
In the Matter of the ORS 656.260 Medical Services Dispute of

Kirkpatrick, Robert J., Claimant

Contested Case No: H04-016

PROPOSED & FINAL ORDER

March 12, 2004

ROBERT J. KIRKPATRICK, Petitioner

SAIF CORPORATION, Respondent

Before Catherine P. Coburn, Administrative Law Judge, Hearing Officer Panel

HISTORY OF THE CASE

Claimant appeals an Administrative Order issued on January 8, 2004 by the Medical Review Unit (MRU) of the Workers' Compensation Division (WCD) Department of Consumer and Business Services (director or the department). On January 28, 2004, WCD referred the matter to the Office of Administrative Hearings for a contested case hearing. On March 9, 2004, Administrative Law Judge Catherine P. Coburn conducted a hearing. Petitioner Robert J. Kirkpatrick (claimant) appeared without benefit of counsel. SAIF Corporation (insurer) was represented by attorney David L. Runner. WCD waived appearance. Oregon Health Systems, a managed care organization (OHS or MCO) also waived appearance. Claimant testified on his own behalf and the record closed on the date of hearing.

ISSUE

Whether MRU incorrectly disapproved claimant's request for physical therapy outside the MCO panel.

EVIDENTIARY RULINGS

WCD Exhibits 1 through 45 were received into the record without objection.

FINDINGS OF FACT

- (1) On August 21, 2003, claimant suffered a right knee injury while working in construction. (Ex. 7.)
- (2) On August 27, 2003, James D. Dowd, MD referred claimant to Impact Physical Therapy for right knee range of motion, quadriceps strengthening and gait training. (Ex. 5-3.) Claimant received physical therapy services at Impact Physical Therapy clinic from August 29, 2003 through September 26, 2003, and his range of motion improved. (Exs. 9 and 13.)
- (3) On September 15, 2003, insurer accepted the compensable right knee condition and enrolled claimant in OHS MCO. The MCO enrollment notified claimant **"Care you receive that is not ordered by your attending physician or care provided that is by non-panel medical providers (without MCO approval) will not be reimbursed."**

(Emphasis in the original.) (Ex. 12.)

(4) Impact Physical Therapy clinic is not an OHS MCO medical provider. (Exs. 14, 16, 26, 28, 35.) Medicare certification is required for processing OHS panel applications. Impact Physical Therapy is not Medicare certified. (Ex. 39-1.)

(5) In September, OHS disapproved claimant's request to continue receiving physical therapy services at Impact Physical Therapy clinic and claimant appealed. (Ex. 14.)

(6) From October 2, 2003 through October 24, 2003, claimant received physical therapy services from Three Rivers Hospital Asante Physical Therapy clinic and his range of motion improved. (Exs. 19, 20, and 21.)

(7) On October 29, 2003, OHS approved a request for water therapy from Dr. Dowd. (Ex. 22.) From October 29, 2003 through November 13, 2003, claimant received eight sessions of water therapy at Grants Pass Physical Therapy clinic. (Testimony of claimant.) Claimant was displeased because the patient/therapist ratio was three to one and because he believed the swim pool was too small and overcrowded. (Testimony of claimant.) Claimant also believed that the facility was inadequate, understaffed and had outdated equipment. (Ex. 28.) Following water therapy at Grants Pass Physical Therapy clinic, claimant's range of motion improved. (Exs. 23-9 and 24.)

(8) On November 25, 2003, the OHS Executive Committee upheld the decision to disapprove claimant's request to receive physical therapy services outside the MCO panel and claimant appealed. (Exs. 26 and 28.)

(9) On November 18, 2003, insurer approved Dr. Dowd's request for surgical authorization. (Ex. 25.) On December 10, 2003, Dr. Dowd performed surgical repair of the right knee anterior cruciate ligament tear and medial meniscus tear. (Ex. 24-1.)

(10) On December 15, 2003, post-surgery, claimant resumed physical therapy at Three Rivers Hospital Asante Physical Therapy clinic. (Ex. 30.) Claimant currently continues physical therapy sessions at Three Rivers. The right knee is still swollen but continues to improve. (Testimony of claimant.)

CONCLUSION OF LAW

MRU correctly disapproved claimant's request for physical therapy outside the MCO panel.

OPINION

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 physical therapy claimant has received from MCO panel providers is not medically detrimental. Consequently, MRU disapproved claimant's request to obtain physical therapy services outside the MCO panel. Claimant contends that insurer should provide medical services to him at Impact Physical Therapy clinic. In support of his position, claimant argues that OHS should list Impact Therapy clinic as an MCO panel provider. However, the record establishes that Impact Therapy is ineligible as an OHS medical provider because it is not Medicare certified. Furthermore, I lack authority to order OHS, a privately owned business, to enter into a contract with any medical provider as a panel member. In contrast, insurer contends that the physical therapy services claimant has received from MCO panel providers are medically appropriate and that claimant's personal preference is irrelevant. I agree.

ORS 656.245(4)(a) provides in part:

(4) "Notwithstanding subsection (2)(a) of this section, when a self-insured employer or the insurer of an employer contracts with a managed care organization certified pursuant to ORS 656.260 for medical services required by this chapter to be provided to injured workers:

(a) Those workers who are subject to the contract shall receive medical services in the manner prescribed in the contract.

By enacting ORS 656.260, the legislature authorized workers' compensation insurers to reduce costs by enrolling injured workers in MCO's and authorized the MCO's to limit the choice of medical providers. Here, claimant is enrolled in OHS MCO. Furthermore, claimant's range of motion has improved while receiving medically appropriate physical therapy services from MCO providers, notwithstanding claimant's personal preferences. Therefore, MRU correctly disapproved claimant's request to obtain physical therapy services outside the MCO panel. Accordingly, I affirm.

ORDER

IT IS HEREBY ORDERED that:

The Administrative Order dated January 8, 2004 is affirmed.