
In the ORS 656.260 Managed Care Dispute of

DARCY M. O'CONNOR, Claimant

Contested Case No: H05-160

PROPOSED AND FINAL ORDER

January 10, 2006

DARCY M. O'CONNOR, Petitioner

SAIF CORP., Respondent

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

HISTORY OF THE CASE

Claimant appeals the Administrative Order issued on September 20, 2005 by the Medical Review Unit (MRU) of the Workers' Compensation Division (WCD), Department of Consumer and Business Services (department or director). On October 28, 2005, the department referred the matter to the Office of Administrative Hearings (OAH). On December 13, 2005, Administrative Law Judge Catherine P. Coburn conducted a hearing in Beaverton, Oregon. Attorney Scott M. McNutt, Jr. represented petitioner Darcy M. O'Connor (claimant). Attorney David L. Runner 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 a cervical facet medial branch block at C4-5, C4-5 and C2-3 proposed by Jennifer K. Lawlor, M.D. on March 16, 2005.

EVIDENTIARY RULINGS

WCD Exhibits 1 through 20¹ were admitted into the record without objection. Pursuant to ORS 656.260(16) and OAR 436-001-0225(1), claimant's Supplementary Exhibit 19C was not admitted into the record. At my request, claimant submitted the 801 claim form dated August 30, 1999, marked Exhibit 3A and it was admitted without objection.

FINDINGS OF FACT

1. On August 27, 1999, claimant suffered a compensable injury while moving office furniture. (Ex. 3A.) On August 15, 2000, claimant underwent a C5-6 laminectomy/discectomy and fusion. (Ex. 5-1.) On April 17, 2001, claimant's condition became medically stationary and on May 3, 2001, insurer accepted thoracic strain and C5-6 disc herniation and closed the claim. (Ex. 1.) On July 9, 2002, insurer enrolled claimant in Caremark Comp Managed Care

¹ I renumbered the WCD exhibits in chronological order as follows:

Ex. 19A: 9/20/05 Administrative Order
Ex. 19B: 9/20/05 Notification of Record
Ex. 19C: 9/26/05 Chart Note Dr. Lawlor
Ex. 20: 10/14/05 Request for Hearing
Exs. 21 and 22: Omitted.

Organization (MCO). (Ex. 2.)

2. On September 24, 2002, claimant designated Jennifer K. Lawlor, M.D. as her attending physician. (Ex. 3.) In July 2004, claimant sought treatment for neck pain and headaches. (Ex. 4.) Dr. Lawlor referred her to Jerod Cottril, D.O. who diagnosed cervical facet syndrome and myofascial pain. (Ex. 5-2.) He recommended right facet injections at C1-2, C2-3, C3-4 and C4-5. (*Id.*)

3. On November 12, 2004, Franklin Wong, M.D. (MCO Medical Director) summarized the results of a Disability Prevention Consultation. (Ex. 6.) He noted that Dr. Lawlor did not plan to appeal the MCO's denial of massage therapy and multiple level facet joint injections. (*Id.*)

4. On February 28, 2005, Dr. Cottril performed facet injection with MCO approval. (Exs. 8, 14 and 21-1.) On March 14, 2005, Dr. Lawlor prescribed C5-4, C3-4 and C2-3 medical branch blocks and on March 16, 2005, the MCO declined review. (Ex. 9.)

5. On March 17, 2005, insurer inquired whether Dr. Lawlor was treating the C5-6 disc level. (Ex. 11.) Dr. Lawlor replied, "[Claimant] has neck pain [symptoms] and myofascial pain attributed to post cervical fusion at C5-6 level. She is receiving treatment for this pain." (*Id.*)

6. On March 21, 2005, the MCO declined to authorize the requested cervical facet medial branch block with fluoroscopy at C4-5, C3-4 and C2-3. (Ex. 12.)

7. On July 12, 2005, Dr. Lawlor stated, "[Claimant] had C2-3, C3-4 and C4-5 facet injections early in March 2005 after [insurer] authorized them. They proved helpful from a diagnostic perspective demonstrating C2-3 to be probable primary pain generator." (Ex. 14.)

CONCLUSION OF LAW

MRU correctly determined that insurer is not liable for a cervical facet medial branch block at C4-5, C4-5 and C2-3 proposed by Jennifer K. Lawlor, M.D. on March 16, 2005.

OPINION

The director has jurisdiction over medical service and managed care disputes. ORS 656.704(3), ORS 656.245(6) and ORS 656.260(16). I review for substantial evidence or error of law. OAR 436-001-0225(1). 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. This obligation continues over the worker's lifetime. ORS 656.245(1)(b).

MRU determined that insurer is not liable for the proposed facet medical branch block. Claimant contends that the disputed treatment is compensably related to the August 1999 work injury. In contrast, insurer contends that the administrative order is correct and should be affirmed.

Substantial evidence exists to support a finding "when the record, viewed as a whole, would permit a reasonable person to make that finding." ORS 183.482(8)(c). To determine whether substantial evidence exists, an ALJ is required to:

"look at the whole record with respect to the issue being decided, rather than one piece of evidence in isolation. If an agency's finding is reasonable, keeping in mind the evidence against the findings as well as the evidence supporting it, there is substantial evidence. *** For instance, and in the context which is likely frequently to occur in workers' compensation cases, if there are doctors on both sides of a medical issue, whichever way the (director) finds the facts will probably have substantial evidentiary support. The ALJ would not need to choose sides. The difference between the "any evidence rule" and the substantial evidence test *** will be decisive only when the credible evidence apparently weighs overwhelmingly in favor of the finding and the (director) finds the other without giving a persuasive explanation." *Armstrong v. Asten-Hill Co.*, 90 Or App 200, 206 (1998).

Here, Dr. Lawlor opined that claimant was receiving treatment for C2-3 as the primary pain generator and this opinion is un rebutted. The accepted condition does not include C2-3. Therefore, MRU's determination that the proposed treatment is not compensable is supported by substantial evidence in the record. 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 September 20, 2005 is affirmed.