
In the ORS 656.260 Managed Care Organization Dispute of

GLEN A. JOHNSTON Claimant

Contested Case No: H04-116

INTERIM ORDER

November 03, 2004

CENTRAL OREGON RADIOLOGY ASSOCIATES, and CENTRAL OREGON MRI,
Petitioner

GLEN A. JOHNSTON, Respondent

Before Catherine P. Coburn, Administrative Law Judge, Administrative Hearings

HISTORY OF THE CASE

Medical providers Central Oregon Radiology Associates and Central Oregon MRI¹ appeal an Administrative Order issued on June 9, 2004 by the Medical Review Unit (MRU) of the Workers' Compensation Division (WCD) Department of Consumer and Business Services (director or the department). On September 1, 2004, WCD referred the matter to the Office of Administrative Hearings for a contested case hearing. On October 21, 2004, Administrative Law Judge (ALJ) Catherine P. Coburn conducted a hearing. The petitioning medical providers appeared as parties pursuant to OAR 137-003-0535(2) and were represented by Billing Supervisor Connie Anderson as the medical provider's authorized representative pursuant to OAR 137-003-0555. *Pro se* respondent Glen A. Johnston (claimant) failed to appear. Respondent SAIF Corporation (insurer) was represented by attorney Kenneth P. Russell. Oregon Health Systems, a managed care organization (OHS or MCO) waived appearance. The record closed on the date of hearing.

ISSUE

Whether a default order is warranted pursuant to OAR 137-003-0670(1)(c).

EVIDENTIARY RULINGS

WCD Exhibits 1 through 77 were received into the record without objection.

FINDINGS OF FACT

1. Medical providers, Central Oregon Radiology and Central Oregon MRI requested the hearing, seeking payment of bills totaling \$1,042.80. (Exs. 8 and 9.)

¹Magnetic Resonance Imaging.

2. The Office of Administrative Hearings notified the parties of the hearing set for October 21, 2004. The Notice of Hearing stated, “**The issue for hearing is** whether SAIF Corporation (SAIF) is liable for a left upper extremity MRI taken by C[entral] O[regon] Radiology Associates on April 10, 2002 under ORS 656 and OAR chapter 436.” (Emphasis in the original.)

3. Claimant received the hearing notice by certified mail. At the time of hearing, claimant was unavailable by telephone. Later, on the date of hearing, claimant telephoned OAH to ask why an ALJ had contacted him earlier in the day. Several days later, claimant telephoned OAH, indicating that he was under the impression that the dispute was between the medical provider and the insurer and did not involve him.

CONCLUSION OF LAW

A default order is not warranted pursuant to OAR 137-003-0670(1)(c).

OPINION

The director exercises jurisdiction over MCO disputes. ORS 656.260(6). I review for substantial evidence and error of law. ORS 656.260(16). The burden of proving a fact or position rests with the proponent. ORS 183.450(2); *Harris v. SAIF*, 292 Or 683 (1982). As petitioner, the medical provider bears the burden of proving by a preponderance of evidence that the administrative order is incorrect. *Cook v. Employment Div.*, 47 Or App 437 (1980) (In the absence of contrary legislation, the standard of proof in administrative hearings is preponderance of evidence). Proof by a preponderance of evidence means that the factfinder is more likely true than false. *Riley Hill General Contractors v. Tandy Corp.*, 303 Or 390 (1989).

ORS 183.415 provides:

- (1) In a contested case, all parties shall be afforded an opportunity for hearing after reasonable notice, served personally or by registered certified mail. The notice shall include:
 - (a) A statement of the party’s right to hearing, or a statement of the time and place of the hearing;
 - (b) A statement of the authority and jurisdiction under which the hearing is to be held;
 - (c) A reference to the particular sections of the statutes and rules involved; and
 - (d) A short and plain statement of the matters asserted or charged.

Additionally, OAR 137-003-0670 provides:

(1) The agency or, if authorized, the administrative law judge may issue a final order by default:

(c) Except as provided in section (2)² of this rule, when the agency or administrative law judge notified the party of the time and place of the hearing and the party fails to appear at the hearing; or

(d) When the injured worker seeks treatment outside the provisions of a governing MCO contract after insurer notification in accordance with OAR 436-010-0275;

Claimant received the Notice of Hearing and he failed to appear at hearing. However, he was not duly notified of the issue presented. The Notice of Hearing failed to notify claimant that he could potentially be found liable for the disputed medical services pursuant to OAR 436-009-0015(1)(d).³ Therefore, I conclude that a default order is not warranted. Accordingly, the matter shall be reset for another hearing date.

ORDER

IT IS HEREBY ORDERED that:

The Office of Administrative Hearings shall set a new hearing date.

² OAR 137-003-0670(2) provides: If the party failed to appear at the hearing after being notified of the time and place of the hearing and, before issuing a final order by default, the agency or administrative law judge finds that the failure of the party to appear was caused by circumstances beyond the party's reasonable control, the agency or administrative law judge may not issue a final order by default under section (1)(c) of this rule. In this case, the administrative law judge shall schedule a new hearing.

³ OAR 436-009-0015 provides: (1) An injured worker shall not be liable to pay for any medical service related to an accepted compensable injury or illness or any amount reduced by the insurer pursuant to OAR chapter 436. A medical provider shall not attempt to collect payment for any medical service from an injured worker, except as follows: