
In the ORS 656.327 Medical Treatment Dispute of

RICHARD E. ROBUCK, Claimant

Contested Case No: H05-069

PROPOSED AND FINAL ORDER

July 18, 2005

RICHARD E. ROBUCK, Petitioner

SAIF CORP., Respondent

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

HISTORY OF THE CASE

Richard Robuck (Claimant) appealed the May 3, 2005 Administrative Order on Reconsideration issued by the Medical Review Unit (MRU) of the Workers' Compensation Division (WCD), Department of Consumer and Business Services. WCD referred the matter to the Office of Administrative Hearings (OAH) on May 11, 2005.

On June 21, 2005, Administrative Law Judge Lawrence S. Smith of OAH conducted a telephone hearing. Attorney Philip Shuster II represented Claimant. Attorney Jerry Larkin represented SAIF Corporation (SAIF). Claimant testified on his own behalf. The record closed that day.

ISSUE

Whether MRU's Administrative Order on Reconsideration that concluded physical therapy prescribed by Dr. Kafrouni is not appropriate medical treatment was supported by substantial evidence and did not reflect an error of law.

EVIDENTIARY RULINGS

WCD Exhibits 1 through 69 were admitted into the record without objection.

FINDINGS OF FACT

(1) On July 2, 2003, claimant suffered a compensable injury. SAIF accepted a lumbosacral strain on February 4, 2004, and enrolled him in an MCO on February 13, 2004. (Ex. 3.)

(2) On January 9, 2004, John Kafrouni, MD, Claimant's treating doctor, examined him and prescribed physical therapy for treatment of pain in his sacroiliac (SI) joint. Dr. Kafrouni opined that "major ongoing cause for treatment is [Claimant's] right sacroiliac joint pain and dysfunction/inflammation." (Ex. 1 at 3.) After reviewing another doctor's comments and an MRI and bone scan, Dr. Kafrouni opined on January 24, 2004, "In my opinion it is medically probable that the current objective clinical findings support a symptomatic right sacroiliac joint." (Ex. 2.)

(3) On February 9, 2004, Dr. Kafrouni examined Claimant, who complained of constant dull pain in the right SI joint region. Dr. Kafrouni prescribed physical therapy of two to three times per week for three to four weeks and planned to recheck claimant's condition in four weeks. Dr. Kafrouni opined: "Treatment for lumbosacral strain will be initiated. Objective evidence of right sacroiliac joint pain and inflammation are present. Includes exam findings detailed above and positive bone scan. The possibility of a diagnostic/therapeutic sacroiliac joint injection exists if there is little response to physical therapy." (Ex. 4 at 2.) Claimant received such physical therapy and seeks coverage for its cost. (Test. of Claimant.)

(4) On February 17, 2004, SAIF accepted a combined condition of lumbosacral sprain/strain and degenerative disc disease and denied any condition involving the SI joint. (Ex. 6.) This acceptance was upheld on appeals to an administrative law judge and the WCB. (Exs. 24 and 42.)

(5) On February 20, 2004, Claimant's managed care organization advised Dr. Kafrouni that his proposed treatment was for a noncompensable condition. (Ex. 7.)

(6) On October 27, 2004, Claimant entered a Disputed Claim Settlement (DCS) in which he agreed that his compensable injury did not cause or contribute to any SI condition he might have. (Ex. 54.)

CONCLUSION OF LAW

MRU correctly determined that physical therapy prescribed by Dr. Kafrouni is not appropriate medical treatment for claimant's compensable condition.

OPINION

WCD has jurisdiction over managed care disputes arising under ORS 656.260. ORS 656.260(6). MRU's decision is reviewed 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). As the proponent of his position, Claimant bears the burden of proving by a preponderance of evidence that the Administrative Order lacks substantial evidence or reflects an error of law.

ORS 656.245(1)(a) requires an insurer to provide medical services for compensable conditions for such period as the nature of the injury or the process of recovery requires. This obligation continues for the worker's lifetime. ORS 656.245(1)(b). ORS 656.245(4)(a) and ORS 656.260(1) authorize insurers to provide medical services to injured workers through a contract with a state-certified MCO.

In its Administrative Order on Reconsideration, MRU determined that the physical therapy prescribed by Dr. Kafrouni was not reimbursable because it was to treat the right sacroiliac joint, which was an area specifically not accepted as compensable. Claimant contends that the PT sessions were for lumbosacral sprain/strain, an accepted condition, and that the Order lacks substantial evidence and reflects an error of law. Claimant argues that Dr. Kafrouni's

prescription was a differential diagnosis, that the physical therapy was for treatment of the lumbosacral sprain/strain and if no relief was obtained, specific treatment for the sacroiliac would be prescribed. That is a plausible reading of the Dr. Kafrouni's reports, but another plausible reading is the Order's conclusion that the physical therapy was for treatment of the sacroiliac area for a non-compensable condition. Therefore, Claimant has failed to establish that the Administrative Order on Reconsideration lacks substantial evidence or reflects an error of law.

In the alternative, Claimant requested remand for further clarification from Dr. Kafrouni. Claimant had plenty of time to procure such further information prior to MRU review. Claimant knew such information would be relevant regarding his claim and could have provided it to MRU for its consideration. Claimant has not shown factors beyond his reasonable control which prevented him from securing the required information earlier. Therefore, his request for remand is denied.

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 on Reconsideration entered May 3, 2005, is affirmed. SAIF is not liable for the physical therapy prescribed for Claimant by Dr. Kafrouni, pursuant to ORS 656.245 and ORS 656.260.