
In the ORS 656.260 Managed Care Dispute of

Donald G. Sloan, Claimant

Contested Case No: 10-071H

PROPOSED & FINAL ORDER

October 4, 2010

DONALD G. SLOAN, Petitioner
SAIF CORPORATION, Respondent

Before Geoffrey G. Wren, Administrative Law Judge

Pursuant to notice, a hearing was scheduled for July 27, 2010. Prior to hearing, the parties notified the undersigned administrative law judge that this matter could be submitted on the documentary record with written closing arguments. Claimant is represented by R. Adian Martin. The employer, J. Frank Schmidt & Son Co., and its insurer, SAIF Corporation, are represented by Holly A. Ansari. The record closed on September 22, 2010 following receipt of written closing arguments.

Exhibits 1 through 36 are admitted.

ISSUE

Medical Services: Claimant challenges the Director's April 13, 2010 Administrative Order of Dismissal. Claimant contends that the Director erred in holding that a consultation and treatment by Dr. Peterson, as requested by claimant's attending physician, was not reimbursable.

STATEMENT OF FACTS

On December 22, 2006, claimant sustained compensable injuries when a large, heavy log struck him. (Exs. 8, 26). The insurer accepted a claim for comminuted tibial plateau fracture, right knee, right chest wall contusion, L2 and L3 non-displaced transverse process fractures, umbilical hernia, left inguinal hernia, lumbosacral strain, right knee anterior cruciate ligament ("ACL") tear, right knee medial collateral injury, post-surgical staphylococcus aureus infection at the umbilical hernia surgery incision site, right and left hydroceles, right postinguinal herniorrhaphy neuralgia, and thoracic contusion. (Ex. 23). Claimant was enrolled in the Oregon Health Systems ("OHS") MCO. (Ex. 2).

In February 2009, claimant came under the care of Dr. Fry, who became his attending physician. (Exs. 8, 21). On January 26, 2010, the doctor stated that claimant's low back condition was medically stationary, but not his thoracic condition. He noted that claimant complained of constant low back pain with little change in the level of pain over time. Dr. Fry assessed contusion of the left side of the back with intact skin surface and myofascial pain syndrome. He explained that these diagnoses were consistent with claimant's complaints and the mechanism of injury and said that they should be accepted conditions. He then stated: "The treatment plan will be a trial of therapeutic injections from interventional physiatry and continue physical therapy." (Ex. 6).

Claimant received back injections from Dr. Zierenberg. (Exs. 6, 26). The doctor noted on February 17, 2010 that an MRI scan revealed fluid at the L3-4 and L4-5 facet joints. He commented that this finding correlated with the location of claimant's pain complaints. (Ex. 26).

On March 16, 2010, Dr. Fry stated:

No therapy is likely to fix [claimant's] back. He will have pain the rest of his life. He already had pain behaviors so I think narcotics would be very high risk for addiction and problems in this patient and I won't prescribe them for him. He does still have options. He could work on losing the significant abdominal obesity. This is the most likely to help his pain. He seems to have very low motivation for this treatment. I would recommend that his SAIF accepted conditions are medically stable. He is not likely to ever return to work of any kind.

(Ex. 6).

Dr. Fry sought authorization for a consultation by Dr. Peterson and possible medial branch block or radio frequency ablation treatment. Dr. Fry noted as the relevant diagnoses closed fracture at L3 and contusion of the back with intact skin surface. (Ex. 30). OHS denied authorization on March 22, 2010, explaining:

The request for consultation is directed towards the evaluation of conditions which have not been claimed or accepted. Dr. Fry notes on 3/16/2010 that SAIF accepted conditions are medically stationary.

(Ex. 32).

Claimant requested Director's review of the denial of service. (Ex. 33). On April 13, 2010, the Director issued an Administrative Order of Dismissal. The Director determined that the insurer was not liable for the consultation with Dr. Peterson. The Director found that "OHS declined review, due to the requested service not being directed towards the evaluation of conditions which have not been claimed or accepted, and that SAIF, on inquiry responded that the service is for a new/omitted condition in which the worker has not asked for acceptance." The Director suggested that the matter could be resolved expeditiously "simply by the worker clearly requesting formal written acceptance of the specific new or omitted condition in writing." (Ex. 35).

CONCLUSIONS OF LAW AND OPINION

Claimant challenges the Director's April 13, 2010 Administrative Order of Dismissal upholding denial of a consultation and possible treatment by Dr. Peterson. Claimant frames the issue for decision as "[w]hether the accepted conditions were a fact of consequence i[n] causing the need for a diagnostic evaluation and injections." He contends that the Director erred in dismissing his request for review because the Director never in fact addressed this core issue.

My review of this matter is governed by ORS 656.260 and OAR 426-035-0225. The parties dispute whether the Director erred in dismissing the request for review, but they do not address the question whether the Director had subject matter jurisdiction to do so. I begin with that question because it precedes any determination whether the Director erred.

In *Hazel M. Hand*, 59 Van Natta 1028 (2007), the Board addressed the respective authority of the Board and the Director to resolve disputes pertaining to compensability of medical services. Under ORS 656.704(3), the Director has subject matter jurisdiction over a dispute whether a medical service is excessive, inappropriate, ineffectual, or in violation of rules regarding the performance of medical services. The Board has subject matter jurisdiction over (1) “a dispute concerning the compensability of the medical condition for which medical services are proposed” and (2) “a dispute concerning whether a sufficient causal relationship exists between medical services and an accepted claim.” Each of the latter two disputes is a “matter concerning a claim” within the Board’s jurisdiction. 59 Van Natta at 1033.

Here, the issue for decision is whether a sufficient causal relationship exists between the proposed medical service and the accepted claim. This is a matter concerning a claim within the Board’s jurisdiction. Nothing in the record indicates that there is any issue whether the proposed service is excessive, inappropriate, ineffectual, or in violation of rules regarding the performance of medical services. The Director should not have addressed the merits of the compensability dispute. Accordingly, the Director’s order must be vacated and this matter must be transferred to the Board’s Hearings Division for further proceedings.

ORDER

IT IS HEREBY ORDERED that the Director’s April 13, 2010 Administrative Order of Dismissal is vacated. This matter shall be transferred to the Workers’ Compensation Board, Hearings Division, for further proceedings.