

In the ORS 656.327 Medical Treatment Dispute of

Athel D. Keely, Claimant

Contested Case No: 15-035H

Administrative Order No: TX 15-0174

PROPOSED & FINAL ORDER

October 30, 2015

ANGEL MEDFLIGHT WORLDWIDE AIR AMBULANCE, Petitioner
SAIF CORPORATION, Respondent

Before Kate Donnelly, Administrative Law Judge

Pursuant to notice, a hearing was held on October 6, 2015, in Eugene, Oregon, before Administrative Law Judge (ALJ) Kate Donnelly. Claimant, *pro se*, appeared at the hearing. The insurer, SAIF Corporation (SAIF), is represented by Trial Counsel Jesse O'Bryant. The petitioner, medical provider Angel MedFlight-Worldwide Air Ambulance (Angel MedFlight), is represented by their attorney Chet Snider. WCD Exhibits 1 through 4 and SAIF's Exhibits A through D, and 5, were received into evidence at hearing. Testimony was taken from Dan Sheppard, Medical Reviewer, Medical Resolution Team (MRT), Resolution Section, Workers' Compensation Division (WCD) and Lori Traeger, a SAIF Claims Specialist. The record closed on October 6, 2015 with recorded closing arguments.

ISSUE

The sole issue is whether Angel MedFlight had good cause for its untimely request for hearing.¹

FINDINGS OF FACT

The findings of fact in the April 13, 2015 Administrative Order are accepted and incorporated in this Proposed and Final Order, with the following supplementation.

Claimant was compensably injured on August 21, 1968. He is a paraplegic and wheelchair bound. In the summer of 2014, claimant and his wife traveled to New Mexico to visit family. While there, claimant was hospitalized and underwent surgical debridement and antibiotic therapy for a coccygeal ulcer. After approximately 2 months of treatment, claimant began his trip home to Oregon. During this trip, his symptoms worsened and he was again hospitalized in St. Rose Dominican Rose de Lima Campus Hospital in Henderson, Nevada.

As claimant's condition began to improve, claimant's family requested that he be moved to Oregon. Claimant's treating doctor at the hospital recommended a medical air transport to Oregon.

¹ Angel MedFlight stipulated at hearing that its appeal of the April 13, 2015 Administrative Order was untimely. Thus, the sole issue is whether Angel MedFlight had good cause for its untimely appeal.

On October 1, 2014, Angel MedFlight provided the transport using a Lear jet ambulance aircraft and subsequently billed SAIF \$277,825.00.

On November 6, 2014, SAIF issued an explanation of benefits (EOB) showing nonpayment for the medical services provided by Angel MedFlight on October 1, 2014. SAIF stated that the service provided was inappropriate, unnecessary, unreasonable, and more than the nature of the compensable injury requires and the charges billed were unreasonable and excessive.

On February 5, 2015, Angel MedFlight, through their attorney, requested administrative review.

Dan Sheppard discussed alternative dispute resolution with the parties prior to issuing the Administrative Order on April 13, 2015. When the parties were unable to resolve their dispute, Mr. Sheppard communicated that he was going to proceed with the review (Dan Sheppard's testimony; Ex. B-2).

SAIF submitted additional information; *i.e.*, supplemental Exhibit 56 on March 27, 2015 (Ex. 1-4). On April 9, 2015, MRT received additional information from SAIF which included supplemental Exhibit 57 and supplemental Exhibit 58 as well as supplemental argument (*See* Ex. 1-4).

On April 13, 2015, Mr. Sheppard, acting on behalf of the director, issued Administrative Order TX 15-0174 (Ex. 1). The director found that the medical treatment provided by Angel MedFlight on October 1, 2014 was appropriate at \$19,475.00. The director further ordered that the amount billed by Angel MedFlight for the medical treatment provided on October 1, 2014 in the amount of \$277,825.00 was unreasonable. SAIF was found liable for payment in the amount of \$19,475.00 (Ex. 1-8).

The order was mailed to Angel MedFlight at 8014 East McClain Dr. Ste. 220, Scottsdale, AZ 85260-1329. This is the address Mr. Sheppard used because it was the address that Angel MedFlight had used. The April 13, 2015 Administrative Order mailed to Angel MedFlight was not returned by the U.S. Postal Service as unclaimed. Mr. Sheppard later verified with Lori Martinez, an employee of Angel MedFlight's legal department, that the address for Angel MedFlight was 8014 East McClain Dr. Ste. 220, Scottsdale, AZ 85260-1329 (Dan Sheppard's testimony).

The order was also mailed to claimant, SAIF and Chet Snider, Angel MedFlight's attorney. However, Mr. Snider's address was mistakenly given as 7650 E Broadway Blvd #107, Tucson, AZ 85710 (Ex. 1-8). This address was pulled off the internet by support staff at the MRT because MRT did not have Mr. Snider's actual mailing address. The order mailed to Angel MedFlight's attorney was returned as unclaimed (Dan Sheppard's testimony; Ex. B-2).

SAIF received the April 13, 2015 Administrative Order on April 14, 2015 (Lori Traeger's testimony).

On May 26, 2015, Lori Martinez, acting on behalf of Angel MedFlight, called Mr. Sheppard and left a voice mail stating that she had just been assigned the case and wanted to know if there were any deadlines regarding this dispute (Ex. B-2). Mr. Sheppard followed up with Ms. Martinez on May 27, 2015. When Ms. Martinez informed Mr. Sheppard that the only thing Angel MedFlight had received dated April 13, 2015 was an exhibit packet from SAIF's counsel, Mr. Sheppard faxed a copy of the April 13, 2015 Administrative Order to her (Ex. 4-24). Ms. Martinez confirmed that the address on the order was the correct address for Angel MedFlight (Ex. B-2; Dan Sheppard's testimony).

On May 28, 2015, Mr. Snider, counsel for Angel MedFlight, contacted Mr. Sheppard. He left a voice mail stating that he received the order on May 27, 2015. He also said that he did not know why Angel MedFlight did not receive the order as it was sent to the correct address (Ex. B-3).

On June 1, 2015, Mr. Snider, acting on behalf of Angel MedFlight, requested a hearing before the WCD regarding the April 13, 2015 Administrative Order (Ex. 2-1 through 3).

On June 2, 2015, the WCD issued a show cause order denying Angel MedFlight's request for hearing, but advising Angel MedFlight that it could request a limited hearing. The issues at the hearing would be limited to the timeliness of the request and whether Angel MedFlight had good cause for not filing it timely (Ex. 3-1).

On July 1, 2015, Angel MedFlight filed a request for limited hearing on timeliness (Ex. 4).

CONCLUSIONS OF LAW AND OPINION

The underlying issue was whether SAIF was liable for payment of Angel MedFlight's medical billing in the amount of \$277,825.00.² On April 13, 2015 the MRT issued an administrative order ordering SAIF to pay Angel MedFlight \$19,475.00 for its medical services. Any party disagreeing with this order had 30 days from the mailing date in which to appeal. Thirty days from April 13, 2015 is May 13, 2015. Angel MedFlight appealed the order on June 1, 2015. The WCD denied Angel MedFlight's appeal of the order as untimely. However, Angel MedFlight was advised that it could request a limited hearing on: (1) whether the request for hearing was timely; and (2) if not, whether Angel MedFlight had good cause for not timely filing. On July 1, 2015, Angel MedFlight timely requested a hearing on the WCD's show cause order. Although the underlying matter arose as a medical fee dispute, because the issue in this case is limited to the timeliness of Angel MedFlight's request for hearing regarding the April 13, 2015 order and because I am not reviewing the MRT's underlying order, the standard of review is *de novo*. OAR 436-001-0225(1); *Jason M. Meola, 12 CCHR 95 (2007)*.

Angel MedFlight has the burden of proving good cause for not timely filing its hearing request. See *Cogswell v. SAIF, 74 Or App 234 (1985)*. Good cause includes "mistake, inadvertence, surprise, or excusable neglect." OAR 436-001-0019(7)(b). The administrative

² This issue is not the subject of this order, but is only being mentioned for background information.

rule's definition of "good cause" mirrors the definition provided by the court in *Sekermestrovich v. SAIF*, 280 Or 723, 726-727 (1977); *Anderson v. Publishers Paper Co.*, 78 Or App 513, 517, *rev den* 301 Or 666 (1986).

To establish good cause, Angel MedFlight argues that the Administrative Order must not have received. Angel MedFlight supports its argument regarding non-receipt of the order by noting that Lori Martinez was "surprised" when she called the MRT on May 26, 2015 to inquire on the status of the review and was informed by Mr. Sheppard that an order had been mailed to the parties on April 13, 2015. Additionally, Angel MedFlight contends that it believed the record remained open because SAIF had submitted two additional exhibits following Angel MedFlight's conversation in March 2015 with Mr. Sheppard in which Mr. Sheppard informed Mr. Snider that he would be issuing an order because further dispute resolution appeared futile. Once Angel MedFlight learned that an order had issued on April 13, 2015, it argues that it took immediate steps to appeal the order.

SAIF responds that the order was mailed to the correct address of the company. SAIF further contends that Angel MedFlight presented no evidence a copy was not properly mailed to Angel MedFlight.

To the extent that Angel MedFlight contends that it did not receive notice of the order because it was not received, its contention fails. The appeal time does not run from the date Angel MedFlight received the order. *See Tracie L. Salustro*, 52 Van Natta 1420 (2000). Rather it runs from the mailing date of the order. No evidence was presented that the order was improperly mailed to Angel MedFlight. In addition, the rule requirement that the order be mailed (rather than received) recognizes that a party has no control over when the postal service actually mails a document. *See Jerry M. Mouser*, 59 Van Natta 904, 906 (2007).

Moreover, Mr. Snider, on behalf of Angel MedFlight, was informed in March 2015 that an order would be issuing because further negotiations appeared to be futile. Therefore, Angel MedFlight should have anticipated that it would soon be receiving the administrative order. The fact that the order was mailed to Mr. Snider at an incorrect address is not relevant. The evidence in this case leads to a conclusion that the order was mailed to Angel MedFlight, the party who requested review by the MRT.

Under such circumstances, I find that Angel MedFlight has failed to establish "good cause" for its untimely appeal of the April 13, 2015 administrative order.

ORDER

IT IS THEREFORE ORDERED that Angel MedFlight's request for hearing of the April 13, 2015 Director's Review and Order is dismissed.