

In the Managed Care of  
**William R. Crippen, Claimant**  
Contested Case No: 06-113H  
**PROPOSED & FINAL ORDER**

February 26, 2007

WILLIAM R. CRIPPEN, Petitioner  
SAIF CORPORATION, Respondent

Before Darren L. Otto, Administrative Law Judge

---

A hearing was scheduled to be heard in the above entitled matter on December 19, 2006 in Portland, Oregon before Administrative Law Judge Darren L. Otto of the Workers' Compensation Board. The parties, however, asked that the matter be decided based on the written record and that request was granted. Claimant is represented by his attorney Bennett P. Dalton. The employer, Tualatin Valley Transport, and its insurer, SAIF Corporation, are represented by their attorney Janelle Irving. On January 5, 2007, claimant filed his initial written closing argument. On January 30, 2007, SAIF filed its written response. The hearing concluded on February 7, 2007 without a reply from claimant. Exhibits 1 through 16 are received into evidence.

### ISSUES

Claimant appeals the Workers' Compensation Division's (WCD) Medical Review Unit's May 19, 2006 Administrative Order which found that SAIF was not liable for additional payment of the September 26, 2005 right shoulder surgery provided by Dr. Hoppert and his surgical assistant. The issue is whether the WCD's Administrative Order was supported by substantial evidence in the record or whether it reflected an error of law.

### FINDINGS OF FACT

I adopt the findings of fact set forth in the Administrative Order as recited below. No additional findings of fact are made. The scope of review in this case, which concerns medical treatment and associated expenses through a managed care organization under ORS 656.245, is limited to the substantial evidence or error of law standard. While OAR 436-001-0225(2) arguably suggest that some type of new evidence can be received during such a hearing, the Court of Appeals has made it clear that substantial evidence review does not contemplate that the reviewing body will make additional or supplemental findings of fact. Liberty Northwest Ins. Co. v. Kraft, 205 Or App 59 (2006).

Mr. Crippen sustained a compensable injury on March 9, 2005. SAIF accepted the claim for right shoulder dislocation, and enrolled Mr. Crippen in Managed Healthcare Northwest (MHN), also known as Caremark Comp. SAIF notified Mr. Crippen that there was no need to change physicians, as Terry Conner, DO, his treating physician, was an authorized MHN provider.

Dr. Conner referred Mr. Crippen to Dr. Hoppert, an MHN provider, for further evaluation. On September 26, 2005, Dr. Hoppert and his surgical assistant, K E Lutt, PA, performed right shoulder arthroscopic decompression, distal clavicle resection and acromioplasty, and an open repair of a ruptured tendon, and billed SAIF for the surgical procedures and services.

On December 9, 2005, SAIF modified it's [sic] acceptance to include right shoulder supraspinatus tear and a right shoulder labral tear.

On January 6, 2006, SAIF issued an Explanation of Benefits (EOB) reducing payment for the surgery, contending that the distal clavicle resection and acromioplasty were not paid because they were not for the accepted condition. SAIF also reduced other portions of the surgery explaining that reductions were based on the Oregon Fee Schedule.

Mr. Crippen requested Administrative Review.

Upon MRU inquiry, MHN Stated that although Dr. Hoppert was an MHN provider, the surgery was not pre-certified, as required by MHN.

(Ex. 15-1).

### CONCLUSIONS OF LAW AND OPINIONS

Claimant argues that, since the conditions addressed by the surgery were later accepted, the insurer has a duty to pay for all of claimant's now compensable, reasonable and necessary medical services. SAIF asserts that claimant's attending surgeon, Dr. Hoppert, was obligated to abide by the terms of the MCO contract as an MCO authorized provider and, since he did not request pre-certification for the surgery as required by the MCO, there is no legal justification to set aside the decision of the MRU and the Administrative Order should be approved.

Claimant is entitled to medical services provided for his compensable condition. ORS 656.245(1). Those workers who are subject to an MCO contract, however, shall receive medical services in the manner prescribed in the contract. ORS 656.245(4)(a). A worker becomes subject to the contract upon the worker's receipt of actual notice of the worker's enrollment in a managed care organization, or upon the third day after the notice is sent by regular mail by the insurer or self-insured employer, whichever event first occurs. *Id.*

On May 23, 2005, claimant was enrolled in Caremark Comp., a state-certified managed care organization (MCO), to provide medical services to injured workers (Ex. 3). Thus, claimant was subject to the MCO requirements when Dr. Hoppert and his assistant performed surgery on September 26, 2005. The MCO required pre-certification of surgery, but the surgery was performed without the pre-certification process being completed (Exs. 8 & 11). The MRU correctly determined that the Director was obligated to enforce the MCO requirement under ORS 656.245(4)(a). Since the surgery was not pre-certified, it was not a reimbursable medical service and the Director correctly concluded that SAIF was not liable for additional payment. The fact

that the condition for which claimant received surgery was later accepted as a compensable component of the industrial injury is irrelevant. The cost of surgery was not reimbursable unless Dr. Hoppert complied with the terms of the MCO contract as an MCO authorized provider. He did not do so and there is no legal justification to set aside the Administrative Order.

**ORDER**

IT IS HEREBY ORDERED that the May 19, 2006 Administrative Order which held that SAIF Corporation was not liable for additional payment of the September 26, 2005 right shoulder surgery is approved.