
In the ORS 656.245 Medical Services Dispute of

Hazel M. Hand, Claimant

Contested Case No: 06-174H

PROPOSED & FINAL ORDER

June 5, 2006

HAZEL M. HAND, Petitioner

SAIF CORPORATION, Respondent

Before Kathryn A. Poland, Administrative Law Judge, Workers' Compensation Board

Hearing in this matter convened before the undersigned Administrative Law Judge (ALJ) in Coos Bay, Oregon on March 30, 2006. Claimant was present with her attorney, James Edmunson. The employer, Coos Curry Transitional House, and its workers' compensation carrier, the SAIF Corporation, were represented by attorney Dennis Ulsted. The following documentary evidence was admitted into the record: Exhibits 1 through 18, as identified in the March 1, 2006 exhibit list prepared by the Department of Business and Consumer Services (Department). At the conclusion of the hearing, the record remained open for written argument and then closed on May 5, 2006.

ISSUES

Medical Services/Jurisdiction. Claimant challenges an order issued on October 24, 2005 by the Medical Review Unit (MRU) of the Workers' Compensation Division (WCD) of the Department. That order concluded that SAIF was not liable for reimbursement for a lumbar MRI. Claimant asserts that the order is invalid because the Department did not have jurisdiction over this medical services dispute.

FINDINGS OF FACT

Claimant has an accepted claim for a thoracic muscle strain and T6-7 disk protrusion with mild stenosis sustained in a June 29, 2000 injury with SAIF's insured. In June 2003, the parties entered into a Claims Disposition Agreement that did not include compensable medical services under ORS 656.245. On November 23, 2004, Dr. Pylman, pain management specialist, evaluated claimant and documented residual right anterolateral thigh pain and sensory loss. Dr. Pylman's report of that examination referenced his impression of lumbar radiculopathy, herniated thoracic disk and myofascial pain, and his plan to obtain a lumbar MRI for further elucidation. A subsequent lumbar MRI on November 29, 2004 did not demonstrate any lumbar disk protrusion.

Thereafter, SAIF denied reimbursement for the lumbar MRI on the ground it was not causally related to the accepted thoracic condition. On August 23, 2005, claimant submitted the dispute to the Department and asserted that the treating physician requested the MRI to ascertain the source of claimant's current symptoms and to rule out any lower spinal problems. In an October 24, 2005 order (MS 05-954), the Medical Review Unit (MRU) of the Workers' Compensation Division (WCD) determined that SAIF was not liable for reimbursement of the

lumbar MRI because it was not performed to determine the cause or extent of the accepted thoracic condition. By letter dated November 22, 2005, the Department received claimant's request for hearing from the October 24, 2005 MRU order (MS 05-954), and that matter was referred to the Hearings Division of the Workers' Compensation Board.

**ULTIMATE FINDINGS OF FACT,
CONCLUSIONS OF LAW AND REASONING**

This matter is before the undersigned ALJ pursuant to the 2005 amendments to ORS 656.704, which are applicable to all hearings held on or after January 2, 2006. Oregon Laws 2005, Ch. 26, sec. 15 and sec. 19. Pursuant to those amendments, hearings regarding Department orders addressing medical services disputes are conducted by an Administrative Law Judge of the Workers' Compensation Board (Board). ORS 656.704(2)(a). In conducting such hearings, the ALJ may modify the Department's order only if it is not supported by substantial evidence in the record or if it reflects an error of law; and new medical evidence or issues may not be admitted or considered at the hearing before the ALJ. OAR 436-001-0225(2).

Claimant asserts that the Department's October 24, 2005 order (MS 05-954) is invalid because the Department did not have jurisdiction over the medical services dispute addressed in the order. I agree.

The Workers' Compensation Board (Board) has jurisdiction over medical services disputes that involve matters concerning a claim, and the Department has jurisdiction over all other medical services disputes. ORS 656.704. A medical services dispute involves a matter concerning a claim within the jurisdiction of the Board if the dispute requires a determination of the compensability of the medical condition for which the medical service is proposed, or a determination of whether a sufficient causal relationship exists between the medical service and an accepted claim. ORS 656.704(3)(b)(A) and (C). A medical services dispute does not involve a matter concerning a claim and is within the jurisdiction of the Department if the dispute requires a determination of whether the medical service is excessive, inappropriate, ineffectual or in violation of the rules regarding the performance of medical services, or a determination of whether medical services for an accepted condition qualify as compensable medical services under ORS 656.245(1)(c). ORS 656.704(3)(b)(B).

Here, SAIF denied reimbursement for the disputed lumbar MRI on the ground it was not causally related to claimant's accepted thoracic condition; and claimant's August 23, 2005 letter asserts that the treating physician requested the MRI "to ascertain the source of claimant's current symptoms and to rule out any lower spinal problems." This medical services dispute requires a determination of the compensability of the medical condition for which the medical service is proposed, or a determination of whether a sufficient causal relationship exists between the medical service and an accepted claim. ORS 656.704(3)(b)(A) and (C). Both issues are matters concerning a claim within the exclusive jurisdiction of the Board. ORS 656.704(3)(b)(C); *AIG Claims Services v. Cole*, 205 Or App 170 (2006). Consequently, the Department's October 24, 2005 order is null and void because it did not have jurisdiction over this medical services dispute.

ORDER

The Department's October 24, 2005 order (MS 05-954) is vacated, and claimant's request for administrative review by the Department is dismissed.