

In the ORS 656.245 Medical Services Dispute of
Samples, Dennis, Claimant

Contested Case No: HH01-142

PROPOSED & FINAL ORDER

March 24, 2002

TRANSPORTATION INSURANCE CO., Petitioner

DENNIS SAMPLES, Respondent

Before John L. Shilts, Workers' Compensation Division Administrator

PROCEDURAL HISTORY

On December 17, 2001, petitioner requested contested case review of an order by the Medical Review Unit (MRU) of the Workers' Compensation Division (WCD) finding that certain medical services were diagnostic for the worker's compensable condition. On February 14, 2002, Hearing Officer Paul Vincent conducted a contested case hearing. Petitioner Transportation Insurance Co. (insurer) was represented by attorney Allen Lyons. Respondent claimant Dennis Samples (claimant) was represented by attorney Roger Ousey. The Workers' Compensation Division waived appearance. No testimony was taken. The record closed on the date of hearing.

ISSUE

Whether insurer is liable for an office visit and x-ray performed by Steven Chamberlain, MD on August 15, 2001.

EVIDENTIARY RULINGS

WCD Exhibits 1-20 were received without objection.

FINDINGS OF FACT

Claimant sustained a compensable left knee injury in December 1994. Insurer accepted the claim for a disabling medial meniscus tear. Claimant settled his claim through a Claim Disposition Agreement (CDA), through which he released all his rights to benefits except for compensable medical services. (Ex. 3). Claimant underwent arthroscopy and left medial meniscectomy in March 1995. Claimant was declared medically stationary on June 1, 1995.

Claimant sought treatment from Dr. Chamberlain for complaints of left knee pain on August 15, 2001. Dr. Chamberlain noted that claimant underwent arthroscopy in 1995 to repair a medical meniscus tear, and that a diagnosis of Grade II chondromalacia of the medial femoral condyle was entered at that time. Dr. Chamberlain took x-rays of claimant's left knee and diagnosed osteoarthritis of the left knee. He requested palliative care (synvisc injections) on September 13, 2001. Dr. Chamberlain billed insurer for the August 15 visit and x-rays. (Ex. 5). Dr. Chamberlain also submitted a Form 827 listing the arthritis diagnosis and recommendation of Synvisc injections. (Ex. 6). On September 25, 2001, insurer informed Dr. Chamberlain that the bill for services on August 15, 2001 was not reimbursable. (Ex. 7). Claimant requested MRU

review. (Ex. 8). Insurer questioned the existence of a causal relationship between the accepted torn medial meniscus and the rendered and proposed medical services. (Exs. 14, 15, 16).

MRU separated the August 15, 2001 medical services (office visit and x-rays) from the proposed medical treatment (Synvisc injections). On November 30, 2001, MRU issued Administrative Order MS 01-1229 finding the disputed office visit and x-rays compensable as diagnostic services for the compensable condition. (Ex. 19). On December 4, 2001, MRU transferred the proposed injections issue to the Workers' Compensation Board on the grounds that "[t]he insurer contends the synvisc injections for left knee pain are not casually related to the accepted condition and are not compensable. Therefore, the director defers the administrative review regarding entitlement to synvisc injections, and transfers the dispute regarding the causal relationship to the Workers' Compensation Board." (Ex. 18).

CONCLUSIONS OF LAW AND REASONING

Jurisdiction

The Director has jurisdiction over medical disputes arising under ORS 656.245(1) in cases where compensability of the condition to which medical services are directed is not at issue. OAR 436-010-0008 (4). Here, the accepted condition is a medial meniscus tear, left knee, which was declared medically stationary on June 1, 1995. (Ex. 3-3). The insurer has disputed that the treatment delivered on August 15, 2001 is related to the accepted claim. (Ex. 16). The insurer has filed a Motion to Defer and Transfer requesting that I find that disputed services involve a determination of whether a sufficient causal relationship exists between medical services and the accepted claim, were not rendered for the purpose of diagnosing the accepted condition, and therefore the diagnostic service dispute should be deferred pending action by the Workers' Compensation Board on the compensability of claimant's osteoarthritis or, in the alternative, transferred to the Hearings Division.

The claimant argues that MRU correctly determined the workers' initial visit with a physician to evaluate the status of his left knee condition was a compensable diagnostic dispute. There is no need to defer or transfer this case to the hearings division, argues claimant, because "different standards of compensability are applicable to the recommended treatment dispute and the initial visit."

I find insurer's argument persuasive. Generally, diagnostic service disputes are not matters necessarily concerning a claim under ORS 656.704(3) and are within the Director's jurisdiction. *See James P. Fisher*, ___ WCSR ___ (H99-060, September 2000) (Determination of causation is not necessary to resolve dispute); *James R. Hampton*, 7 WCSR ___ (2002)(Final Order). However, the Director has jurisdiction over medical disputes arising under ORS 656.245(1) only where compensability of the condition to which medical services are directed is not at issue. *Anna B. Madriz*, 5 WCSR 49 (2000). When an insurer contends that the matter before WCD raises issues under ORS 656.704(3)(b)(A) and (C) that require a determination of the compensability of the medical condition for which medical services were delivered, or require a determination

of whether a sufficient causal relationship exists between medical services and the accepted claim to establish compensability, such issues should be transferred by MRU to the WCB and any remaining issues should be deferred pending outcome of the WCB's decision. This result is required by OAR 436-010-0008 (4), which states: "When there is a denial of the causal relationship between the medical service and the accepted condition or the underlying condition, the issue must first be decided by the Hearings Division of the Workers' Compensation Board."

Here, insurer raised to MRU the issue of causation regarding all medical services rendered and proposed by Dr. Chamberlain on August 15, 2001. When the causal relationship between diagnostic treatment and the accepted injury is challenged, OAR 436-010-0008(4) requires the director to defer the diagnostic treatment dispute and transfer the issue of causal relationship to the Hearings Division. Pursuant to ORS 656.704(3)(b)(D), administrative review of all remaining matters should be deferred until matters concerning a claim are resolved. Once compensability is resolved, administrative review before MRU can resume.

ORDER

IT IS HEREBY ORDERED that:

The Director's Review and Order, MS 01-1229, dated November 14, 2001 is withdrawn. This matter is remanded to the Medical Review Unit. The issue of causal relationship between the disputed services and the accepted injury shall be transferred by MRU to the Hearings Division and administrative review of all remaining matters shall be deferred until matters concerning a claim are resolved. Once compensability is resolved, administrative review before MRU may resume.

DATED this _____ day of March 2002.

Paul Vincent
Hearing Officer
Hearing Officer Panel