

In the ORS 656.245 Medical Dispute of

Cheryl A. Wolfe, Claimant

Contested Case No: 06-118H

PROPOSED & FINAL ORDER

February 23, 2007

CHERYL A. WOLFE, Petitioner

SAIF CORPORATION, Respondent

Before Emerson G. Fisher, Administrative Law Judge

Claimant appeals the Director's Administrative Order issued on July 14, 2006 by the Medical Review Unit (MRU) of the Workers Compensation Division (WCD), Department of Consumer and Business Services (director or department).

Pursuant to notice, a hearing was convened before the undersigned Administrative Law Judge (ALJ) in Astoria, Oregon on September 20, 2006. Claimant was present and represented by attorney Charles Mundorff. HCW Clients, and its insurer, the SAIF Corporation, were represented by attorney John Motley. The proceedings were recorded by the ALJ.¹

The hearing was reconvened on February 14, 2007 for closing arguments. The proceedings of February 14, 2007 were not recorded.

The documentary evidence consists of Exhibits 1 through 16 submitted by MRU on August 11, 2006.

The record closed on February 14, 2007.

ISSUE

Whether SAIF is liable for out of pocket expenses incurred by claimant to receive medical services on February 7, 2006.

CONCLUSIONS OF LAW AND OPINION

MRU's Order of March 20, 2006 may be modified only if it is not supported by substantial evidence in the record or if it reflects an error of law. OAR 436-001-0225(2). Insofar as review of factual findings is concerned, 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 *Liberty Northwest Insurance Corporation v. Kraft*, 205 Or App 59, 62 (2006); *Armstrong v. Asten-Hill Co.*, 90 Or App 200, 206 (1988).

¹ During the proceeding of September 20, 2006, the parties were permitted to try evidence not presented to MRU under an "offer of proof." However, because of my limited review, I do not consider that evidence in my review of MRU's order. OAR 436-001-0225(2).

The pertinent facts, as determined by MRU, are as follows:

- (1) On June 25, 2005, claimant sustained a compensable injury. SAIF accepted a non-disabling cervical strain;
- (2) On October 4, 2005, claimant sought treatment from Dr. Duncan. Claimant experienced neck and left arm pain. Dr. Duncan reasoned that work activities aggravated claimant's pain. Dr. Duncan recommended neuro-surgical consultation and referred claimant to Dr. Schostal;
- (3) On November 17, 2005, SAIF enrolled claimant in Oregon Health Systems (OHS) a managed care organization (MCO). Dr. Duncan and Dr. Schostal are not OHS panel providers;
- (4) Claimant's condition became medically stationary on November 7, 2005;
- (5) Dr. Schostal referred claimant to Dr. Antezana. Dr. Antezana provided a neurosurgical consultation on February 7, 2006.
- (6) Claimant requested mileage reimbursement for travel from Astoria to Portland to see Dr. Antezana and for overnight lodging on February 7, 2006;
- (7) When SAIF did not reimburse claimant, she requested administrative review.

Finding that claimant became subject to the MCO contract on November 20, 2005, and determining that Dr. Schostal was not an MCO provider, MRU reasoned that services provided by Dr. Schostal after November 20, 2005 were not compensable. (Ex. 15-2). Based on the same reasoning, MRU concluded that the referral to Dr. Antezana was not compensable. (*Id.*) Consequently, MRU concluded that claimant's out-of-pocket expenses to attend the consult with Dr. Antezana (a non-compensable service) were not reimbursable.² (*Id.*)

On review, claimant does not dispute that she became subject to the MCO contract on November 20, 2005. Nor does she dispute that Dr. Schostal is not an MCO member. Rather,

² At the time of MRU's review, SAIF contended (among other things) that there was no causal connection between the services provided by Dr. Antezana and the accepted cervical strain condition. Although MRU did not discuss the potential ramifications of SAIF's contentions, it is apparent that in concluding that Dr. Antezana's services were not compensable because they were rendered on referral from a non-MCO physician, MRU further concluded there was no need for a defer and transfer order to the Hearings Division to consider SAIF's causal connection argument.

asserting that Dr. Antezana is an MCO member, claimant argues that his neurosurgical consultation services are compensable regardless of the referral from a non-MCO member.

Here, SAIF's MCO enrollment letter was mailed on November 17, 2005. (Ex. 2-4; 2-5). Thus claimant became subject to the terms of the MCO contract on November 20, 2005. ORS 656.245(4)(a). Under the terms of the MCO contract (as outlined in the November 17, 2005 enrollment letter), all medical treatment must be provided by an MCO designated physician or on referral from such a physician. (Ex. 2-5). The contract further provides that care not ordered by the attending physician will not be reimbursed. (*Id.*) Therefore, pursuant to the terms of the MCO contract, to which claimant became subject on November 20, 2005, Dr. Antezana's consultation services, which were not ordered by an MCO attending physician, are not reimbursable. Consequently, claimant's out-of-pocket expenses to attend non-reimbursable services are likewise not reimbursable.

ORDER

The July 14, 2006 Administrative Order is affirmed