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In the ORS 656.245 Medical Services Dispute of

**Fisher, Dennis, Claimant**

Contested Case No: H01-128

**PROPOSED & FINAL ORDER**

March 6, 2002

DENNIS FISHER, SR, Petitioner

SAIF CORPORATION, Respondent

Before John L. Shilts, Workers' Compensation Division Administrator

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**PROCEDURAL HISTORY**

On November 6, 2001, claimant's attorney requested contested case review of an order by the Medical Review Unit (MRU) of the Workers' Compensation Division (WCD) finding that SAIF correctly reimbursed claimant for out-of-pocket expenses. On January 3, 2002, Hearing Officer Paul Vincent conducted a contested case hearing. Petitioner Dennis Fisher (claimant) was represented by attorney Christine Jensen. Respondent SAIF Corporation (SAIF or insurer) was represented by attorney John Motley. The Workers' Compensation Division waived appearance. Claimant testified on his own behalf; Jennifer Shafer testified for Respondent. The record closed on the date of hearing.

**ISSUE**

Whether SAIF correctly reimbursed claimant for out-of-pocket expenses incurred for medications prescribed by Drs. Janelli, Letts, Glassmen and Baker from September 24, 1999 through December 13, 2000 under ORS 656 and OAR Chapter 436.

**EVIDENTIARY RULINGS**

WCD Exhibits 1-45 were received without objection.

**FINDINGS OF FACT**

I adopt the findings of fact in Administrative Order MS 01-963, dated October 24, 2001, with the following supplemental fact findings:

Jennifer Shafer is a claims examiner at SAIF. Claimant's claim file is assigned to her and she is familiar with the claim file. (Testimony of Jennifer Shafer).

Claimant requested reimbursement for the prescription medications Duragesic and Norco, prescribed by Dr. Janelli on December 27, 1999, through a Prescription Drug Reimbursement Request received by SAIF. (Ex. 5; Testimony of Jennifer Shafer). The bills were originally disallowed based on SAIF's current condition denial. Following the Disputed Claim Settlement of the cervical condition denial of March 27, 2000, SAIF reimbursed claimant for these medications on September 18, 2000. (Exs. 23-24; Testimony of Jennifer Shafer).

Claimant requested reimbursement for the prescription medications Duragesic and Hydrocodone, prescribed by Dr. Glassman on December 27, 1999; Hydrocodone, prescribed by Dr. Glassman on February 7, 2000; Paxil, prescribed by Dr. Glassman on February 8, 2000; Celebrex, prescribed by Dr. Glassman on February 16, 2000; and Zydone, prescribed by Dr. Glassman on May 12, 2000. Claimant requested reimbursement for all of these medications through a Prescription Drug Reimbursement Request received by SAIF. (Ex. 5; Testimony of Jennifer Shafer). SAIF reimbursed claimant for all of these medications on July 17, 2000 or September 18, 2000. (Exs. 23-24; Testimony of Jennifer Shafer).

Claimant did not file a Prescription Drug Reimbursement Request with SAIF for the prescription medications Ultram, prescribed by Dr. Baker on August 30, 2000. (Ex. 5; Testimony of Jennifer Shafer).

Claimant requested reimbursement for the prescription medications Ultram, prescribed by Dr. Baker on October 2, 2000; Ultram, prescribed by Dr. Baker on November 22, 1999; Oxycontin, prescribed by Dr. Baker on December 12, 1999; Hydrocodone, prescribed by Dr. Baker on December 23, 1999; and Hydrocodone, prescribed by Dr. Baker on March 24, 2000. Claimant requested reimbursement for all of these medications through a Prescription Drug Reimbursement Request received by SAIF. (Ex. 5; Testimony of Jennifer Shafer). With the exception of the Ultram prescribed by Dr. Baker on October 2, 2000, SAIF reimbursed claimant for all of these medications on July 17, 2000 or September 18, 2000. (Exs. 23-24; Testimony of Jennifer Shafer). The October 2, 2000 prescription for Ultram, in the amount of \$15, was requested for reimbursement by claimant but never reimbursed by SAIF. SAIF reimbursed claimant for all of the remaining medications on July 17, 2000 or September 18, 2000. (Exs. 23-24; Testimony of Jennifer Shafer).

### **CONCLUSIONS OF LAW AND REASONING**

Jurisdiction over this medical services dispute lies with the director. ORS 656.245(6); OAR 436-010-0008(1). Since ORS 656.245 prescribes no standard of review, I review *de novo*. Archie M. Ulrich, 2 WCSR 152, 153 (1997); OAR 436-010-0225(1). The burden of proving a fact or position rests with the proponent. ORS 183.450(2). As petitioner, insurer bears the burden of proving by a preponderance of the evidence that the administrative order is incorrect. See *Cook v. Employment Div.*, 47 Or 437 (1982) (In the absence of contrary legislation, the standard of proof in an administrative hearing is preponderance of evidence).

The claimant contests the director's conclusion that the Stipulation and Disputed Claim Settlement Agreement (DCS) reached by the parties on March 27, 2000 deprived the director of jurisdiction over medical billings related to the accepted lumbar conditions. The director's order concluded summarily that "[s]ince the the DCS addressed all unpaid medical billings on or before March 15, 2000, jurisdiction lies with the Workers' Compensation Board for those dates of service." The director then continued review for two remaining prescriptions. However, in the DCS reached between the parties dealt solely with the disputed cervical conditions:

SAIF Corporation issues the following denial: SAIF Corporation has received information that you are treating for a cervical condition with various diagnoses

including, but not limited to, cervical strain and degenerative disc diseases at C4-5, C5-6 and C6-7, which you believe is a result of your injury of August 5, 1999 and/or your employment at L & H Grading, Inc. It is the employer and SAIF Corporation's position that your accepted cervical condition has fully resolved and that your current cervical condition, however diagnosed, and the need for treatment therefore, is due to pre-existing degenerative disc disease with osteophyte formation at C4-5, C5-6 and C6-7 and is unrelated to the work injury of August 5, 1999 and the work exposure at L&H Grading, Inc. Therefore, SAIF Corporation issues this current condition denial of your cervical condition and strain. (Ex. 20-2).

A later section of the document, entitled "Medical Provider Reimbursement," states:

The parties agree that SAIF Corporation has fully paid, within the amounts set by the Administrative Rules, all medical billings received by SAIF Corporation on or before March 15, 2000. Therefore, there are no unpaid medical billings subject to reimbursement from the proceeds of this settlement." (Ex. 20-4).

I agree with claimant that the intent of the DCS was not to resolve outstanding medical billings unrelated to the denied cervical condition. The DCS did not in any way address any matter unrelated to the denied cervical condition and therefore did not absolve SAIF of liability for claims related to the accepted lumbar contusion and lumbar strain. (See Ex. 21). Accordingly, because SAIF presented no evidence at hearing indicating that the one billing not reimbursed was unrelated to the accepted lumbar contusion and lumbar strain, MRU erred in determining that it had no jurisdiction over medical billings related to the accepted lumbar condition prior to March 15, 2000.

At hearing, SAIF conceded that the requested reimbursement for Ultram on October 2, 1999 remains unpaid. As indicated in my fact findings, the record demonstrates that all other requested reimbursements were paid by SAIF on either July 17, 2000 or September 18, 2000. (Exs. 23-24; Testimony of Jennifer Shafer). Consequently, I conclude that the \$15 Ultram prescription is reimbursable.

### **ATTORNEY FEES**

Claimant has prevailed in a contested case hearing, and therefore, his attorney is entitled to a reasonable fee. ORS 656.385(1). Considering the factors listed in OAR 436-001-0265, a reasonable fee for claimant's attorney's services in this case is \$450.

**ORDER**

IT IS HEREBY ORDERED that:

The Director's Review and Order, MS 01-963, dated October 24, 2001 is reversed in part. SAIF Corporation shall pay claimant a prescription reimbursement in the amount of \$15. SAIF shall pay claimant's attorney a fee of \$450.<sup>1</sup>

DATED this 6<sup>th</sup> day of March 2002.

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Paul Vincent  
Hearing Officer  
Hearing Officer Panel

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<sup>1</sup> Claimant's attorney has submitted a statement of services documenting three hours and ten minutes of work on this case and requested a fee of \$1000. I find the time documented to have been reasonable given the complexity of the record and arguments presented. Weighing the other factors listed in OAR 436-001-0265 as well, however, I find \$450 to be a reasonable fee.