

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F309895

LAVONNA VANOVEN, EMPLOYEE	CLAIMANT
A I D TEMPORARY SERVICES, INC., EMPLOYER	RESPONDENT
AMERICAN HOME ASSURANCE CO., INSURANCE CARRIER	RESPONDENT
ARKANSAS DEPARTMENT OF HUMAN SERVICES	INTERVENER

OPINION FILED MARCH 8, 2005

Decision rendered on a stipulated record by ADMINISTRATIVE LAW JUDGE MARK CHURCHWELL, in Little Rock, Pulaski County, Arkansas.

The claimant was represented by HONORABLE JOHN BARTTELT, Attorney at Law, Jonesboro, Arkansas.

The respondents were represented by HONORABLE GLENN LOVETT, JR., Attorney at Law, Jonesboro, Arkansas.

The intervener was represented by HONORABLE RICHARD DAHLGREN, Attorney at Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

This case was submitted to the Administrative Law Judge for a decision on a documentary record only in lieu of a live hearing. For purposes of this decision, the record shall consist of my February 4, 2005 letter to the attorneys and that portion of the deposition of Lavonna Denise Vanoven from October 28, 2004 provided to me by Attorney Glenn Lovett under cover letter dated February 10, 2005.

By agreement of the parties, the issue to be litigated and resolved at the present time is limited to whether the medical services rendered by or at the direction of Dr. Bozeman and Dr. Eubanks, which are the subject of a Medicaid lien in this case, are unauthorized and therefore not the responsibility of the respondents in this case pursuant to the applicable change of physician statute, Ark. Code Ann. § 11-9-514.

DISCUSSION

Ark. Code Ann. § 11-9-514(a)(3)(ii) provides that where an employer has contracted with a managed care organization certified by the Commission, the claimant-employee shall be allowed to change physicians one time only by petitioning the Commission to a physician who is either associated with the managed care entity chosen by the employer or who is the regular treating physician of the employee. Furthermore, Ark. Code Ann. § 11-9-514(b) provides that:

Treatment or services furnished or prescribed by any physician other than the ones selected according to the foregoing, except emergency treatment, shall be at the claimant's expense.

In the present case, the claimant's deposition testimony establishes that she received a change of physician at the direction of the Commission to Dr. Abraham.

Thereafter, on her own initiative, she presented to Dr. Bozeman, her primary care physician through Medicaid, and later presented to Dr. Eubanks by a referral from Dr. Bozeman. Ms. Vanoven knew when she saw Dr. Bozeman and when she saw Dr. Eubanks that she had not gone through the Workers' Compensation channels and that their visits and treatment were not going to be authorized.

Under these conditions, I find that a preponderance of the evidence establishes that the treatment provided by Dr. Bozeman and Dr. Eubanks was not authorized pursuant to the change of physician rules cited above, and therefore the expenses for that treatment shall be at the expense of the claimant and not at the expense of the respondents, as required by Ark. Code Ann. § 11-9-514(b).

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The claimant's authorized treating physician pursuant to a Commission Change of Physician Order was Dr. Abraham at the time that Ms. Vanoven presented to Dr. Bozeman and then to Dr. Eubanks.

2. The treatment and services rendered by and at the direction of Dr. Bozeman & Dr. Eubanks were not emergency treatment.

3. Therefore, under the provisions of Ark. Code Ann. § 11-9-514, the treatment and services provided by or at the direction of Dr. Bozeman and Dr. Eubanks shall be at the expense of the claimant and not the respondents.

4. The preponderance of the evidence therefore establishes that the respondents in this case have no liability for the lien asserted by the Department of Human Services for treatment rendered by or at the direction of Dr. Bozeman and Dr. Eubanks.

ORDER

Pursuant to Ark. Code Ann. § 11-9-704(b)(6)(A) any party aggrieved by the findings of this Order may file an Application For Review with the Full Commission within thirty (30) days from the date of receipt of this decision.

IT IS SO ORDERED.

MARK CHURCHWELL
Administrative Law Judge