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In the ORS 656.260 Managed Care Dispute of

**Sandra Holmstedt, Claimant**

Contested Case No: 11-085H

**FINAL ORDER**

September 12, 2012

SANDRA HOLMSTEDT, Petitioner

PROVIDENCE MCO, Respondent

Before John Shilts, Workers' Compensation Division Administrator

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Sandra Holmstedt (claimant) seeks an order directing the Providence managed care organization (MCO) or Dr. Michael Sandquist to reimburse her for time loss benefits she allegedly was overpaid because the doctor did not verify claimant's inability to work during a period when he was treating her. Claimant asserts a prior administrative order and Proposed and Final Order erred in not ordering this reimbursement. I dismiss the matter for lack of jurisdiction.

**FACTUAL SUMMARY**

Claimant suffered compensable injuries in 2004. The accepted conditions were right lumbrosacral strain and L5-S1 disc herniation. Dr. Angela Nairn acted as claimant's attending physician from September 7, 2006, through March 30, 2007.

The employer's insurer enrolled claimant in the Providence MCO in 2005. The MCO contract states that the attending physician "is responsible for all aspects of the injured worker's medical care, including monitoring and overseeing medical care provided by other physicians and medical practitioners." The contract requires practitioners to accept new patients. Attending physicians may not authorize temporary disability benefits more than two weeks prospectively or retrospectively.

Dr. Sandquist, a neurosurgeon, first saw claimant on June 13, 2005, on a referral from Dr. Opie. Claimant saw Dr. Sandquist for leg pain and Dr. Sandquist reported his findings and recommendations to Dr. Opie. Dr. Sandquist recommended steroid injections and physical therapy.

Dr. Sandquist saw claimant again on February 3, 2006. He reported his findings to a Dr. Saltzman. Dr. Sandquist recommended steroid injections and said surgery would be considered if the injections were not effective.

On July 27, 2006, Dr. Sandquist wrote a letter to Dr. Nairn about claimant. He identified Dr. Nairn as claimant's internist.

On September 7, 2006, claimant completed a Form 827 for change of attending physician. This form identified Dr. Nairn as the new attending physician.

Claimant saw Dr. Nairn on September 7, 2006. Dr. Nairn stated she was not a specialist and deferred to Dr. Sandquist to recommend treatment for claimant's continued leg pain.

Claimant saw multiple doctors, including Dr. Sandquist, through March 2007, on Dr. Nairn's referral. Dr. Nairn excused claimant from work at times during this period as well.

Dr. Sandquist saw claimant on March 6, 2007. He reviewed the options for surgery or steroid injections.

Claimant saw Dr. Sandquist on June 7, 2007. They discussed steroid injections and Dr. Sandquist recommended an orthopedic evaluation for claimant's knee pain. Claimant saw an orthopedist on Dr. Sandquist's referral.

Dr. Sandquist referred claimant to Dr. Ron Ruff. Dr. Ruff treated claimant with steroid injections on July 23, 2007, as specifically requested by Dr. Sandquist.

On July 24, August 7, August 15, September 13, October 1 and 31, November 12 and 21, and December 10, and 31, 2007, claimant completed questionnaires the insurer sent to her. On that form, claimant identified Dr. Sandquist as her attending physician.

Claimant returned to Dr. Sandquist on August 30, 2007. Dr. Sandquist sent a report of that visit to Dr. Nairn, saying he was not sure if Dr. Nairn was still caring for claimant. This report described the treatment by Dr. Ruff and also gave the results of an orthopedic examination on claimant's knee. Dr. Sandquist discussed potential treatments with claimant including steroid injections and surgery.

Claimant completed another Form 827 on September 20, 2007. She checked the box indicating "Notice of change of attending physician" and wrote "Need attending physician locally." The physician's section of the form was dated October 10, 2007, and name stamped by Astoria Medical Services.

Claimant next saw Dr. Sandquist on October 4, 2007. Dr. Sandquist reported the results of this visit to a Dr. Paul Voeller. Dr. Sandquist's letter stated "I understand you have been taking care of [claimant]." Dr. Sandquist reported the results of steroid injections, described the surgery he was recommending, and also recommended performing a discography.

Claimant saw Dr. Voeller at Astoria Medical Services, on October 10, 2007. Dr. Voeller noted claimant was preparing to have surgery by "her neurosurgeon." The notes state: "[C]laimant has seen another provider for her work injury, wants me to assume care in this role."

On February 12, 2008, claimant contacted the insurer and the MCO about identifying a local attending physician. She said Dr. Sandquist did not consider himself to be her attending physician.

On March 7, 2008, the insurer notified claimant it had overpaid her temporary disability benefits during the period of March 31, 2007, through February 5, 2008. The insurer's letter stated an attending physician had not authorized the time loss benefits for that period.

After the claim was closed, claimant requested a reconsideration of the notice of closure.

The reconsideration order issued on February 8, 2010. That order found claimant had been entitled to temporary disability benefits from December 8, 2004, through March 30, 2007, and from October 10, 2007, through August 25, 2009.

Claimant filed a dispute contending either Dr. Nairn or Dr. Sandquist, or the MCO, had violated the MCO contract by not authorizing temporary disability between March 30, 2007, and October 10, 2007. Claimant asserted the MCO should be liable for the cost of those benefits. The Workers' Compensation Division's Resolution Team (RT) issued an order resolving the matter. Claimant requested reconsideration of that order. RT issued an Administrative Order on Reconsideration on May 12, 2011.

RT's order found Dr. Sandquist never assumed the role of attending physician. RT reasoned that the MCO contract required an attending physician to see a worker every two weeks to authorize temporary disability but Dr. Sandquist did not see claimant that frequently. Dr. Sandquist's notes also indicated he left it up to claimant whether to schedule follow up visits with him. The MCO contract would have required Dr. Sandquist to schedule claimant every two weeks in order to authorize temporary disability. Claimant also reported Dr. Sandquist had indicated to her that he did not consider himself her attending physician. RT's order found Dr. Sandquist was only acting in a specialist or consultant capacity, and therefore was not claimant's attending physician. The administrative order did not make a determination about claimant's entitlement to temporary disability benefits because the order concluded that was a matter concerning a claim.

Claimant requested a hearing. Administrative Law Judge John Mark Mills heard the matter. He issued a Proposed and Final Order on April 18, 2012. ALJ Mills found Dr. Sandquist specifically declined to act as the attending physician and served as a specialist. The ALJ therefore concluded substantial evidence supported the administrative order. Claimant filed exceptions.

### CONCLUSIONS OF LAW

Claimant focuses her argument on the issue of whether Dr. Sandquist in fact acted as the attending physician. Claimant reasons that the MCO contract required Dr. Sandquist to serve as the attending physician because of the services Dr. Sandquist was providing, because no other doctor was filling that role, because the MCO contract requires doctors to accept patients, and because the MCO contract requires doctors to help patients find a treating doctor if the first doctor does not accept a person as a patient.<sup>1</sup>

The MCO argues this division does not have any authority to order the relief which claimant requests, which would be an order making the MCO or Dr. Sandquist responsible for the overpaid temporary disability benefits. Claimant has not directly responded to this argument.

The issue the MCO raises is significant because it is jurisdictional. An administrative

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<sup>1</sup> Although not raised by the parties, it appears the issue of whether Dr. Sandquist acted as claimant's attending physician was previously litigated and resolved against claimant in an April 18, 2012, Opinion and Order reviewing a February 8, 2010, Order on Reconsideration in this matter.

agency exercises only those powers the legislature grants to it. An agency cannot exercise authority the legislature has not extended to it. *SAIF Corporation v. Shipley*, 326 Or 557, 561-562 (1998); *Coquille School District 8 v. Castillo*, 212 Or App 596, 606 (2007).

Claimant does not cite any statute through which the legislature delegated authority to the Department of Consumer and Business Services to order a physician or an MCO to be responsible for overpaid temporary disability benefits. Paying temporary disability is the responsibility of the insurer or self-insured employer. ORS 656.262(1), (4). The attending physician is authorized to verify a worker's inability to work. ORS 656.262(4)(d). If the insurer or self-insured employer requests verification and the attending physician does not provide it, that physician's services are not compensable. ORS 656.262(4)(f). However, no statute grants the department the power to order a physician or MCO to be responsible when the doctor fails to verify the worker's inability to work. The department therefore does not have jurisdiction to grant the relief claimant requests. RT should have dismissed the dispute for lack of jurisdiction.

I also find a lack of jurisdiction for another reason. This is a dispute over temporary disability benefits. Such a dispute concerns compensation, which is a matter concerning a claim. ORS 656.005(8), 656.704(3)(a). Jurisdiction over this matter therefore is with the Workers' Compensation Board, not with the director. ORS 656.283(1), 656.704(1).

**IT IS HEREBY ORDERED** the April 18, 2012, Proposed and Final Order is not adopted. This dispute is dismissed for lack of jurisdiction.