In the ORS 656.260 Managed Care Dispute of

Tammie D. Jimenez, Claimant

Contested Case No: 07-029H

CORRECTED PROPOSED & FINAL ORDER

June 28, 2007

TAMMIE D. JIMENEZ, Petitioner
SAIF CORPORATION, Respondent

Before Kathryn A. Poland, Administrative Law Judge

The caption of the Proposed and Final Order issued in this matter on June 25, 2007 did not identify this case as a managed care dispute under ORS 656.260. In addition, the employer's name and address was inadvertently omitted from the final page of the order. Accordingly, the aforementioned Proposed and Final Order is hereby republished in its entirety, with the corrections identified above. The parties' appeal rights will run from the date of this corrected order.

This matter is before the undersigned Administrative Law Judge (ALJ) pursuant to a request for hearing from an order issued by the Medical Review Unit (MRU) under ORS 656.260. That request for hearing was filed by Doctors Professional Billing on behalf of Silverton Anesthesia Group (Silverton Anesthesia). Hearing in this matter convened on May 22, 2007 in Salem, Oregon. Silverton Anesthesia did not appear at hearing, either personally or through legal counsel. Attorney Holly O'Dell appeared on behalf of the SAIF Corporation and the employer, B & E4, LLC. The following documentary evidence was admitted into the record: Exhibits 1 through 11, as identified in the March 2, 2007 exhibit packet prepared by the Department of Business and Consumer Services (Department). The record was reopened on May 25, 2007 for receipt of further information regarding SAIF's efforts to copy Silverton Anesthesia on the aforementioned exhibits. The record ultimately closed with the receipt of that information on May 25, 2007.

ISSUE

Silverton Anesthesia is challenging an MRU order that denied reimbursement for anesthesiology services rendered without the requisite pre-certification.

FINDINGS OF FACT AND ULTIMATE FACT

I adopt the Findings of Fact set forth in Administrative Order MMS 07-095, and I set forth the salient findings from that order with the additional supplementary findings included below.

On October 18, 2005, Silverton Anesthesia provided anesthesiology services for surgery performed on Tammie D. Jimenez. That surgery was performed under an accepted claim with SAIF for an injury to Ms. Jimenez while she was working for SAIF's insured. At the time of the surgery, Ms. Jimenez was enrolled in Oregon Health Systems, Inc. (OHS), an entity under contract with SAIF to provide services as a managed care organization (MCO). The October 18,

2005 surgery was performed by Dr. Zakaib, who was a participating OHS provider. The contract between OHS and SAIF required pre-certification of the October 18, 2005 surgery. That surgery and the associated anesthesiology services were rendered before the requisite pre-certification was sought or received by Dr. Zakaib or Silverton Anesthesia.

On November 9, 2005, SAIF received a bill for the services Silverton Anesthesia provided at the time of the October 18, 2005 surgery. On December 15, 2005, SAIF issued an Explanation of Benefits (EOB) without payment on the ground that: (1) the anesthesiology services had not been pre-certified; and (2) Silverton Anesthesia had not filed a timely request for MRU review of SAIF's EOB and nonpayment. Silverton Anesthesia received SAIF's EOB without payment no later than January 13, 2006.

On October 10, 2006, MRU issued an order denying reimbursement for other hospital and diagnostic services ancillary to the October 18, 2005 surgery on the ground that pre-certification was not obtained for the surgery. (Administrative Order MMS 06-885).

On November 9, 2006, Silverton Anesthesia filed a written request for MRU review of SAIF's December 15, 2005 EOB and nonpayment of the billing for the anesthesiology services provided at the time of the October 18, 2005 surgery. On February 9, 2007, MRU issued an order denying reimbursement for these anesthesiology services (Administrative Order MMS 07-095).

CONCLUSIONS OF LAW AND REASONING

Silverton Anesthesia is challenging MRU's order denying payment for the anesthesiology services provided at the time of claimant's October 18, 2005 surgery. In so doing, MRU relied on its prior decision that other medical services ancillary to the October 18, 2005 surgery were not compensable because the responsible surgeon did not seek or obtain pre-certification. I review MRU's factual findings for substantial evidence and its legal conclusions for errors of law.

SAIF argues that MRU correctly concluded that SAIF is not liable for the anesthesiology services at issue because pre-certification was not obtained for the October 18, 2005 surgery or the anesthesiology services. SAIF further asserts that it is not liable for the services at issue because Silverton Anesthesia did not file a timely request for MRU review of SAIF's EOB and nonpayment. Silverton Anesthesia did not appear at hearing, but its position in this matter is set forth in Exhibits 5 and 11. Silverton Anesthesia reasons that it should not be penalized for the failure to obtain pre-certification of the October 18, 2005 surgery and anesthesiology services because it was the surgeon's responsibility to obtain pre-certification, and Silverton Anesthesia "was not aware of the situation."

Neither party has challenged the Findings of Fact set forth in MRU's order, and I find no basis in the record to conclude those findings are not supported by substantial evidence. I further conclude that MRU's ultimate conclusions and supporting rationale are consistent with the applicable law.

Pursuant to ORS 656.245(4)(a), a worker subject to an MCO contract shall receive medical services in the manner prescribed in that contract. The anesthesiology services at issue were provided at a time when Ms. Jimenez was enrolled in OHS, the MCO contract between OHS and SAIF required pre-certification of the October 18, 2005 surgery, and the surgery and related anesthesiology services were rendered before the requisite pre-certification was sought or received by Dr. Zakaib or Silverton Anesthesia. The fact that Silverton Anesthesia may not have known of the pre-certification requirement is not a persuasive basis for requiring SAIF to pay for the anesthesiology services. There is no evidence that OHS, SAIF or the employer requested or arranged for these services. Nor is there evidence that these services were otherwise rendered pursuant to any contract between Silverton Anesthesia and OHS, SAIF or the employer. Consequently, I find no error of law in MRU's rationale and ultimate conclusion that SAIF is not liable for these anesthesiology services. *Compare Janet K. Massimilla, 4 WCSR 412* (where non-MCO physician covering for MCO physician performs diagnostic services without requisite preauthorization, that failure is attributed to MCO provider, and the carrier is not liable).

Moreover, even if MRU's rationale includes errors of law, its ultimate conclusion to deny reimbursement is still legally correct because Silverton Anesthesia did not file a timely request for MRU review. Pursuant to OAR 436-009-0008(2)(a) and (b) and 436-010-0008(6), medical services disputes must be submitted to MRU within 90 days from the date of the explanation of benefits. Silverton Anesthesia did not request MRU review until November 9, 2006, more than seven months after the 90-day time period for requesting MRU review. *Compare Roseburg Forest Products v. Humbert*, __ Or App __ (April 25, 2007) (Director has authority to achieve statutory goal of prompt and expeditious delivery of medical treatment by promulgating and enforcing strict timelines for requesting Department review of surgery request).

In summary, I find no reason in the record to conclude that the Findings of Fact set forth in MRU's order are not supported by substantial evidence. Furthermore, I conclude that MRU's legal rationale and conclusions are consistent with the applicable statutes, administrative rules and case law. Consequently, I find no basis for granting the relief requested by Silverton Anesthesia.

ORDER

Administrative Order MMS 07-095 issued February 9, 2007 is affirmed.