Dr. Langdon’s January, April and June letters and chart notes and
21 prescription notes¹ should be read in concert with one another and with the November 2000 letter
22 to constitute a valid treatment plan under the rule. In contrast, insurer contends that the
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24 ¹ In support of her contention, claimant relies on supplementary exhibits that were not before MRU.

1 documents prior to November 2000 do not satisfy the rule and the November 2000 letter is
2 ineffective to authorize chiropractic treatment retroactively.

3 In interpreting an administrative rule, I apply the same method of analysis employed in
4 determining the meaning of a statute, *viz.*, to determine the meaning of the words used, giving
5 effect to the intent of the enacting body, which in this case is the department. *Abu-Adas v.*
6 *Employment Dept.*, 325 Or 480, 485 (1997); *see also PGE v. Bureau of Labor and Industries*,
7 317 Or 606, 610-11 (1993) (court's task in determining legislative intent first is to examine text,
8 including context in which the statute is found and, if intent is clear, to proceed no further with
9 its analysis.) OAR 436-010-0230(4) establishes that the disputed chiropractic services are
10 reimbursable only if they were rendered in accordance with a treatment plan as defined in
11 subsection (3). A valid treatment plan must be provided to the insurer prior to the
12 commencement of treatment or within 30 days of the beginning of treatment and must include
13 statement of treatment objectives, modalities, frequency and duration.

14 I agree with insurer's argument that OAR 436-101-0230(3) does not recognize six
15 separate documents written over a period of seven months as constituting a valid treatment plan.
16 The director promulgated the rule for the purpose of facilitating the orderly provision of medical
17 services to injured workers. The rule's text indicates that the director intended to require
18 attending physicians to provide adequate notice to insurers of the nature of ancillary medical
19 treatment. The rule specifies each category of information required as well as prospective
20 submission of the treatment plan.

21 OAR 436-010-0230(3)(a) requires the attending physician to specify treatment
22 objectives, modalities, frequency or duration. The documents Dr. Langdon submitted prior to
23 November 16, 2000 fail to provide this information and do not constitute a valid treatment plan.
24 Therefore, the disputed chiropractic treatments are not reimbursable.

NOTICE OF REVIEW AND APPEAL RIGHTS

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As provided in OAR 137-003-0650, the parties are entitled to file written exceptions, including argument, to this Proposed and Final Order. The exceptions must be served on the parties and filed with the Administrator of the Workers' Compensation Division at the address set forth below within 30 days following the date of service of the order. Written responses to exceptions must be filed within 20 days of service of the exceptions. Replies, if desired, must be filed within 10 days of service of the response.

If no exceptions are filed, this order shall become final upon expiration of 30 days following the date of service on the parties.

After this order becomes final, you are entitled to judicial review pursuant to the provisions of ORS 183.480. Judicial review may be obtained by filing a petition with the Court of Appeals within 60 days from the date that this order becomes final.

Mail any exceptions and a copy of any petition for judicial review to:

Technical Coordinator
Policy Consultation Unit
Workers' Compensation Division
Department of Consumer and Business Services
350 Winter Street NE, Room 27
Salem, OR 97301-3879