

In the Matter of an ORS 656.260 Managed care Dispute of

Seits, Kerry, Claimant

Contested Case No: H01-096

PROPOSED & FINAL ORDER

February 26, 2002

TODD LEWIS, MD., Petitioner
SAIF CORPORATION, Respondent
KERRY SEITS, Respondent

Before John L. Shilts, Workers' Compensation Division Administrator

On November 1, 2001 Hearing Officer Paul Vincent conducted a telephone conference in this matter. The Petitioner, Todd Lewis, MD, did not appear. Respondent SAIF Corporation (insurer or SAIF), appeared and was represented by its attorney, Debra Ehrman. Respondent Kerry Seits (claimant) appeared pro se. The Workers' Compensation Division (WCD or agency) waived appearance. David Kryger was called to testify as a witnesses for claimant.

The record of this proceeding, consisting of a tape recording of the hearing, 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 presented is whether substantial evidence supports agency's administrative order, MMS 01-550, issued on August 23, 2001.

EVIDENTIARY RULING

WCD Exhibits 1-50 were received without objection and admitted into evidence. SAIF Exhibits 4A, 45A were received without objection and admitted into evidence.

FINDINGS OF FACT

The claimant compensably injured his back on April 22, 1995. Insurer accepted his claim for an acute lumbosacral strain on May 25, 1995 and enrolled claimant in Health Future Enterprises Inc., a managed care organization (MCO), on May 25, 1995.

On June 27, 1996, SAIF issued a partial denial of a low back, gluteal and posterior thigh conditions.

On July 30, 1996, claimant entered into a Claims Disposition Agreement (CDA) that released all of claimant's benefits on this claim except necessary medical care for the acute lumbosacral strain.

Claimant has continued to receive treatment for chronic back symptoms. Todd Lewis, MD, has treated claimant on numerous occasions since 1998.

On March 1, 2000, Dr. Lewis and claimant submitted an aggravation claim to SAIF. In response to a SAIF inquiry, Dr. Lewis stated on March 16, 2000 that claimant had a longstanding chronic back condition without a lot of change in the general status of his back.

On January 23, 2001, Dr. Lewis again examined claimant. He noted that claimant's condition waxes and wanes. Claimant described his current pain as originating from the L4-5 region of the low back. Dr. Lewis ordered a discogram to rule out discogenic pain.

On February 16, 2001, Dr. Lewis re-examined claimant. He noted that claimant continued to experience low back pain. Dr. Lewis indicated he needed to discover whether claimant had mechanical low back pain dysfunction or discogenic back pain with chronicity. Dr. Lewis referred claimant to Craig McNabb for a second opinion.

SAIF reviewed Dr. Lewis' bills and disapproved payment, stating that the treatment was not related to the compensable condition but rather to the denied low back pain previously settled by the DCS of 1996. Claimant disagreed and requested administrative review.

On August 23, 2001, WCD issued administrative order MMS 01-550 finding that SAIF is not liable for medical services provided to claimant by Todd Lewis on February 28, 2000; January 23, 2001 and February 1, 2001. The director concluded that "[g]iven SAIF's belief that the disputed care is for the denied conditions, and the lack of evidence to show otherwise, the director concludes that Dr. Lewis' care is not for the accepted condition of 1995."

CONCLUSIONS OF LAW

Absent an of error law, my standard of review is for substantial evidence. ORS 656.260(16). Substantial evidence exists to support a finding "when the record, viewed as a whole, would permit a reasonable person to make that finding." ORS 183.482. To determine whether substantial evidence exists, a Hearings Judge is required to:

"look at the whole record with respect to the issue being decided, rather than one piece of evidence in isolation. If an agency's finding is reasonable, keeping in mind the evidence against the finding as well as the evidence supporting it, there is substantial evidence. * * * For instance, and in the context which is likely frequently to occur in workers' compensation cases, if there are doctors on both sides of a medical issue, whichever way the [director] finds the facts will probably have substantial evidentiary support. [The Hearings Judge] would not need to choose sides. The difference between the 'any evidence' rule and the substantial evidence test * * * will be decisive only when the credible evidence apparently weighs overwhelmingly in favor of the finding and the [director] finds the other without giving a persuasive explanation." *Armstrong v. Asten-Hill Co.*, 90 Or App 200, 206 (1988).

In assessing whether findings are supported by substantial evidence, my task is not to

substitute my judgment for that of MRU, but rather to decide whether the findings are reasonable in the light of countervailing as well as supporting evidence. *Reguero v. Teacher Standards and Practices*, 312 Or 402, 417-18 (1991).

The record here contains substantial evidence to support the director's decision. Although claimant called his former attorney, David Kryger, as a witness to testify as to correct the interpretation of the 1996 CDA, the issue in this case centers on whether the treatment being delivered by Dr. Todd is for the accepted condition or another condition. As stated in MRU's order:

“Medically, it is expected that a lumbosacral strain would resolve within no more than six months absent unusual circumstances. In this case, there is no evidence of any unusual circumstances. While [claimant] continues to experience low back pain, there is no medical evidence that his symptoms are related to his 1995 low back condition. Dr. Lewis' diagnosis of mechanical back pain or discogenic pain supports this conclusion since neither of these diagnoses are part of a lumbosacral strain.”

The record contains substantial evidence to support MRU's conclusion that the requested treatment is not for the accepted condition.

ORDER

IT IS HEREBY ORDERED that MRU's Administrative Order, MMS 01-550, is affirmed.

DATED this 26th day of February, 2002.

By: _____
Paul Vincent, Hearing Officer
Hearing Officer Panel