

In the Managed Care Dispute of
Richard T. Anderson, Claimant
Contested Case No: 15-032H & 15-033H
Administrative Order No: MTX 15-0263 & MTX 15-0285
PROPOSED & FINAL ORDER
January 5, 2016
CITY OF PORTLAND, Petitioner
RICHARD T. ANDERSON, Respondent
Before David D. Lipton, Administrative Law Judge

In lieu of proceeding to hearing on September 28, 2015, the parties agreed to submit this matter to the undersigned Administrative Law Judge for a decision based upon the record and their written arguments. Claimant is represented by James Dodge. The self-insured and self-administer employer, City of Portland, is represented by Linh Vu.

At a conference call held on September 25, 2015, in WCB case number 15-00032H, Administrative Order MTX 15-0263, proposed exhibits 1 through 18 received from the Workers' Compensation Division were admitted. In WCB case number 15-00033H, Administrative Order MTX 15-0285, proposed exhibits 1 through 15 received from the Workers' Compensation Division were admitted.

The record closed on December 17, 2015.

FINDINGS OF FACT

I incorporate the Findings of Fact from both Administrative Orders. For purposes of this Order, I summarize the pertinent facts.

In WCB case number 15-00032H, Administrative Order number MTX 15-0263, the issue here began with an Order of the Director on February 8, 2012 denying Claimant's palliative care for the reason that he was no longer employed by the City but was self-employed. The Director again denied Claimant's palliative care request on November 14, 2012. On March 25, 2013 the City of Portland denied a new palliative care request. This was addressed by the Director in Administrative Order MS 13-0537. The Director found that the issue concerned a palliative care request as a compensable medical service as opposed to a challenge to an action of the MCO. The Director found that the criteria for palliative care had been met and approved the palliative care request. Thereafter, Claimant's physician, Hubert Leonard, M.D. wrote to Franklin Wong, M.D. the medical Director of Managed Healthcare NW. He explained the rationale for prescribing massage therapy and chiropractic treatment, advocating for this treatment which had successfully reduced Claimant's reliance on pain medication.

Managed Healthcare NW responded on November 14, 2013 upholding its decision not to approve one chiropractic treatment that had been provided between October 7, 2013 and October 13, 2013 on the ground that approval had not been requested in advance pursuant to its interpretation of the Care Mark Comp Contract but had only been requested retrospectively.

Thereafter, a Managed Care Dispute was filed concerning the chiropractic treatment provided to Claimant between October 7, 2013 and October 13, 2013.

In the interim, Managed Healthcare NW advised Dr. Leonard that it was upholding the MCO's disapproval of the chiropractic care and massage therapy provided between October 14, 2013 and November 8, 2013 for the reason it was not related to the accepted conditions and was unnecessary.

A Defer and Transfer Order issued on February 4, 2014 referring the causal relationship of the one the chiropractic treatment between October 7, 2013 and October 13, 2013 to the Workers' Compensation Board.

Administrative Law Judge Kekauoha heard the dispute raised by the February 4, 2014 Defer and Transfer Order and issued his Opinion and Order on June 12, 2014. He found that the requested medical service was compensably related to the accepted injury.

On June 8, 2015 the Director found that the one chiropractic treatment between October 7, 2013 to October 13, 2013 was appropriate and that the City of Portland was liable for payment of \$53.00 due for that treatment. The Director reasoned that the MCO and Managed Healthcare NW had failed to follow the appropriate procedure for palliative care. He noted that pre-certification was only required under the MCO contract for open claims and that a different standard for palliative care after an injured worker was found medically stationary applied. He concluded that the City had not followed the appropriate procedure. He further concluded that the rationale relied on by the City did not provide medical reasoning contrary to the opinion of Dr. Leonard the attending physician. The City's appeal followed.

In WCB case number 15-00033H, Administrative Order MTX 15-0285, the dispute began on October 20, 2014 when Managed Healthcare NW advised Claimant's attorney it was upholding the MCO's decision disapproving four massage therapy visits between October 27, 2014 and April 27, 2015 for the reason that the MCO, CareMark Comp, does not support such treatment for chronic pain and therefore the treatment was excessive. On appeal of that decision, the Joint Medical Committee of Managed Healthcare NW on November 20, 2014 affirmed its October 20, 2014 decision for the reason that "evidence based disability guidelines" and worker specific documentation supported the determination that massage therapy one to two times per week from 2001 through 2011 and one to three times per month since was excessive. It concluded that the treatment was unnecessary for Claimant's accepted head trauma.

Claimant's attorney appealed the decision. The employer, City of Portland, responded to the Workers' Compensation Division that the proposed service was excessive, inappropriate and ineffectual.

During the pendency of the matter, the Workers' Compensation Division advised the parties that the issue had been misstated and that 48 massage therapy visits from October 27, 2014 to April 27, 2015 were in issue.

Thereafter, On June 8, 2015 the Workers' Compensation Division issued Administrative Order MTX 15-0285. The Director held that the disapproved 48 massage therapy visits were appropriate and that the City of Portland was liable for payment on the grounds that the City of Portland had not followed proper procedure by failing to respond itself to the palliative care request. The Director also found that Dr. Leonard's opinion was persuasive. The employer, City of Portland, appealed that decision.

OPINION AND CONCLUSION

I may only modify the Director's Order if it is not supported by substantial evidence in the record or if it reflects an error of law. OAR 436-001-0225(2).

In WCB case number 15-00032H, Administrative Order MTX 15-0263, what little attention the employer pays to this issue fails to note that the Director's Order relied on the employer's failure to follow the appropriate procedure in addressing the single chiropractic visit in contention. I find the Director's Order is supported by substantial evidence and does not reflect an error of law.

Pursuant to OAR 436-001-0410, I find that Claimant's attorney expended in excess of six hours on this matter concerning a \$53.00 benefit. He is entitled to an employer paid fee of \$1500.00.

In WCB case number 15-00033H, Administrative Order MTX 15-0285, the employer, City of Portland, fails to address the Director's rationale that again the employer failed to follow the proper procedure concerning the treatment in dispute. The Director found that the employer had failed to follow the proper procedure in responding to the palliative care request. The Director's consideration of Dr. Leonard's opinion was unnecessary to the ultimate decision. However, the Director's reliance on medical opinions specific to Claimant rather than general medical guidelines was appropriate. I find that the Director's Order is supported by substantial evidence in the record and correctly reflects the law.

Pursuant to OAR 436-001-0410, the benefit in issue is in excess of \$6000.00. Claimant's attorney's time expenditure is in the upper echelon of the matrix. I find that Claimant's attorney is entitled to an employer paid fee of \$3000.00.

ORDER

In WCB case number 15-00032H, the June 8, 2015 Administrative Order MTX 15-0263 is affirmed and the employer is ordered to pay Claimant's attorney a fee of \$1500.00;

In WCB case number 15-00033H, the June 8, 2015 Administrative Order MTX 15-0285 is affirmed and the City is ordered to pay Claimant's attorney a fee of \$3000.00.