

---

In the ORS 656.260 Managed Care Dispute of

**Brian K. Keith, Claimant**

Contested Case No: 10-073H

**PROPOSED & FINAL ORDER**

October 12, 2010

BRIAN K. KEITH, Petitioner

SAIF CORPORATION, Respondent

Before Chuck Mundorff, Administrative Law Judge

---

A hearing was scheduled to convene on August 4, 2010 in Eugene, Oregon before Administrative Law Judge Chuck Mundorff. The claimant is represented by attorney Allison B. Lesh. The employer, Farwest Steel Corporation, and its insurer, the SAIF Corporation, are represented by attorney Tom Harrell. The parties agreed to litigate the matter on the record by written argument. The record closed on September 14, 2010 with receipt of claimant's Reply argument.

**EXHIBITS**

By letter submission of June 1, 2010 the Worker's Compensation Division submitted exhibits 1-15 for inclusion in the record. Having received no objections by the parties those exhibits are hereby admitted.

**ISSUES**

Claimant appeals WCD's Order of Dismissal dated April 23<sup>rd</sup> 2010 that dismissed claimant's request for administrative review of a medical service dispute. Claimant seeks a fee if he prevails in setting aside the Order of Dismissal.

**FINDINGS OF FACT**

Claimant was injured on May 21, 2010 when he fell off a rail car. (Ex. 1). His claim was accepted for left thumb distal phalanx fracture, thoracolumbar strain, left knee contusion, non-displaced fracture to the proximal pull of the scaphoid left wrist and left DeQuervains Tenosynovitis. (Exs. 2, 3, 4). The claim was enrolled in Providence MCO to provide medical services. (Ex. 2 at 5).

Claimant treated with Dr. Paul Curtin at Crescent Family Medicine. Dr. Curtin reported that claimant continued to be uncomfortable with neck, back, wrist and knee pain. He felt that claimant had developed myofascial pain syndrome as a result of his traumatic injury. He reported "I think a work hardening program is appropriate and indicated and we will seek approval of that." (Ex. 5).

On February 10, 2010 Dr. Curtin wrote to the claims adjuster and noting his disagreement with the IME report stated that it would be beneficial for claimant to go through a work hardening process. He noted that claimant wanted to be sure that the procedure would be paid

for before beginning the program and therefore was submitting this request for consideration. (Ex. 6).

On April 1, 2010 counsel for claimant requested administrative review by the Medical Resolution Team (MRT) of WCD submitting Dr. Curtin's chart note and letter. (Ex. 7). SAIF responded to the specification of disputed medical issues by checking that the service was "excessive, inappropriate, ineffectual." (Ex. 9). On April 19, 2010 the claims adjuster wrote to MRT and stated that he had no notice that Dr. Curtin had requested preauthorization from the MCO for the work hardening program and that he had no indication what type of program was being considered. As such, he felt that dispute resolution was premature. (Ex. 10).

A note in the claim file of WCD stated that a telephone call with Providence MCO indicated that it does require precertification for a work hardening program and that it had no request on file from the worker. (Ex. 12).

Claimant's counsel wrote to MRT on April 21, 2010 responding to the claims adjuster's letter and noted that while the program must be presented to the MCO for preauthorization, OAR 436-010-0275(10)(b) required the insurer to notify the MCO of any request for medical services received from the work or the worker's medical provider. The letter further pointed out that the claims adjuster had Dr. Curtin's chart note requesting the work hardening program for two months without acting at the time of the letter. (Ex. 13).

On April 23<sup>rd</sup> 2010 the medical reviewer issued an Order dismissing the request for review on the grounds that the MCO had not been contacted regarding preauthorization and that this was a requirement before the dispute was ripe. (Ex. 14). Claimant appealed that decision resulting in this proceeding. (Ex. 15).

## CONCLUSIONS AND REASONING

Claimant argues that although Dr. Curtin did not request MCO review of the work hardening program, he did request medical treatment from the claims adjuster who has a mandate by administrative rule to notify the MCO if he receives such a request. Additionally, claimant notes that SAIF's response to MRT included a dispute that the work hardening program was excessive, inappropriate or ineffectual which was ripe for adjudication.

SAIF responds that under the proper standard of review the director's order can only be set aside or remanded if it is not supported by substantial evidence and that is not the case in the present proceeding. SAIF argues that Dr. Curtin's letter to SAIF was not a request for medical services that would trigger the provision of OAR 436-010-0275(10)(b). It alleges that Dr. Curtin requested a guarantee of payment prior to requesting the program and that SAIF has no obligation to pre-approve payment of a procedure – only that it must process medical billings. SAIF asserts there is no bona fide medical dispute to be resolved.

This is a medical services dispute arising under ORS 656.260(6) and OAR 436-010-0008 which pertain to medical disputes subject to an MCO contract. OAR 436-010-0008(5) provides:

“The following time frames and conditions apply to requests for administrative review before the director under this rule:

- (a) For all disputes subject to dispute resolution within a Managed Care Organization, upon completion of the MCO process, the aggrieved party must request administrative review by the director within 60 days of the date the MCO issues its final decision. If a party has been denied access to an MCO internal dispute process or the process has not been completed for reasons beyond a party’s control, the party may request director review within 60 days of the failure of the MCO process. If the MCO does not have a process for resolving the particular type of dispute, the insurer must advise the medical provider or worker that they may request review by the director.”

In this instance, claimant argues that he was denied access to an MCO internal dispute process due to the failure of the carrier to refer the matter to the MCO.

As noted in his argument, claimant relies upon OAR 436-010-0275(10)(b) which provides the obligations of the carrier concerning medical services subject to MCO contracts. That provision reads:

“(10) The insurer must also notify the MCO of:

- (a) The name, address, and telephone number of the worker and, if represented, the name of the worker’s attorney, any changes in this information; and
- (b) Any requests for medical services received from the worker or the worker’s medical provider.”

Claimant argues that Dr. Curtin’s chart note was a specific request for medical services and was not merely a request for pre-authorization. I agree. Dr. Curtin’s chart note specifically states “I think a work hardening program is appropriate and indicated and we will seek approval of that.” (Ex. 5). Additionally, while Dr. Curtin indicates that his patient is concerned with payment for that program, he did not rescind his request for those services to be provided.

By failing to notify the MCO of the request for medical services SAIF Corporation essentially denied claimant the opportunity to access the MCO dispute process. As such, the request for administrative review was appropriate pursuant to OAR 436-010-0008(5). This was particularly true in light of the fact that SAIF denied the program on the basis of being excessive, inappropriate and ineffectual before the director.

I find that issuing a dismissal in this matter was an error of law in that the medical services issue was properly before the director and was ripe for adjudication. Therefore, I remand for further consideration.

For services provided at this level of review, I award claimant’s counsel a \$1,500.00 attorney fee pursuant to ORS 656.385(1) contingent upon claimant finally prevailing on the remanded issues. *See Todd R. Ferguson*, 62 Van Natta 304 (2010).

**ORDERS**

1. This matter is remanded to the director for further consideration of the medical dispute;
2. Claimant's counsel is awarded a contingent attorney fee of \$1,500.00 for services in this proceeding should he finally prevail on the medical dispute.