

In the Compensation of
Jose L. Martinez, Claimant
Contested Case No: 06-196H
PROPOSED & FINAL ORDER

June 26, 2007

JOSE L. MARTINEZ, Petitioner
SAIF CORPORATION, Respondent

Before Darren L. Otto, Administrative Law Judge

A hearing was convened and concluded in the above entitled matter on June 5, 2007 in Portland, Oregon before Administrative Law Judge Darren L. Otto of the Workers' Compensation Board. Claimant was not present but was represented by his attorney, Donald Hooton. The employer, Seals Unlimited, and its insurer, SAIF Corporation, were represented by their attorney, Larry Schucht. Exhibits 1 through 55 were received into evidence.

ISSUES

Claimant appeals the Workers' Compensation Division's November 1, 2006 Administrative Order which found that SAIF was not liable for the prosthetic devices manufactured by Advanced Arm. The issue is whether claimant is entitled to receive payment for the prosthetic devices manufactured by Advanced Arm.

FINDINGS OF FACT

Mr. Martinez sustained a compensable injury on February 9, 2006. SAIF Corporation (SAIF) accepted amputation at the middle phalanx of the right third finger; amputation at the proximal phalanx of the right fifth finger; amputation at the proximal phalanx of the right fourth finger; laceration of the extensor mechanism of the central slip on right third finger; laceration of the flexor digitorum sublimas of the right third finger; and laceration to the right index finger as the compensable conditions in this claim.

On February 24, 2006, SAIF enrolled Mr. Martinez in Managed Healthcare Northwest/Caremark Comp (Caremark), a managed care organization (MCO). SAIF sent Mr. Martinez an enrollment letter notifying Mr. Martinez that "Care you receive that is not ordered by your attending physician or care provided that is by non-panel medical providers (without MCO approval) will not be reimbursed. A complete list of all panel members (including physical therapists, occupational therapists, etc.) is available from Caremark Comp. You may request a copy by calling 1-(503)-413-5800."

On May 1, 2006, Steven Madey, MD, prescribed "three custom silicone restorative passive finger prosthesis" for Mr. Martinez at Advanced Arm Dynamics (Advanced Arm).

On May 2, 2006, Advanced Arm requested authorization from SAIF for the prosthesis listing a cost of \$17,001.45 noting discounts for prompt approval and payment, which would reduce the cost to \$15,641.33.

On May 8, 2006, Caremark notified SAIF that they did not review or preauthorize prosthesis.

On August 4, 2006, SAIF notified Mr. Martinez they had scheduled him for a prosthetic evaluation at Artisan Orthopedic/Prosthetic Tech (Artisan) on August 21, 2006.

On August 21, 2006, Mr. Martinez did not attend the prosthetic evaluation as scheduled due to the taxi service failure to pick him up.

On August 22, 2006, Mr. Martinez was evaluated at Artisan for a passive prosthetic device.

On August 24, 2006, when the prosthetic was not authorized Mr. Martinez, through his attorney, requested Administrative Review. Donald Hooton, AAL, representing Mr. Martinez, noted that Mr. Martinez learned through the office of his attending physician Dr. Madey that SAIF had concerns about whether a local company was available to provide the prosthetic. Mr. Hooton indicated that Advanced Arm is a local company whose parent office is located in Redondo Beach, California; however, the prosthetic company is local and provides services in this area. Mr. Hooton indicated that Mr. Martinez attended the mandatory evaluation required by SAIF at Artisan but wanted to go with Advanced Arm as he had already been fitted, molded and taken all the steps to prepare for the prosthesis and did not want to further delay the process necessary to obtain his prosthesis.

On September 6, 2006, Artisan, in a letter to SAIF, provided the prosthetic evaluation recommendations and listed the cost of the passive prosthetic device at \$14,500.00.

On September 13, 2006, in response to an inquiry by SAIF, Dr. Madey indicated there were no differences between either of the two proposed prosthetics in their ability to benefit Mr. Martinez.

On September 18, 2006, in response to an inquiry by SAIF, Dr. Madey responded there were differences between the two proposed prosthetics in their ability to benefit Mr. Martinez. Dr. Madey noted that Advanced Arm prosthesis was superior. "It looks better, looks closer to actual hand."

Upon MRU inquiry, SAIF responded the initial request for authorization was received on May 2, 2006; however, the prescription authorization from Dr. Madey

was not received until July 31, 2006. Once the prescription was received, SAIF contacted Dr. Madey and requested Mr. Martinez be seen at Artisan for a second opinion as to the medical necessity of the proposed prosthetic and to obtain a comparison quote. SAIF indicated they further explained to Dr. Madey that Advanced Arm was sending an out-of-state artist to design the prosthesis and in order to prevent further delays the expectation of SAIF was to keep the provider within the state. SAIF further responded once they received the information from Artisan, SAIF would be authorizing the prosthetic from Artisan.

On September 26, 2006, in a letter to the director, Mr. Martinez' attorney noted that although SAIF provided an explanation for their actions "The provider of medical services should be the claimant's choice, and not the insurer. Based upon SAIF's response, it is clear that Dr. Madey was not aware of Artisan Orthotics, and always sent patients to Advanced Arm Dynamics. Having learned about Artisan Orthotics, Dr. Madey no longer has a preference for which of the two providers provide this necessary service."

Caremark responded that Artisan is a Caremark panel provider and Advanced Arm Dynamics is not a member of Caremark. Caremark provided a copy of pages 46 and 61 of the Caremark Comp Provider Directory as of November 2, 2005, listing Artisan as a panel provider. Caremark further responded that this information is available to workers by contacting Caremark or visiting their website at www.mhninc.com under "Directories" and then searching under "Search Caremark Comp MCO."

On October 23, 2006, in a letter to the director, Mr. Martinez' attorney indicated, "Dr. Madey has responded that the prosthetic devices are not comparable and that the Advanced Arm Dynamics device is superior." In addition, Mr. Martinez' attorney stated: "I have checked the current listings for Caremark Comp, and find that Artisan is also not a member of the MCO. Indeed, there is no prosthetic or medical supplier in the Caremark Comp. MCO based upon its most recent provider listing as advertised by SAIF Corp. on their website."

(Ex. 54, pgs. 1-3).

CONCLUSIONS OF LAW AND OPINIONS

Claimant contends that there is no substantial evidence to support the Director's finding that Advanced Arm was not a member of the Caremark providers list and the Director committed errors of law by finding that claimant was not entitled to a prosthetic device and that SAIF had the right to demand in-state rather than out-of-state medical providers. In fact, claimant's request for review of the medical service dispute raised only one issue. As claimant stated in that request for review, "**** The claimant wishes to go with Advanced Arm Dynamics, Inc., unless there is some specific reason that SAIF Corp. can identify that these services should not be approved." (Ex. 41-1). The Director found that Advanced Arm was not a member of the Caremark MCO list and therefore, if claimant sought care with Advanced Arm, SAIF was not liable. SAIF

asserts that the Director's Order was supported by substantial evidence in the record and should be approved.

OAR 436-001-0225, promulgated by the Workers' Compensation Division, prescribes the standard of review governing an ALJ's review on appeal of an MRU order in a proceeding under ORS 656.245:

(1) Except for the matters listed in sections (2) and (3), the administrative law judge reviews all matters within the director's jurisdiction de novo, unless otherwise provided by statute or administrative rule.

(2) In medical service and medical treatment disputes under ORS 656.245 *** the administrative law judge may modify the director's order only if it is not supported by substantial evidence in the record of if it reflects an error of law. New medical evidence or issues may not be admitted or considered.

Under "substantial evidence" review, the reviewing tribunal "look[s] at the whole record with respect to the issue being decided, rather than at one piece of evidence in isolation. If an agency's finding is reasonable, keeping in mind the evidence against the finding as well as the evidence supporting it, there is substantial evidence." Armstrong v. Asten-Hill Co., 90 Or App 200, 206 (1988). The "substantial evidence" review does not mean that a factual finding must be affirmed if it is supported by *any* evidence, no matter how meager. The law requires more than that. It requires such evidence that "a reasonable mind would employ to support a conclusion." Ruiz v. Employment Division, 83 Or App 609 (1987) *citing* Cook v. Employment Division, 47 Or App 437, 441, *rev den* 290 Or 157 (1980); *see also* de St. German v. Employment Division, 74 Or App 484, 488 (1985). Substantial evidence "means more than 'any evidence,' a scintilla of evidence, or speculation." Cantrell v. Employment Division, 24 Or App 215, 217 (1976). Under a substantial evidence review, the administrative law judge may not supplement the evidentiary record developed below. Liberty Northwest Ins. Corp. v. Kraft, 205 Or App 59, 62-63 (2006).

ORS 656.245(4)(a) provides, in relevant part, that workers who are subject to the MCO contract shall receive medical services in the manner prescribed in the MCO contract. A worker becomes subject to the contract upon the worker's receipt of actual notice of the worker's enrollment in the managed care organization, or upon the third day after the notice was sent by regular mail by the insurer or self-insured employer, whichever event first occurs.

On February 24, 2006, claimant was enrolled with Caremark Comp, a state-certified managed care organization, to provide medical services to injured workers (Ex. 15-1). As a member of that MCO, claimant's attending physician was required to either provide all medical treatment or agree to refer claimant to an MCO provider for any specialized treatment. *Id.* Claimant was instructed that care he received that was not ordered by his attending physician or care that was provided by non-panel medical providers without MCO approval would not be reimbursed (Ex. 15-2).

Claimant's attending physician, Dr. Madey, referred claimant to Advanced Arm dynamics for prosthetic fittings regarding his partial amputations of the third, fourth, and fifth fingers of the right hand (Exs. 19 and 21). Advanced Arm, however, was not on Caremark's MCO provider list in either 2005 or 2006 (Exs. 1 and 53). According to the notice sent to claimant regarding his MCO enrollment with Caremark, SAIF was not liable to pay for any medical treatment or prosthetic devices manufactured by a company that was not a member of the MCO provider list.

SAIF referred claimant to Artisan Orthotic and Prosthetic Technologies, which was a member of Caremark's MCO provider list. SAIF would be liable for payment of the prosthetic devices manufactured by Artisan, but in his apparent effort to save time and stay with Advanced Arm, claimant has unfortunately delayed payment of the prosthetic devices.

Although SAIF does not dispute that claimant is entitled to a prosthetic devices for his finger amputations, that issue was not raised by claimant to the Director. Instead, claimant's only dispute was which prosthetic manufacturer would be reimbursed for the prosthetic devices. The Director correctly concluded, based on the evidence in this record, that Advanced Arm was not a member of the MCO provider list and therefore SAIF was not liable for any costs incurred by Advanced Arm. Therefore, the Administrative Order will be approved.

ORDER

IT IS HEREBY ORDERED that the Workers' Compensation Division's November 1, 2006 Administrative Order is approved in its entirety.