

STATE OF MONTANA  
DEPARTMENT OF LABOR AND INDUSTRY  
HEARINGS BUREAU

IN THE MATTER OF	)	Case No. 327-2002
MONTANA REHABILITATION THERAPY,	)	
Petitioner,	)	
	)	FINDINGS OF FACT;
vs.	)	CONCLUSIONS OF LAW;
	)	AND ORDER
CONSTITUTION STATE SERVICES,	)	
Respondent.	)	

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**I. INTRODUCTION**

Montana Rehabilitation Therapy filed a request for a contested case hearing before the Department on the basis that Constitution State Services denied payment for medical services provided to Dan Maggard on April 3, 2001. Michael T. Furlong, Hearing Officer, conducted a hearing in this matter on November 29, 2001. Steve Botten, co-owner of Billings Surgical Group, represented the petitioner. Linda Botten and Lorena Pettet appeared as petitioner witnesses. Constitution State Services was represented by Anna Creed, Attorney at Law. Diane Nelson appeared as a respondent witness.

Petitioner exhibits 2 through 5 and Respondent exhibits A through L were admitted into evidence without objection. The Hearing Officer admitted Petitioner exhibit 1 over Respondent's hearsay objection.

**II. ISSUE**

Whether Montana Rehabilitation Therapy requested prior authorization with Constitution State Services for services rendered to Dan Maggard on April 3, 2001, as required under ARM 24.29.1517.

**III. FINDINGS OF FACT**

1. Dan Maggard suffered a work-related injury on March 30, 2001, for which he sought initial treatment from Dr. Michael Layman. Upon examination, Dr. Layman diagnosed Maggard with an acute lower back sprain, and referred him to Montana Rehabilitation Therapy (MRT) for further rehabilitation treatment.
2. Maggard reported to MRT for initial evaluation by a licensed physical therapist on April 2, 2001.

3. On April 2, 2001, MRT contacted an adjuster with Constitution State Services (CSS) to obtain prior authorization before providing evaluation and treatment services for Maggard. The adjuster verbally gave authorization for the treatment provided to Maggard on that date.
4. Maggard reported for his evaluation appointment on April 2. Following the appointment, MRT scheduled a second therapy session for Maggard on April 3, 2001. Maggard received a physical therapy treatment as scheduled on April 3.
5. On April 4, 2001, MRT sent a facsimile request to CSS for authorization to provide physical therapy for Maggard. It sent a statement signed by Dr. Layman certifying that Maggard needed continued treatment by a physical therapist to include a total of six therapy sessions. It also sent CSS a medical status report signed by Dr. Layman on April 2, 2001, which indicated that he had seen Maggard for back sprain injury and referred him for physical therapy treatment. Dr. Layman determined that Maggard was unable to return to work and was to be re-examined in 3 to 4 days.
6. Upon receiving the facsimile, CSS sent a response via facsimile to MRT on April 4, authorizing six physical therapy sessions for Maggard effective April 6, 2001.
7. Maggard reported for a subsequent physical therapy appointment at MRT on April 6, 2001.
8. As the insurance carrier, CSS accepts liability for Maggard's job-related injury.
9. On April 25, 2001, CSS notified MRT by letter that it had received bills for therapy provided to Maggard on April 2, April 3, and April 6, 2001. It authorized the evaluation and treatment on April 2, and the therapy session on April 6, 2001. However, it denied payment, in the amount of \$138.55, for services provided to Maggard on April 3, 2001, indicating that it had no record of prior authorization sought or given for that session.
10. Linda Botten has been the corporation president since 1991 and has worked extensively with insurance companies, including CSS, involving requests for prior authorization. In the typical course of care for patients referred by a physician, it has been customary for them to authorize a certain number of physical therapy visits. In her experience working with CSS, once the initial evaluation has been approved for individuals with acute therapy needs, there has never been refusal to authorize follow up visits in the typical course of care. For that reason, MRT, scheduled the physical therapy session on April 3.

#### IV. DISCUSSION/RATIONALE

The workers' compensation laws provide for the department to regulate costs for medical services. § 39-71-704, MCA. Therefore, the department has adopted rules requiring medical providers to obtain prior authorization of treatment costs in certain circumstances. The department rules provide:

24.29.1517 PRIOR AUTHORIZATION (1) When prior authorization is required, the provider must request the authorization a reasonable amount of time in advance of the time the procedure is scheduled to be performed. The request must

contain enough information to allow the insurer to make an informed decision regarding authorization. The insurer may not unreasonably withhold its authorization. An insurer's denial must contain an explanation of the reasons for its denial. Reasonableness will be judged in light of the circumstances surrounding the medical procedure and the claim.

- (4) Prior authorization is required when:
  - (a) the provider to whom the referral is made is a consulting specialist; or
  - (e) any of the following is proposed:
    - (ix) any physical rehabilitation program involving work hardening, physical restoration, or similar programs.
- (6) Prior authorization is not required for emergency procedures.

Pursuant to the law, a provider is required to request prior authorization if a patient is to be treated for a non-emergency condition.

As the provider in this case, MRT requested authorization from the insurance company for the treatment provided Maggard on April 3, 2001, on the basis that they had obtained prior authorization to provide services to Maggard. CSS contends that MRT did not request and was not given prior authorization for the treatment, and that, therefore, costs for the medical services provided on April 3, 2001, should be denied.

The record shows that when MRT received a prescription for physical therapy from the injured worker's physician, it contacted the insurer on April 2, 2001, for the purpose of obtaining 'prior authorization' as required under the law. The disputed facts in this case center around whether or not the authorization given by the adjuster should include the treatment provided on April 3, 2001. The extent of the authorization given on April 2, 2001 was strictly oral between the parties and the insurer did not maintain written documentation concerning the request.

The insurer contends that the adjuster granted authorization, but only for Maggard's initial visit on April 2, 2001. In support of its decision to deny payment, it refers to the testimony of the adjuster who said she granted authorization only for the initial evaluation conducted on April 2, 2001. It also refers to the medical status appointment report (Exhibit 2) faxed on April 4, 2001, where MRT indicated that Maggard's next appointment date was set for April 6, 2001. Therefore, since MRT did not provide the medical status report until after the injured worker's April 3, 2001 appointment, MRT failed in its obligation to request prior authorization for those services.

On the other hand, MRT argues that it followed customary past practice in its request to obtain prior authorization from CSS. It was MRT's intention to obtain the regulatory prior authorization so it could begin the continued physical therapy of Maggard when it contacted the adjuster on April 2, 2001. The call made to the adjuster was the customary procedure it had always followed, and its requests for authorization by insurers to proceed with continued physical therapy have always been granted so an injured worker can return to work as soon as possible. MRT understood that it had received authorization to proceed with the necessary prescribed physical therapy. For that reason, it scheduled an appointment and proceeded with Maggard's treatment on April 3, 2001, as determined during his initial evaluation. It was not until after the April 3, 2001 treatment was performed that MRT received written notice from the insurer denying payment for the treatment because CSS records did not show that prior authorization had been sought or given. Under the circumstances, upon contacting the insurer on April 2, 2001, Montana Rehabilitation

Therapy had reason to believe that it had followed the required procedures and had been given prior authorization to provide continued prescribed treatment. Therefore, Montana Rehabilitation Therapy, as the provider in this case, did request prior authorization in advance of the procedures performed on the injured worker on April 3, 2001 as required under the provisions of ARM 24.29.1517.

#### **V. CONCLUSIONS OF LAW**

1. The State of Montana and the Commissioner of the Department of Labor and Industry has jurisdiction over this complaint under §§39-71-704 (6) and 39-71-2401, MCA.
2. Montana Rehabilitation Therapy made a request for prior authorization as required pursuant to ARM 24.29.1517. Therefore, it is entitled to payment for the services.

#### **VI. ORDER**

Montana Rehabilitation Therapy's request for payment for treatment of Dan Maggard on April 3, 2001, is granted.

Constitution State Services is ORDERED to pay the billed /amount of \$138.55 for treatment received by Dan Maggard on April 3, 2001.

DATED this 27th day of December, 2001.  
DEPARTMENT OF LABOR & INDUSTRY  
HEARINGS BUREAU

By: /s/ Michael T. Furlong  
Michael T. Furlong  
Hearing Officer

Notice: This Order is signed by the Hearing Officer of the Department of Labor and Industry under authority delegated by the Commissioner. Any party in interest may appeal this Order to the Workers' Compensation Court within thirty (30) days after the date of mailing of this Order as provided in ARM 24.29.215(3). The Court's address is:

Workers Compensation Court  
P.O. Box 537  
Helena, MT 59624-0537  
(406) 444-7794