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In the ORS 656.260 Managed Care Dispute of

**Davis, Ronald E., Claimant**

Contested Case No: HH01-151

**PROPOSED & FINAL ORDER**

May 14, 2002

RONALD E. DAVIS , Petitioner

CITY OF PORTLAND, Respondent

Before John L. Shilts, Workers' Compensation Division Administrator

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**HISTORY OF THE CASE**

Claimant appeals an administrative order issued on December 3, 2001 by the Medical Review Unit (MRU) of the Workers' Compensation Division (WCD), Department of Consumer and Business Services (director or department). On February 28, 2002, Administrative Law Judge Catherine P. Coburn conducted a contested case hearing. Petitioner Ronald E. Davis (claimant) was represented by attorney Douglas A. Swanson. Respondent self-insured employer City of Portland (insurer) was represented by attorney David L. Jorling. Claimant testified on his own behalf and the record closed on the date of hearing.

The record of this proceeding, consisting of written argument, all evidence received, and all hearing papers filed, has been considered. The findings of fact and conclusions of law are based upon the entire record.

**ISSUE**

The issue is whether insurer is obligated to provide a neuropsychological evaluation outside the MCO.

**EVIDENTIARY RULINGS**

WCD Exhibits 1 through 123 were received into the record without objection.

**MOTION TO POSTPONE**

Claimant asserted a Motion to Postpone the hearing, arguing in the alternative that the matter should be consolidated with the appeal of a recently issued administrative order or that the matter should be postponed pending a claim for the compensability of additional medical conditions. Claimant further argued that additional medical evidence would show that claimant has benefited and will benefit from medical treatment outside the MCO. Insurer opposed the motion.

OAR 137-003-0525 allows the administrative law judge discretion to postpone a hearing for "good cause". At hearing, I denied the motion, reasoning that if claimant is entitled to a neuropsychological examination outside the MCO, his medical treatment should proceed without

undue delay. *See* ORS 656.268(1).<sup>1</sup> Furthermore, ORS 656.260(16)<sup>2</sup> bars admission of additional medical evidence in an MCO dispute.

### FINDINGS OF FACT

I adopt the findings of fact contained in the Administrative Order dated December 3, 2001 with the following supplementation:

On March 10, 1998, claimant suffered a compensable injury when he fell out of a truck, striking his head on a concrete floor. (Ex. 9). On March 16, 1998, claimant elected to receive medical treatment through Kaiser On-The-Job Managed Care Organization (MCO). (Ex. 11).

On April 17, 1998, Michael Adams, MD, a panel provider, declared claimant's condition medically stationary without impairment and released claimant to regular work. (Ex. 18).

In May 1998, insurer accepted "contusion to scalp with post-concussive syndrome of 3-10-98 and cervical/lumbar strain of 3-10-98" as compensable conditions. (Exs. 20 and 22). On August 6, 1998, claimant returned to Dr. Adams complaining of mentation problems. (Ex. 28-1). Dr. Adams referred claimant to the neurology department for evaluation. (*Id.*) On

August 13, 1998, Osamu Muramoto, MD examined claimant in a neurology consultation and detected no gross cognitive dysfunction. (Exs. 29-2 and 44-1). Dr. Muramoto offered reassurance and instructed claimant to return in several months. (Ex. 29-2). Dr. Muramoto noted that claimant's previous CT scan was normal, and that he would consider another evaluation. (*Id.*)

On June 22, 1999, claimant returned to Dr. Adams, again complaining of mentation problems. (Ex. 41). Dr. Adams referred claimant to the neurology department for a second evaluation. (*Id.*) On July 1, 1999, Dr. Muramoto examined claimant and suggested a neuropsychology evaluation. (Ex. 44-2). On August 27, 1999, Dr. Adams examined claimant and referred claimant for a neuropsychiatric evaluation. (Ex. 49-1).

On October 5, 1999, Christopher Tongue, PhD conducted a neuropsychological evaluation lasting approximately 4 hours or one half day. (Ex. 53; testimony of claimant). Dr.

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<sup>1</sup> ORS 656.268(1) provides:

"One purpose of this chapter is to restore the injured worker as soon as possible and as near as possible to a condition of self support and maintenance as an able-bodied worker.\*\*\*"

<sup>2</sup> ORS 656.260(16) provides:

"\*\*\*No new medical evidence or issues shall be admitted.\*\*\*"

Tongue examined claimant, interviewed claimant's wife and administered standardized tests. (Ex. 53). Dr. Tongue made several recommendations to claimant including follow-up counseling. (Ex. 53-1).

In addition to Dr. Tongue, four MCO panel members perform neuropsychology evaluations. (Ex. 120). Additionally, five MCO contracting medical providers are available to perform neuropsychology evaluations upon the attending physician's referral. (*Id.*). The MCO allows second opinions. (*Id.*).

### CONCLUSIONS OF LAW AND REASONING

The director exercises jurisdiction over MCO disputes. ORS 656.260(6). I review for substantial evidence and error of law. ORS 656.260(16). The burden of proving a fact or position rests with the proponent. ORS 183.450(2).; *Harris v. SAIF*, 292 Or 683 (1982). As petitioner, claimant bears the burden of proving by a preponderance of evidence that the administrative order is incorrect. *Cook v. Employment Div.*, 47 Or 437 (1982) (In the absence of contrary legislation, the standard of proof in administrative hearings is preponderance of evidence).

MRU determined that the MCO was not obligated to provide a neuropsychology evaluation outside the MCO because Dr. Tongue, an MCO panel member, conducted such an evaluation and because the MCO offers the services of nine other neuropsychologists. Claimant contends that he is entitled to a neuropsychological evaluation outside the MCO because insurer failed to provide him with a list of neuropsychologist MCO panel members. Insurer contends that the administrative order is correct and should be affirmed.

Pursuant to ORS 656.245(1)(a), an insurer is obligated to provide medical services that are materially related to a compensable work injury for so long as the nature of the injury or the process of recovery requires. This obligation continues over the worker's lifetime. ORS 656.245(1)(b). Pursuant to ORS 656.245(4), an insurer may contract with a state-certified MCO to provide medical services to enrolled injured workers. OAR chapter 436, division 015 governs the delivery of medical services to injured workers through MCO's. OAR 436-015-0030(3)(j) provides:

- (3) The MCO plan shall provide a description of the time, places and manner of providing services under the plan adequate to ensure that workers governed by the MCO shall be able to:
  - (j) Receive specialized medical services the MCO is **not otherwise able to provide**. The application must include a description of the times, places and manner of providing such specialized medical services. (Emphasis added).

I agree with MRU's conclusion. Inasmuch as Dr. Tongue, an MCO panel member, conducted a neuropsychology evaluation and the MCO offers the services of nine other neuropsychologists, the MCO panel is able to provide specialized medical services to claimant. Therefore, insurer is not obligated to provide a neuropsychology evaluation outside the MCO.

### ATTORNEY FEES

Claimant has not prevailed in a contested case hearing, and therefore, he is not entitled to

an attorney fee. ORS 656.385(1).

**ORDER**

IT IS HEREBY ORDERED that:

The Administrative Order dated December 3, 2001 is affirmed.

DATED this \_\_\_\_\_ day of May 2002.

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Catherine P. Coburn, Administrative Law Judge  
Hearing Officer Panel