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In the ORS 656.260 Managed Care Dispute of

**Olivia R. Ulloa, Claimant**

Contested Case No: 06-123H

**PROPOSED & FINAL ORDER**

November 29, 2006

OLIVIA R. ULLOA, Petitioner

SAIF CORPORATION, Respondent

Before Monte Marshall, Administrative Law Judge

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Pursuant to notice, a hearing was held October 25, 2006 in Salem, Oregon before Administrative Law Judge Marshall. Claimant was present and represented by her attorney, Matthew Roy. The employer, Northwest County Place, and its insurer, the SAIF Corporation, were represented by their attorney, Dennis Ulsted. Exhibits 1-46 were admitted into evidence at hearing.<sup>1</sup> The record closed on October 25, 2006.

**ISSUE**

Claimant challenges a July 20, 2006 Administrative Order, as amended July 28, 2006, which found that SAIF was not liable for the payment of a discogram procedure.

**FINDINGS OF FACTS**

On December 29, 1994, claimant sustained a work-related low back injury. SAIF accepted the injury as a low back strain. Claimant was treated for this injury by medical providers from Managed Healthcare Northwest, Inc. (MHN). Claimant continued to experience low back and right leg symptoms and underwent low back surgery in July 1995. By letter dated November 8, 1995, SAIF expanded its acceptance to include a herniated disc at right L4-5. Claimant continued to experience low back and right leg symptoms after the surgery.

On May 31, 2005, claimant was examined by Dr. Phipps, M.D. for increased right leg symptoms. Dr. Phipps recommended a lumbar MRI scan. The MRI scan showed a moderate central disc protrusion at L5-S1 with degenerative changes and an annular bulge at L4-5. Dr. Phipps indicated that claimant was not a surgical candidate and recommended physical therapy. After a follow-up examination, Dr. Phipps referred claimant for possible steroid injections. On August 19, 2005, Dr. Heubert, M.D., administered epidural steroid injections at both right and left L5-S1. Following the injections, claimant's low back and gluteal symptoms improved, but she continued to experience symptoms in both legs. Dr. Heubert diagnosed lumbar degenerative disc disease, and previous back surgery with ongoing leg symptoms.

On October 29, 2005, Dr. Parsons, M.D., performed a file review at the request of SAIF.

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<sup>1</sup> Exhibits 1-44 were submitted in WCB Case No. 06-0123H and Exhibits 1-46 were submitted in WCB Case No. 06-00124H. The two exhibit packets appeared to be identical with the exception of Exhibits 45 and 46 in WCB Case No. 06-00124H. At hearing, the parties and the undersigned Administrative Law Judge agreed that Exhibits 1-46 in WCB Case No. 06-00124H were served as the record for purposes of resolving this dispute.

Dr. Parsons diagnosed chronic low back pain secondary to physical deconditioning. Dr. Parson reported that no further medical treatment was necessary for claimant's accepted low back condition. On November 30, 2005, claimant was again examined by Dr. Heubert. Dr. Heubert recommended further diagnostic studies, including a provocative discogram at L3-4, L4-5 and L5-S1. On December 19, 2005, claimant was examined by Dr. Blatt, M.D. on referral from Dr. Heubert. Dr. Blatt diagnosed discogenic low back pain and postlaminectomy syndrome. Dr. Blatt recommended a discogram at L3-4, L4-5 and L5-S1.

By letter dated December 21, 2005, MHN disapproved Dr. Blatt's request for a discogram on the basis that it did not meet the medical necessity criteria. Thereafter, claimant requested administrative review of the disapproval of the discogram procedure. By Administrative Order dated July 26, 2006 the Medical Review Unit (MRU) found that the discogram was not a compensable medical service and held that SAIF was not liable for payment of that procedure. MRU issued an amended Administrative Order on July 28, 2006 that reached the same conclusion.

### **CONCLUSIONS OF LAW AND OPINION**

This dispute arose under ORS 656.260 following a decision by a MHN, a managed care organization, to deny claimant's request for a discogram procedure. Pursuant to OAR 436-001-0025 (2), the administrative order issued by the Director may only be modified if the order is not supported by substantial evidence in the record or if it reflects an error of law.

Claimant argues that the administrative order is not supported by substantial evidence because it is based on a different ground than used by MHN. Specifically, claimant contends that MHN denied the discogram because it did not meet the medical necessity criteria. In contrast, the administrative order denied the discogram because it was not necessary to determine the cause and extent of claimant's compensable injury.

Although claimant may be correct, I find no authority which would limit the Director's ability to review a disputed diagnostic procedure. Moreover, the administrative order's conclusion that there is no persuasive medical evidence that supports a finding that the discogram is necessary to determine the cause and extent of claimant's compensable injury is supported by substantial evidence in the record. Specifically, neither Dr. Huebert nor Dr. Blatt address this issue. Accordingly, based on this record, the administrative order finding SAIF not liable for payment of the discogram must be affirmed.

### **ORDER**

**IT IS THEREFORE ORDERED** that the Administrative Order, dated July 26, 2006, as amended, July 28, 2006, is affirmed.