In the ORS 656.245 Medical Services of

Augusto Sanchez-Lopez, Claimant

Contested Case No: 09-059H

PROPOSED & FINAL ORDER

July 28, 2009

SEDGWICK CLAIMS MANAGEMENT SERVICES INC., Petitioner
AUGUSTO SANCHEZ-LOPEZ, Respondent

Before Emerson G. Fisher, Administrative Law Judge

Sedgwick CMS appeals the Director's Administrative Order issued on March 20, 2009 by the Medical Review Team (MRT) of the Workers Compensation Division (WCD), Department of Consumer and Business Services (director or department) that determined Sedgwick was liable for a proposed wrist MRI proposed by Dr. Verheyden and directed Sedgwick to pay claimant's counsel an assessed attorney fee of $490.

Pursuant to notice, a hearing was convened before the undersigned Administrative Law Judge (ALJ) in Bend, Oregon on July 21, 2009. Claimant was represented by attorney James Bailey. Henley Farms LLC, and its claims processing agent, Sedgwick Claims Management Services, were represented by attorney Michael Bostwick. The proceedings were recorded by the ALJ.

The documentary evidence consists of Exhibits 1 through 18 submitted by MRT on May 12, 2009.

The record closed on July 21, 2009.

ISSUE

The appropriateness of the March 20, 2009 Order.

CONCLUSIONS OF LAW AND OPINION

MRT's Order of March 20, 2009 may be modified only if it is not supported by substantial evidence in the record or if it reflects an error of law. OAR 436-0001-0225(2). Insofar as review of factual findings is concerned, if a finding by MRT is reasonable, keeping in mind the evidence against the finding as well as the evidence supporting it, the finding is supported by 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).

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

1. Claimant sustained a compensable injury on June 23, 2008;

2. Sedgwick accepted the claim for disabling right distal radius fracture;

> 3. On October 27, 2008, Dr. Verheyden recommended an MRI of the right wrist to evaluate for further injury (suspected TFCC tear) related to the fall at work;
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> 4. Dr. Verheyden requested authorization for the MRI on November 4, 2008;
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> 5. Claimant, through his attorney, requested Administrated Review on January 16, 2009;
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> 6. In response to MRT inquiry, Sedgwick replied that "The only medical service that requires our authorization is elective surgery. An MRI is a diagnostic test and authorization for payment in advance of the service is not required. * * * If billing is received with the documentation and the service provided is reasonable, necessary and related to the accepted condition the billing will be processed for payment."

Finding, from a review of Dr. Verheyden's chart notes, that the proposed right wrist MRI was to further evaluate claimant's persistent wrist/hand symptoms, and applying the holdings of *Counts v. International Paper Co*., 146 Or App 768 (1997) and *Roseburg Forest Products v. Langley*, 156 Or App 458 (1998), MRT determined that Sedgwick was liable for payment for the proposed MRI. Reasoning that claimant had prevailed, MRT awarded claimant's counsel a $490 assessed attorney fee, payable by Sedgwick, pursuant to ORS 656.385 and OAR 436-010-0008.

Sedgwick contends that it did not question the medical merits of the proposed MRI. Rather, Sedgwick asserts that it merely challenged Dr. Verheyden's request to preauthorize the proposed MRI. Reasoning that an MRI is not a medical service for which preauthorization is required, and asserting that MRT erred in addressing the medical merits of the proposed MRI when the medical merits were not in dispute, Sedgwick requests that the March 20, 2009 be vacated and the matter remanded to MRT to address the preauthorization issue.

I agree that Sedgwick was not required to preauthorize the proposed MRI. However, contrary to Sedgwick's assertions, the record presented supports the conclusion that Sedgwick, did in fact, challenge the medical merits of the proposed MRI. Consequently, MRT appropriately addressed the medical merits of the proposed MRI, and appropriately awarded an assessed attorney fee. I reason as follows.

Sedgwick's February 19, 2009 response to MRT reads as follows:

> "This is in response [to the] Notice of Required Action on a Medical Dispute. I understand the issue regarding a right wrist MRI. The only medical service that requires our authorization is elective surgery. An MRI is a diagnostic test and authorization for payment in advance of the service is not required. The medical provider in this particular claim has done a number of diagnostic

> tests without requesting our authorization for payment in advance of providing the service. If the billing is received with the documentation and the service provided is reasonable, necessary and related to the accepted condition[,] the billing will be processed for payment." (Ex. 10-1)

While Sedgwick's response does raise preauthorization as an issue, the response does not concede the medical merits of the proposed MRI. To the contrary, by using the words "if the service is reasonable, necessary, and related to the accepted condition" in its response, Sedgwick clearly sets out the medical merits of the proposed MRI have not been conceded. Consequently, MRT correctly addressed the medical merits of the proposed MRI, and having concluded that Sedgwick was liable for the disputed medical service awarded an assessed attorney fee.

Accordingly, MRT's Order issued on March 20, 2009 is affirmed.

Claimant's counsel is entitled to a reasonable attorney fee. ORS 656.385(1). Considering the factors listed in OAR 436-001-0265, I find that $1,200 is a reasonable fee for claimant's counsel's services in this matter. Said fee is payable by Sedgwick.

ORDER

The Administrative Order dated March 20, 2009 is affirmed. Claimant's counsel is awarded a $1,200 attorney fee, pursuant to ORS 656.385(1), payable by Sedgwick.