

In the ORS 656.260 Managed Care Dispute of

GARY MONEY, Claimant

Contested Case No: H05-003

PROPOSED AND FINAL ORDER

APRIL 7, 2005

GARY MONEY, Petitioner

SAIF CORP., Respondent

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

HISTORY OF THE CASE

Claimant appeals the Administrative Order issued on December 17, 2004 by the Medical Review Unit (MRU) of the Workers' Compensation Division (WCD), Department of Consumer and Business Services (department or director). On January 18, 2005, the department referred the matter to the Office of Administrative Hearings (OAH). On March 9, 2005, Administrative Law Judge Catherine P. Coburn conducted a hearing in Beaverton, Oregon. Attorney John M. Hoadley represented petitioner Gary Money (claimant). Caremark Comp Managed Care Organization (MCO) waived appearance. Attorney David L. Runner represented respondent SAIF Corporation (insurer). Claimant testified on his own behalf and the record closed on the date of hearing.

ISSUE

Whether MRU correctly determined that a left knee injection is not a compensable medical service.

EVIDENTIARY RULINGS

WCD Exhibits 1 through 22 were admitted into the record without objection. Pursuant to ORS 656.260(16), OAR 436-010-0008(14)(d) and OAR 436-001-0225(1), I sustained insurer's objection to claimant's Supplementary Exhibit 23, a letter from Donald A. Peterson, M.D., dated after the administrative order which constitutes new medical evidence.

FINDINGS OF FACT

(1) On January 15, 2003, claimant suffered a compensable injury while descending a ladder in a warehouse. (Ex. 3.)

(2) Insurer initially denied compensability and on June 28, 2004, accepted a medial meniscus tear, left knee. (Exs. 5 and 9-2.) Insurer enrolled claimant in Caremark Comp Managed care Organization (MCO). (Ex. 10.)

(3) On July 12, 2004, Donald A. Peterson, MD, performed surgical medial meniscus repair. (Ex. 11.) On September 1, 2004, Anton F. Eilers, MD, examined claimant and noted,

“He still has some medial symptoms which I think are due to chondromalacia medially...I think the best step would be viscosupplementation. Authorization will be sought for that procedure.” (Ex. 1-6.)

(4) On September 14, 2004, the MCO denied approval for the Synvisc injection because it was not FDA-approved for the treatment of chondromalacia. (Ex. 12.) On October 1, 2004, the MCO denied approval because the Synvisc injection was directed to a noncompensable condition. (Ex. 13.)

CONCLUSION OF LAW

MRU correctly determined that a left knee injection is not a compensable medical service.

OPINION

The director has jurisdiction over medical service disputes. ORS 656.704(3) and ORS 656.245(6). Moreover, the director has jurisdiction over MCO disputes. ORS 656.704(3) and ORS 656.260(16). I review for substantial evidence or error of law. The burden of proving a fact or position falls upon the proponent. ORS 183.450(2). 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 legislation adopting a different standard, the standard of proof in an administrative hearing is preponderance of evidence). Proof by a preponderance of the 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).

Pursuant to ORS 656.245(1)(a), an insurer is obligated to provide medical services that are materially related to a compensable condition for so long as the nature of the injury or the process of recovery requires. Here, the accepted condition is a left medial meniscus tear. However, Dr. Elier’s chart note establishes that the disputed injection is directed to medial chondromalacia. “Chondromalacia” is defined as “softening of the cartilage.” *Stedman’s Medical Dictionary*, 26th ed. P. 332(1995). Chondromalacia does not fall within the scope of acceptance and the record contains no medical evidence attributing chondromalacia to the accepted injury. Consequently, I find that the disputed treatment is directed to a noncompensable medical condition. Therefore, I agree with MRU’s conclusion that the disputed knee injection is not reimbursable.

ATTORNEY FEES

Claimant has not prevailed in a contested case hearing and is entitled to no attorney fee. ORS 656.385(1).

ORDER

IT IS HEREBY ORDERED that:

The Administrative Order dated December 17, 2004 is affirmed.