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In the ORS 656.240 Managed Care Dispute of

**Pamela K. Orender, Claimant**

Contested Case No: 06-179H

**PROPOSED & FINAL ORDER**

March 13, 2007

PAMELA ORENDER, Petitioner

SAIF CORPORATION, Respondent

Before Gregory J. Naugle, Administrative Law Judge

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Pursuant to notice, a hearing was held February 12, 2007, in Eugene, Oregon before Administrative Law Judge Naugle. Claimant was present and represented by attorney Dale Johnson. The employer, G J Investments, Inc., and its insurer, SAIF Corporation, were represented by attorney Janelle Irving. Exhibits 1-79 were submitted and admitted into evidence without objection.<sup>1</sup> The record closed at the conclusion of the hearing.

**ISSUE**

Propriety of the October 12, 2006 Administrative Order that the insurer is not liable for chiropractic treatment by Richard Gorman from July 2, 2003 through December 22, 2003.

**FINDINGS OF FACT**

I adopt the findings of fact in the Administrative Order.<sup>2</sup>

**CONCLUSIONS OF LAW AND OPINION**

MRU's October 12, 2006 Order may be modified only if the order is not supported by substantial evidence or the order reflects an error of law. OAR 436-001-0225(2). New medical evidence or issues may not be admitted or considered.

The burden of proving a fact or position rests with its proponent. ORS 183.450(2); *Salem Decorating v. National Council on Comp. Ins.*, 116 Or App 170 (1992), *rev den* 315 Or 643 (1993). Claimant, as the proponent of her position, bears the burden of proving by a preponderance of evidence that the administrative order is incorrect. *See Harris v. SAIF*, 292 Or 683 (1982). Claimant does not meet her burden.

ORS 656.245(1) provides that for every compensable injury, the insurer shall cause to be provided medical services for conditions caused in material part by the injury for such period as the nature of the injury or the process of the recovery requires. ORS 656.245(4)(a) provides that a worker subject to an MCO contract shall receive medical services in the manner prescribed in

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<sup>1</sup> Citing *Liberty Northwest Ins. Corporation v. Kraft*, 205 Or App 59 (2006), I sustained SAIF's objection to claimant testifying at hearing.

<sup>2</sup> Although OAR 436-001-0225(2) can be read to suggest that some type of new evidence can be received during hearing, the Court of Appeals indicated that substantial evidence review does not contemplate that the reviewing body will make additional or supplemental findings of fact. *Id.* at 62-63.

the contract.

Here, the MCO contract that claimant was subject to provided that care received that is not ordered by the attending physician or care provided by non-panel member without MCO approval will not be reimbursed.

Claimant does not dispute that Dr. Gorman is not an MCO panel member or that she was subject to the MCO contract for the disputed services. Rather, she contends that the disputed services are reimbursable because she detrimentally relied on SAIF's pattern of paying Dr. Gorman, that she had verbal referrals for the disputed treatment, and that OHS did not fully respond to her request not to change her primary care physician.

With regard to whether the disputed services were authorized, if a finding by MRU is reasonable, keeping in mind the evidence against the finding as well as the evidence supporting it, the finding is supported substantial evidence. *See Armstrong v. Asten-Hill Co.*, 90 Or App 200, 206 (1988).

Here, claimant and Dr. Gorman wrote letters expressing their understandings with regard to authorizations. However, considering that the that the record does not contain confirmation or verification of authorizations from Dr. Davis or SAIF for the disputed services, I conclude that MRU's finding that Dr. Gorman did not have permission to provide the disputed services is reasonable, and therefore supported by substantial evidence. Similarly, claimant's issues with regard to detrimental reliance and change of primary care physician do not raise an error of law.

Consequently, because Dr. Gorman is not an MCO panel member and did not get permission for the disputed treatment, SAIF is not liable for his treatment from July 2, 2003, through December 22, 2003. Claimant therefore has not met her burden to establish that the order is not supported by substantial evidence or reflects an error of law.

### **ORDER**

**IT IS HEREBY ORDERED** that:

The October 12, 2006 Administrative Order is affirmed.