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In the Matter of the ORS 656.327 Treatment Dispute of

**Richard Callahan, Claimant**

Contested Case No: 04-068

**ORDER REMANDING WITH INSTRUCTIONS**

September 16, 2004

JAMES RIVER CORP.OF NEVADA

and SEDGWICK CLAIMS MANAGEMENT SERVICES, INC., Petitioner

RICHARD CALLAHAN, Respondent

Before Ella D. Johnson, Administrative Law Judge, Office of Administrative Hearings

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Claimant appeals a March 25, 2004 Administrative Order issued by the Medical Review Unit (MRU) of the Workers' Compensation Division (WCD), Department of Consumer and Business Services (the director or the department) which found that insurer was barred from challenging the appropriateness of the proposed surgery because it failed to timely respond to Dr. Farrar's request for elective surgery by filing a request for administrative review on form 440-3228. Finding the opinion of Dr. Lewis persuasive, MRU concluded that insurer was liable for the proposed lumbar surgery at L4-5 and L5-S1, and all associated costs, if rendered. Insurer timely requested a hearing challenging MRU's order. The matter was referred to the Office of Administrative Hearings (OAH) for hearing on May 21, 2004.

On September 14, 2004, OAH Administrative Law Judge (ALJ) Ella D. Johnson conducted a telephone hearing in this matter in Salem, Oregon. Attorney Jerald Keene represented the petitioning self-insured employer James River Corporation of Nevada and its claims administrator Sedgwick Claims Management Services, Inc. (insurer or Sedgwick). Attorney Evohl Malagon represented respondent Richard Callahan (claimant). No witnesses testified.

At the outset of the hearing, claimant moved to dismiss this matter, arguing that MRU's order reflects an error of law because, instead of dismissing the matter after concluding that insurer was barred from challenging the appropriateness of the proposed surgery, MRU continued its review and found Dr. Lewis' opinion to be persuasive. Claimant also offered a letter from Dr. Farrar, marked as Exhibit 204, which appeared to change the surgical procedure for the surgery. Insurer objected to the exhibit, arguing that no new medical evidence can be admitted in the hearing following the administrative review. I sustained insurer's objection. The parties agreed that the most appropriate resolution of this matter was to remand it to MRU to allow a review of Dr. Farrar's surgical request dated July 2, 2004 and marked by claimant as Exhibit 204.

Insurer asked that the matter be remanded with instructions for MRU to determine whether this was in fact the same proposed surgery or if this was a new dispute over a new surgery request. Accordingly, this matter is remanded to MRU with instructions to review the new medical evidence offered by Dr. Farrar and determine if this is a new request or the same surgery request previously made.

**ATTORNEY FEES**

Claimant has not finally prevailed in this contested case hearing, and therefore, is entitled to no assessed attorney fee at this time.

**ORDER**

*IT HEREBY ORDERED* that MRU's March 25, 2004 Administrative is vacated and this matter shall be remanded with instructions as stated above.