

In the Matter of the ORS 656.260 Managed Care Dispute of

JAMES W. HENRY, Claimant

Contested Case No: H05-149

PROPOSED AND FINAL ORDER

December 5, 2005

JAMES W. HENRY, Petitioner

SAIF CORPORATION, Respondent

Before Lawrence S. Smith, Administrative Law Judge, Administrative Hearings

HISTORY OF THE CASE

James W. Henry (Claimant) appeals the Administrative Order issued on September 7, 2005, by the Medical Review Unit (RRU) of the Workers' Compensation Division (WCD), Department of Consumer and Business Services. On October 10, 2005, the appeal was referred to the Office of Administrative Hearings (OAH).

After a pre-hearing telephone conference on November 10, 2005, Administrative Law Judge Lawrence S. Smith of the OAH conducted a telephone hearing on November 15, 2005. Claimant appeared and was represented by his attorney, J. Michael Casey. Assistant Attorney General Jerry Larkin represented SAIF. No witnesses testified, and the record closed that day.

ISSUE

Whether MRU has jurisdiction to issue the Administrative Order, pursuant to ORS 656.260.

EVIDENTIARY RULINGS

WCD Exhibits 1 through 51 were not admitted during the hearing because the Administrative Law Judge did not have them. The parties had them and had no objection to them. The ALJ received them later and are relevant. Exhibits are therefore entered into the record. The parties have 10 days after issuance of this order to object to these Exhibits.

FINDINGS OF FACT

The Findings of Fact in the Administrative Order issued September 7, 2005 are adopted and incorporated in this order.

CONCLUSION OF LAW

MRU had jurisdiction to issue the Administrative Order.

OPINION

An administrative order may only be modified if it is "not supported by substantial

evidence in the record or reflects an error of law.” ORS 656.260(16); OAR 436-010-0008(14)(d). The proponent of a fact or position has the burden of proving that fact or position. ORS 183.450(2). As the petitioner in this case, Claimant has the burden of proving that MRU’s order is not supported by substantial evidence or reflects an error of law.

This case involves a claim and denial of medical treatment by a managed care organization (MCO) pursuant to ORS 656.260. Claimant did not allege that MRU’s order lacked substantial evidence, but alleged that it reflected a legal error because MRU lacked jurisdiction to issue its order, which affirmed the denial.

Pursuant to ORS 656.246(6), if a claim for medical services is denied, the claimant may request review by WCD, pursuant to ORS 656.260 or 656.327, subject to the provisions of ORS 656.704. WCD has sole authority to review any medical issues related to MCOs. *See* ORS 656.260(6), which provides in relevant part:

Any issue concerning the provision of medical services to injured workers subject to a managed care contract * * * shall be subject solely to review by the director.

ORS 656.704(3) addresses the respective authority of WCD and the Workers’ Compensation Board (WCB) to conduct hearings. It provides, in pertinent part:

(a) For the purpose of determining the respective authority of the director and the board to conduct hearings, investigations and other proceedings under this chapter, and for determining the procedure for the conduct and review thereof, matters concerning a claim under this chapter are those matters in which a worker’s right to receive compensation, or the amount thereof, are directly in issue. However, subject to paragraph (b) of this subsection, such matters do not include any disputes arising under ORS * * *656.260, * * *, any other provisions directly relating to the provision of medical services to workers or * * * except as those provisions may otherwise provide.

(b) The respective authority of the board and the director to resolve medical service disputes, other than disputes arising under ORS 656.260, shall be determined according to the following principles:

This case arises under ORS 657.260, so ORS 656.704(3)(b) is not applicable. Therefore, the issue is not one concerning a claim that would fall under WCB’s jurisdiction. WCD has authority to issue the administrative order in this case.

Claimant further argues that WCB has sole authority to decide this issue pursuant to OAR 436-010-0008(2) & (3).¹ Without considering other subsections, these subsections may be

¹ (3) Except for disputes regarding interim medical benefits, when there is a formal denial of the compensability of the underlying claim, the parties must first apply to the Hearings Division of the Workers’ Compensation Board to resolve the compensability issues. After the compensability of the underlying claim is finally decided, any party may request

contradictory regarding which agency has jurisdiction, but subsection (4) clearly states that WCD has jurisdiction to consider “[a]ll issues pertaining to disagreement about medical services within [an MCO].”

Claimant conceded that the administrative order was supported by substantial evidence in the record. Claimant has not established that the order reflects a legal error because WCD had jurisdiction to issue the order. Therefore, the order is affirmed.

ATTORNEY FEES

Claimant has not prevailed and is therefore not entitled to an attorney fee. ORS 656.385(1).

ORDER

The Administrative Order issued September 7, 2005, is affirmed.

director's review of appropriate medical issues within 30 days after the date the decision becomes final by operation of law.

(4) When there is a denial of the causal relationship between the medical service and the accepted condition or the underlying condition, the issue must first be decided by the Hearings Division of the Workers' Compensation Board.