
In the ORS 656.245 Medical Services Dispute of

Cheryl A. Wolfe, Claimant

Contested Case No: 06-070H

PROPOSED & FINAL ORDER

February 23, 2007

SAIF CORPORATION, Petitioner

CHERYL A. WOLFE, Respondent

Before Emerson G. Fisher, Administrative Law Judge

The SAIF Corporation appeals the Director's Administrative Order issued on March 20, 2006 by the Medical Review Unit (MRU) of the Workers Compensation Division (WCD), Department of Consumer and Business Services (director or department).

Pursuant to notice, a hearing was convened before the undersigned Administrative Law Judge (ALJ) in Astoria, Oregon on September 20, 2006. Claimant was present and represented by attorney Charles Mundorff. HCW Clients, and its insurer, the SAIF Corporation, were represented by attorney John Motley. The proceedings were recorded by the ALJ.¹

The hearing was reconvened on February 14, 2007 for closing arguments. The proceedings of February 14, 2007 were not recorded.

The documentary evidence consists of Exhibits 1 through 18 submitted by MRU on April 25, 2006.

The record closed on February 14, 2007.

ISSUE

Whether SAIF is liable for mileage reimbursement for medical services rendered on November 4, 2005, and November 18, 2005.

CONCLUSIONS OF LAW AND OPINION

MRU's Order of March 20, 2006 may be modified only if it is not supported by substantial evidence in the record or if it reflects an error of law. OAR 436-001-0225(2). Insofar as review of factual findings is concerned, if a finding by MRU 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).

¹ During the proceeding of September 20, 2006, the parties were permitted to submit evidence not presented to MRU under an "offer of proof." However, because of my limited review, I do not consider that evidence in my review of MRU's order. OAR 436-001-0225(2).

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

- (1) On June 25, 2005, claimant sustained a compensable injury. SAIF accepted a non-disabling cervical strain;
- (2) On October 4, 2005, claimant sought treatment from Dr. Duncan. Claimant experienced neck and left arm pain. Dr. Duncan reasoned that work activities aggravated claimant's pain. Dr. Duncan recommended neuro-surgical consultation;
- (3) On November 4, 2005, claimant presented at St. Johns Hospital Radiology Department for a cervical MRI requested by Dr. Schostal;
- (4) On November 17, 2005, SAIF enrolled claimant in Oregon Health Systems (OHS) the managed care organization (MCO);
- (5) On November 18, 2005 claimant presented at Dr. Schostal's office. Dr. Schostal reviewed the results of the MRI with claimant;
- (6) Claimant submitted a mileage reimbursement request to SAIF for the two dates of service on November 18, 2005;
- (7) On December 6, 2005, SAIF notified claimant that her condition became medically stationary on November 7, 2005;
- (8) In a December 15, 2005 letter, SAIF informed claimant that the November 4, 2005 and November 18, 2005 dates of service would not be reimbursed, as the mileage reimbursement request did not coincide with physician billings;
- (9) When SAIF disallowed the reimbursement request, claimant requested administrative review;
- (10) SAIF responded on February 6, 2005 that the request for mileage reimbursement for the two dates of service did not coincide with chart notes or billings;
- (11) On February 9, 2006, claimant's counsel responded that the November 18, 2005 chart note was received from SAIF on February 7, 2006.

Acknowledging that at the time claimant submitted her mileage reimbursement request, SAIF had not received supporting documentation, but finding that by the time of the administrative review proceeding SAIF had received documentation (chart notes) corresponding

to the November 4, 2005 and November 18, 2005 dates of service, MRU determined that SAIF was liable for mileage reimbursement for the aforementioned dates of service. (Ex. 16-2).

On review, SAIF argues, among other things, that the record does not establish that medical services were rendered to claimant on November 4, 2005.²

Here, the chart note for the November 18, 2005 medical service is contained in the record as Exhibit 3. Consequently, there is substantial evidence in the record supporting MRU's determination that SAIF had a copy of the November 18, 2005 chart at the time of MRU's review.

However, the same cannot be said of the November 4, 2005 medical service. The record does not contain a chart note, a radiology report, or billing demonstrating that claimant received any medical services at St. Johns Hospital Radiology Department on November 4, 2005. Although Dr. Schostal's chart note of November 18, 2005, establishes that a cervical MRI was performed at some point in time, nothing in that chart note establishes where or when the MRI was performed. Consequently, there is not substantial evidence supporting MRU's finding that on November 4, 2005, claimant presented at St. Johns Hospital Radiology Department for a cervical MRI.

Claimant's counsel is entitled to an assessed attorney pursuant to ORS 656.385(1). Applying the factors outlined in OAR 436-010-0008(13), I find that a reasonable fee for claimant's attorney's services at the Hearings Division is \$600.

ORDER

The March 20, 2006 Administrative Order is reversed in part, and affirmed in part. That portion of the March 20, 2006 Administrative Order finding SAIF liable for mileage reimbursement for medical services rendered on November 4, 2005 is reversed. The remainder of the March 20, 2006 Administrative Order is affirmed. Claimant's counsel is awarded a \$600 assessed attorney fee, payable by SAIF, for services at the Hearings Division.

² During the course of the proceedings, SAIF raised several other issues which, arguably, support its position that it is not liable for mileage reimbursement for medical services rendered to claimant on November 4, 2005, and November 18, 2005. However, because those issues were not raised before MRU, I am not permitted to address those arguments as a part of my review. OAR 436-001-0225(2).