
In the ORS 656.260 Managed Care Dispute of

Reiner K. Widmaier, Claimant

Contested Case No: 11-097H

ORDER REMANDING

November 30, 2011

SAIF CORPORATION, Petitioner

REINER K. WIDMAIER, Respondent

Before Kate Donnelly, Administrative Law Judge

HISTORY OF THE CASE

SAIF appeals a June 14, 2011 Administrative Order (MTX 11-0504) issued by the Medical Section Resolution Team (RT) of the Workers' Compensation Division (WCD), Department of Consumer and Business Services (DCBS). The Managed Care Dispute arose under ORS 656.260. The director ordered that the pain management program prescribed by Dr. John Ford was appropriate; and if provided, SAIF was liable, pursuant to statute and rule, for all associated-costs. The director further ordered SAIF to pay claimant's attorney an attorney fee in the amount of \$1,300 (Ex. 97-4).

Pursuant to notice, a hearing was scheduled for October 19, 2011, in Eugene, Oregon, before Administrative Law Judge (ALJ) Kate Donnelly. Claimant is represented by James L. Edmunson. The employer, McIntyre Construction, Inc., and its insurer, SAIF Corporation (SAIF), are represented by David L. Runner. Prior to the scheduled hearing, the parties agreed to submit this matter on the documentary record.

In its opening argument, SAIF contended that RT should have vacated its order and dismissed the dispute because Dr. Ford had withdrawn his recommendation of the pain center treatment. In response to SAIF's opening argument, claimant moved for Remand to the MCO pursuant to ORS 656.260 (16) for further evidence taking because the record of Dr. Ford's medical opinion was incompletely and insufficiently developed below. SAIF agreed with claimant that it is appropriate for the ALJ to vacate the current administrative order and remand the dispute to the MCO for consideration of the attending physician's new request for pain center treatment.

The record closed on November 28, 2011, following receipt of claimant's letter agreeing with SAIF that the current administrative order should be vacated and the matter remanded to the MCO pursuant to ORS 656.260(16).

ISSUE

Whether Administrative Order MTX 11-0504 should be vacated and the dispute remanded to the MCO for consideration of the attending physician's new request for pain center treatment.

EXHIBITS

Exhibits 1 through 103 were submitted by WCD on July 25, 2011 and are hereby admitted into the record.

FINDINGS OF FACT

The Findings of Fact in the June 14, 2011 Administrative Order are accepted and incorporated in this Order Vacating and Remanding to the MCO, with the following supplementation.

On June 29, 2011, Dr. Ford indicated that he was withdrawing his request for pain center treatment (Ex. 98-2).

On July 1, 2011, SAIF requested that RT withdraw its June 14, 2011 Administrative Order based upon Dr. Ford's withdrawal of his request for pain center treatment (Ex. 99).

On July 8, 2011, RT denied SAIF's request for reconsideration of Administrative Order MTX 11-0504 (Ex. 100).

SAIF requested a hearing challenging the Administrative Order (Ex. 101).

On November 9, 2011, claimant moved for Remand to the MCO October 25, 2011 response to the Appellate Review Unit (ARU).

SAIF agreed with claimant Motion to Remand to the MCO and requested that the June 14, 2011 Administrative Order be vacated. Claimant agreed that the Administrative Order should be vacated.

CONCLUSIONS AND REASONING

This is a managed care dispute arising under ORS 656.260. The administrative order may be modified only if it is not supported by substantial evidence in the record or reflects an error of law. New medical evidence or issues may not be admitted or considered. Decisions by the Director regarding medical disputes are subject to review under ORS 656.704. ORS 656.260(16); OAR 436-001-0225(2).

ORS 656.260(16) provides that a dispute may be remanded to the MCO for further evidence taking, correction, or other necessary action if the ALJ or director determines that the record has been improperly, incompletely or otherwise insufficiently developed. I find that the record has been incompletely and/or insufficiently developed regarding Dr. Ford's pain center treatment recommendation. I reach this conclusion based upon the following reasoning.

Here, the record contains Dr. Ford's withdrawal of his recommendation for pain center treatment after the Administrative Order issued. The RT stated that it was "not persuaded by the new information to change its decision in MTX 11-0504" (Ex. 101-2). In his response to SAIF's

closing argument, claimant enclosed a new report from Dr. Ford responding to questions from the ARU. This report is not admissible regarding the merits of the dispute. Moreover, ORS 656.260 (16) does not provide for remand to the RT to reconsider Dr. Ford's initial opinion in light of his subsequent clarification and does not permit introduction of relevant new evidence at hearing. Because the only statutory remedy is remand to the MCO, claimant and SAIF jointly agree that Administrative Order MTX 11-0504 should be vacated and the dispute remanded to the MCO for further evidence taking and a new determination of whether the attending physician's new request for pain center treatment is now appropriate.

Under such circumstances. Administrative Order MTX 11-0504 is hereby vacated and the pain center treatment dispute is remanded to the MCO for further evidence taking and a new determination of whether the attending physician's new request for pain center treatment is now appropriate.

ORDER

IT IS HEREBY ORDERED that the June 14, 2011 Administrative Order MTX 11-0504 is vacated. The matter is remanded to the MCO for further evidence taking and a new determination of whether the attending physician's new request for pain center treatment is now appropriate.