
In the ORS 656.245 Medical Services of

Justin J. Bach, Claimant

Contested Case No: 11-124H

PROPOSED & FINAL ORDER

May 14, 2012

CITY COUNTY INSURANCE SERVICES, Petitioner

JUSTIN J. BACH, Respondent

Before Kathryn A. Polland, Administrative Law Judge

This medical services dispute is before the undersigned Administrative Law Judge (ALJ) pursuant to a referral from the Director of the Department of Consumer and Business Services (hereinafter Department). The self-insured employer, City of Lebanon, and its claims processing agent, City County Insurance Services (hereinafter CIS), are represented by attorney Richard Cantwell. Claimant is represented by attorney Brent Wells. The parties agreed to waive hearing and submit this matter with written argument based on the following documents, which are hereby admitted into the record: Exhibits 1 through 27, as identified in the Department's September 27, 2011 exhibit list. The record initially closed on February 9, 2012, the date the final written argument from the employer/CIS was received at the Board's Salem office. The record was reopened for the submission of the additional documents identified in claimant's December 9, 2011 exhibit list, those documents were received at the Board's Salem office on March 21, 2012, and the record reclosed on that date. On April 20, 2012, the record was reopened for claimant's withdrawal of these same documents and reclosed on that same date.

ISSUE

Medical Services. CIS asserts that the Department's August 17, 2011 Administrative Order (MS11-0738) (hereinafter Administrative Order) erred in finding it liable for claimant's March and April 2011 treatment from Dr. Suzanne Best, PhD.

FINDINGS OF FACT

The "Findings of Fact" set forth in the Administrative Order are hereby adopted by reference and supplemented with the following additional findings of fact.

Claimant is a 36 year-old male who has been employed as a police officer for the City of Lebanon since March 2010. On December 19, 2010, claimant was involved in a work-related shooting incident while on patrol with a field training officer (FTO). At that time, claimant shot an adult male who was repeatedly stabbing the FTO in the chest after having stabbed claimant in the left forearm. On December 20, 2010, claimant filed a Form 801 for the left forearm injury he incurred in the work incident. On December 23, 2010, Dr. Adams, M.D., provided conservative treatment for claimant's left forearm laceration and assumed the role of attending physician. On December 30, 2010, CIS issued an acceptance of an injury claim for a non-disabling left forearm laceration on December 19, 2010, Claim No. WCLEB2010053931.

After the December 19, 2010 work incident, claimant went on paternity leave until March 2011. On returning to work, claimant experienced progressively worsening mental stress symptoms that caused him to leave work on March 21, 2011. On or around March 23, 2011, claimant's supervisor, Chief Thor Dahle, contacted Dr. Suzanne Best, PhD, to arrange counseling for claimant. On March 23, 2011, claimant completed and signed a Form 801 for traumatic stress anxiety that referenced a March 21, 2011 date of injury/illness, and a history of unmanageable stress-related symptoms when claimant returned to work in March 2011 after the December 19, 2010 shooting incident. CIS processed the March 23, 2011 Form 801 as Claim No. WCLEB2011054558 with a March 21, 2011 date of injury/illness.

On March 24, 2011, Dr. Best wrote to Chief Dahle and recommended an intensive course of psychotherapy for claimant that was specifically directed toward addressing the December 19, 2010 work incident. Dr. Best's treatment records reference psychotherapy directed at mental stress symptoms related to the December 19, 2010 work incident.

On March 25 and March 31, 2011, CIS sent claimant letters with an introductory caption that referenced Claim No. WCLEB2011054558 and a March 21, 2011 date of injury. One of the March 25, 2011 letters from CIS to claimant acknowledged receipt of the March 23, 2011 Form 801, and informed claimant that "[y]our claim number is noted above and should be provided to the medical providers associated with your injury." Another March 25, 2011 letter from CIS to claimant addressed treatment limitations and informed claimant that health care providers, other than attending physicians, chiropractors, naturopathic physicians, podiatrists, physician assistants and authorized nurse practitioners, "[m]ay provide compensable medical treatment for a period of 30 days or 12 visits from the date of injury or occupational disease on the initial claim[.]"

The March 30, 2011 chart note authored by Dr. Santiago Mejia includes the following treatment comment: "[Claimant] will continue with his counseling sessions with Susan Best from Portland; may need to be referred to Workman's Comp; either he or Susan Best will contact me."

On April 18, 2011, Dr. Best forwarded her treatment records for claimant to CIS.

The April 25, 2011 letter from CIS to the Department requesting review of Dr. Best's treatment included an introductory caption that referenced Claim No. WCLEB2011054558 and a March 21, 2011 date of injury. CIS copied that letter to claimant and Dr. Best.

On May 3, 2011, the Department wrote Dr. Best, claimant and CIS to request additional information regarding Dr. Best's treatment of claimant. The Department referenced Claim No. WCLEB2011054558 and a March 21, 2011 date of injury in these May 3, 2011 letters.

On May 10, 2011, Dr. Best forwarded her treatment records for claimant to the Department.

The May 17, 2011 response from CIS to the Department referenced Claim No. WCLEB2011054558 and a March 21, 2011 date of injury. CIS copied that response to Dr. Best and claimant.

On May 18, 2011, CIS issued a denial of Claim No. WCLEB2011054558 on the ground that claimant did not suffer a new and separate mental disorder on March 21, 2011, and that the claimed mental disorder was related to the previously accepted claim for the December 19, 2010 work incident. On that same date, CIS issued a Modified Notice of Claim Acceptance under the December 19, 2010 injury claim of the additional condition of possible Adjustment Disorder with Mixed Anxiety and Depressed Mood.

On August 17, 2011, a Department Resolution Team (RT) Reviewer (hereinafter RT Reviewer) issued Administrative Order (MS11-0738) in the ORS 656.245 medical services dispute regarding Dr. Best's treatment of claimant on March 24, March 29, April 5 and April 14, 2011. In that order, the RT Reviewer concluded that Dr. Best's treatment was authorized under the Department's rules, and that CIS was liable for those medical services.

ULTIMATE FINDINGS OF FACT, CONCLUSIONS OF LAW AND REASONING

This medical services dispute is before me pursuant to CIS' request for hearing from the Department's August 17, 2011 Administrative Order (MS11-0738) (hereinafter Administrative Order). That order can be modified only if it is not supported by substantial evidence in the record developed by the Department, or if it reflects an error of law. ORS 656.327(2); OAR 436-001-0225(2).

CIS asserts that the Administrative Order erred in concluding that CIS was liable for Dr. Best's treatment in March and April 2011. In so concluding, the RT reviewer reasoned that, even though Dr. Best cannot be an "attending physician" under the applicable statute and administrative rules, her treatment is reimbursable because it was provided within the 30-day period identified in Appendix A at OAR 436-010. That Appendix tracks ORS 656.245(2)(b)(A), which reads in pertinent part:

"A medical service provider who is not qualified to be an attending physician may provide compensable medical service to an injured worker for a period of 30 days from the date of the first visit on the *initial claim* or for 12 visits, whichever first occurs, without the authorization of an attending physician. Thereafter, medical service provided to an injured worker without the written authorization of an attending physician is not compensable." (emphasis supplied)

The RT reviewer also reasoned that the ancillary services rule at OAR 436-010-0230(4)(a) was not applicable because Dr. Best treated claimant within the 30-day period identified in ORS 656.245(2)(b)(A) and OAR 436-010, Appendix A. The ancillary services rule reads in pertinent part:

"[A]ncillary services * * * by a medical service provider other than the attending

physician, authorized nurse practitioner, or specialist physician will not be reimbursed unless prescribed by the attending physician, authorized nurse practitioner, or specialist physician and carried out under a treatment plan prepared prior to the commencement of treatment and sent by the ancillary medical service provider to the attending physician, authorized nurse practitioner, or specialist physician, and the insurer within seven days of beginning treatment[.]”

CIS asserts that the Administrative Order reflects errors of law because it incompletely and incorrectly applies the Department’s administrative rules regarding medical treatment. In particular, CIS relies on OAR 436-010-0220(2), which reads in pertinent part:

“The worker may have only one attending physician or authorized nurse practitioner at a time. Simultaneous or concurrent treatment by other medical service providers must be based upon a written request of the attending physician or authorized nurse practitioner, with a copy of the request sent to the insurer. Except for emergency services, ***or otherwise provided for by statute or these rules***, all treatments and medical services must be authorized by the injured worker’s attending physician or authorized nurse practitioner to be reimbursable[.]” (emphasis supplied)

CIS reasons that Dr. Best’s treatment is not reimbursable because it addressed a mental stress disorder that is a consequential condition under the December 19, 2010 injury claim, and the disputed services were not prescribed by the attending physician under that claim, Dr. Adams.

CIS’ rationale assumes that the December 19, 2010 injury claim is the “initial claim” referenced in ORS 656.245(2)(b)(A) and OAR 436-010, Appendix A. In contrast, the rationale of the RT Reviewer assumes that, for this medical services dispute, the “initial claim” referenced in ORS 656.245(2)(b)(A) and OAR 436-010, Appendix A is the March 23, 2011 Form 801. I conclude that the rationale of the RT Reviewer is consistent with the applicable statutes and administrative rules and should be upheld.

The March 23, 2011 Form 801 references a condition of traumatic stress anxiety and a March 21, 2011 date of injury/illness. Dr. Best’s treatment was directed at the mental stress disorder claimed on the March 23, 2011 Form 801. Dr. Best rendered the disputed services at a time when CIS was processing the March 23, 2011 Form 801 under new claim No. WCLEB2011054558, with a March 21, 2011 date of injury/illness. Furthermore, the disputed treatment was rendered prior to April 25, 2011, when CIS requested Department review of the treatment. There is no evidence in the record that, prior to April 25, 2011, claimant or Dr. Best had notice that CIS would dispute Dr. Best’s treatment because it was provided more than 30 days after the first treatment under the December 19, 2010 injury claim, or that CIS would process claimant’s mental stress disorder under that claim. I particularly note that, prior to April 25, 2011, all correspondence that CIS addressed or copied to claimant or Dr. Best referenced the March 21, 2011 date of injury/illness and Claim No. WCLEB2011054558.

I further note that Dr. Best treated claimant at the express request of his supervisor, Chief Dahle, and that Dr. Mejia's March 30, 2011 chart note evidences his recommendation that claimant continue the counseling sessions with Dr. Best. Furthermore, there is no evidence that Dr. Best did anything that unreasonably delayed CIS' processing of claimant's mental stress claim. To the contrary, Dr. Best forwarded her treatment records for claimant to CIS in a timely manner on April 18, 2011. I further note that the record evidences Dr. Best's efforts to inform claimant of the applicable attending physician requirements, and to assist claimant in finding an attending physician for his mental stress condition.

This record includes substantial evidence that, for this medical services dispute, the March 23, 2011 Form 801 is the "initial claim" referenced in ORS 656.245(2)(b)(A) and OAR 436-010, Appendix A. Dr. Best's treatment was rendered within 30 days of the March 21, 2011 date of injury/illness referenced on the March 23, 2011 Form 801. Consequently, the Administrative Order did not make an error of law in concluding that CIS was liable for Dr. Best's treatment. Consequently, the Administrative Order cannot be modified.

Finally, I note that the undersigned ALJ has not received a signed retainer agreement or statement of hours from claimant's counsel, as referenced in OAR 436-001-0400. Consequently, an attorney fee award under ORS 656.385(1) would be premature.

PROPOSED ORDER

The Department's August 17, 2011 Administrative Order MS11-0738 is hereby affirmed.