

In the ORS 656.245 Medical Services Dispute of  
**CRECENCIA PAVON-VALDEZ, Claimant**

Contested Case No: H03-077

**PROPOSED AND FINAL ORDER**

MAY 24, 2005

CRECENCIA PAVON-VALDEZ, Petitioner

SAIF CORP., Respondent

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

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**HISTORY OF THE CASE**

Claimant appeals the Administrative Order issued on May 7, 2003 by the Medical Review Unit (MRU) of the Workers' Compensation Division (WCD), Department of Consumer and Business Services (department or director). On February 25, 2005,<sup>1</sup> the department referred the matter to the Office of Administrative Hearings (OAH). On May 5, 2004, Administrative Law Judge (ALJ) Catherine P. Coburn conducted a hearing in Beaverton, Oregon. Attorney Gail M. Gage represented petitioner Crecencia Pavon-Valdez (claimant). Attorney James Booth represented respondent SAIF Corporation (insurer). Claimant testified on her own behalf and the record closed on the date of hearing.

**ISSUE**

Whether MRU correctly determined that insurer is not liable for chiropractic treatment provided to claimant from November 4 through December 20, 2002.

**EVIDENTIARY RULINGS**

WCD Exhibits 1 through 52, as well as claimant's Supplementary Exhibits 53 through 56 were admitted into the record without objection.

**FINDINGS OF FACT**

(1) On August 21, 2002, claimant was injured in a work-related motor vehicle accident. (Ex. 4; testimony of claimant.) On September 13, 2002, insurer accepted "closed segmental fracture of the right tibia and fibula" and enrolled claimant in an MCO. (Ex. 9.)

(2) From November 4 through December 20, 2002, Gary B. Taylor, DC, who is not an MCO panel member, provided treatment to claimant. (Exs. 14 and 22.) He diagnosed cervical, TMJ, thoracocostal, right shoulder, lumbosacral sacroiliac and right ankle sprains. (Ex. 14-1.) On November 15, 2002, he referred claimant to Robert Volkman, MD, who is an MCO panel member, as soon as possible. (Exs. 14-16, 29 and 46-2.) On November 27, 2002, Dr. Taylor

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<sup>1</sup> On November 4, 2003, I issued an Interim Order of Deferral pending litigation before the Workers' Compensation Board.

again referred claimant to Dr. Volkman. (Ex. 14-21.) On November 29, 2002, Dr. Taylor examined claimant and noted that he would see claimant the following Wednesday if the referral were approved. (Ex. 14-22.) On December 2, 2002, Dr. Volkman referred claimant to Dr. Taylor. (Exs. 29 and 46.)

(3) In 2003, following litigation, insurer accepted a right hip condition. (Exs. 53 through 56.)

### CONCLUSION OF LAW

MRU correctly determined that insure is not liable for chiropractic treatment provided to claimant from November 4 through December 20, 2002.

### OPINION

The director exercises sole 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). Preponderance of evidence means that the factfinder is persuaded that the facts asserted are more likely true than false. *Riley Hill General Contractors v. Tandy Corp.*, 303 Or 390 (1989). I conclude that claimant has failed to meet her burden.

MRU determined that insurer is not liable for the disputed medical services for several reasons. First, the disputed medical services were obtained outside the MCO panel. Second, they were not pre-certified by the MCO. Third, the record contains no treatment plan. Claimant contends that the disputed medical services are reimbursable. In the alternative, claimant requests remand to allow MRU to consider whether they were directed to the subsequently accepted right hip condition. In contrast, insurer contends that the administrative order is correct and should be affirmed.

ORS 656.245 provides in pertinent 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.

Additionally, OAR 436-010-0230(4)(a) provides:

Except as otherwise provided by the MCO, ancillary services including but not limited to physical therapy or occupational therapy, by a medical service provider other than the attending physician or specialist physician shall not be reimbursed unless prescribed by the attending physician or specialist physician and carried out under a treatment plan prepared prior to the commencement of treatment and signed by the attending physician or specialist physician within 30 days of beginning treatment. The medical service provider shall provide an initial copy of the treatment plan to the attending physician or specialist physician and the insurer within seven days of beginning treatment. A copy of the treatment plan signed by the attending physician or specialist physician shall be provided to the insurer by the medical service provider within 30 days of beginning treatment. The treatment plan shall include objectives, modalities, frequency of treatment, and duration. The treatment plan may be recorded in any legible format including, but not limited to, signed chart notes. Treatment plans required under this subsection do not apply to services provided pursuant to ORS 656.245(2)(b)(A).

I agree with MRU's determination that the disputed medical services are not reimbursable. To begin, they were provided by Dr. Taylor, who is not an MCO panel member. Next, they were not pre-certified by the MCO and Dr. Volkman's retroactive referral is ineffective. Finally, Dr. Taylor failed to obtain a written treatment plan from Dr. Volkman as required by OAR 436-010-0230(4)(a). For these reasons, claimant has failed to carry the burden of proving that the disputed medical services are reimbursable. Finally, I deny claimant's motion for remand to MRU. Even if the disputed medical services were directed to the subsequently accepted right hip condition, insurer would not be liable for the reasons explained above. Furthermore, Dr. Taylor did not diagnose a right hip condition. Accordingly, I affirm the administrative order.

### ***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 May 7, 2003 is affirmed.