
In the ORS 656.245 Medical Services Dispute of

SUSAN MATHEWS, Claimant

Contested Case No: H05-115

PROPOSED AND FINAL ORDER

September 27, 2005

SUSAN MATHEWS, Petitioner

SAIF CORP., Respondent

Before Catherine P. Coburn, Administrative Law Judge, Administrative Hearings

HISTORY OF THE CASE

Claimant appeals the Administrative Order issued on July 28, 2005 by the Medical Review Unit (MRU) of the Workers' Compensation Division (WCD), Department of Consumer and Business Services (department or director). On August 8, 2005, the department referred the matter to the Office of Administrative Hearings (OAH). On September 20, 2005, Administrative Law Judge Catherine P. Coburn conducted a hearing in Beaverton, Oregon. Attorney Jodie Phillips Polich represented petitioner Susan Mathews (claimant). Attorney Dennis Ulsted represented respondent SAIF Corporation (insurer). No witnesses testified and the record closed on the date of hearing.

ISSUE

Whether MRU incorrectly determined that insurer is not liable for laboratory tests provided to claimant on February 4, 2005.

EVIDENTIARY RULINGS

WCD Exhibits 1 through 23 were admitted into the record without objection.

FINDINGS OF FACT

(1) On September 18, 2003, claimant suffered a compensable injury when she fell down a manhole while working as a heavy equipment operator. (Exs. 9-1.) Insurer initially accepted a right comminuted calcaneous fracture and subsequently accepted the following conditions: left shoulder subacromial bursitis, posterior occipital scalp laceration, bilateral upper arm abrasions, intraarticular synovitis with anterior medial and anterior lateral linear scarring, chondral softening of the medial and lateral dome of the talus, and hypermobile and thin heel pad. (Exs. 2, 4 and 8.) On November 30, 2004, claimant was enrolled in a managed care organization (MCO). (Ex. 6-1.)

(2) Donald Jones, M.D. referred claimant to Alexandre J. Lockfield, M.D. for electrodiagnostic testing and neurologic evaluation. (Ex. 9.) February 3, 2005, electrodiagnostic studies suggested that claimant suffered polyneuropathy and Dr. Lockfield recommended laboratory screening for treatable causes of polyneuropathy as well as a serum lead level. (Ex. 9-2.)

(3) On February 4, 2005, Sacred Heart Hospital performed a panel of 13 tests. (Ex. 10.) Insurer paid for 11 of the 13 laboratory tests. (Ex. 12.) Insurer declined payment for a lipid test and a syphilis test, totaling \$64.40. (Ex. 12-1.)

CONCLUSION OF LAW

MRU correctly determined that insurer is not liable for laboratory tests provided to claimant on February 4, 2005.

OPINION

Jurisdiction over this medical service dispute lies with the director. ORS 656.245(6); OAR 436-010-0008(1). I review for substantial evidence or error of law. ORS 656.245(6), ORS 656.260(16) and OAR 436-001-0225(1). The burden of presenting evidence to support a fact or position rests with the proponent. ORS 184.450(2). As petitioner, claimant bears the burden of proving by a preponderance of the evidence that the administrative order is incorrect. *See Cook v. Employment Div.*, 47 Or App 437 (1980) (In the absence of contrary legislation, the standard of proof in an administrative hearing is preponderance of evidence). Proof by a preponderance of evidence means that the fact finder is persuaded that the facts asserted are more likely true than false. *Riley Hill General Contractors v. Tandy Corp.*, 303 Or 390 (1989).

Following a work injury, an insurer is obligated to provide medical services for conditions caused in material part by the injury for such period as the nature of the injury or the process of the recovery requires. ORS 656.245(1)(a). This obligation continues over the injured worker's lifetime. ORS 656.245(1)(b). After the medically stationary date, medical services are not compensable with certain exceptions, such as diagnostic services. ORS 656.245(1)(c)(H). To establish compensability, the injured worker must show that the compensable injury made the diagnostic service necessary. *Counts v. International Paper Co.*, 146 Or App 768, 770 (1997). Diagnostic services for the purpose of determining a causal relationship, if any, between an accepted condition and the worker's condition are compensable. *Roseburg Forest Products v. Langley*, 156 Or App 454, 462 (1998). The service is compensable if it is necessary to determine the cause or extent of the compensable injury, even if a noncompensable condition is discovered as a result. *Counts* at 771. Tests to determine the extent of a compensable injury are reimbursable; tests to establish the existence of a new or consequential condition are not. *Langley* at 463.

Here, the record contains no evidence of any relationship between the disputed laboratory tests and the work injury. Neither Dr. Jones nor Dr. Lockfield rendered any statement linking the lipid test or the syphilis test to the work injury. Therefore, MRU correctly determined that insurer is not liable for these tests. Accordingly, I affirm.

ATTORNEY FEES

Claimant has not prevailed in a contested case hearing and is not entitled to an attorney fee. ORS 656.385(1).

ORDER

IT IS HEREBY ORDERED that:

The Administrative Order dated July 28, 2005 is affirmed.

DATED this 27th day of September, 2005.