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In the ORS 656.260 Managed Care Dispute of

**Curt G. Carpenter, Claimant**

Contested Case No: 10-186H

**PROPOSED & FINAL ORDER**

March 30, 2011

CURT G. CARPENTER, Petitioner

SAIF CORPORATION, Respondent

Before Elizabeth Fulsher, Administrative Law Judge

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Pursuant to notice, a hearing was held and the record closed on March 7, 2011 in Portland, Oregon before Administrative Law Judge Fulsher. Claimant was not present but was represented by his attorney, Gary Borden. The employer, Eric Dahlgren, and the insurer, SAIF Corporation, were represented by their attorney, Craig Miller.

Exhibits 1 through 14 were admitted into evidence.

**ISSUE**

The issue is entitlement to an attorney fee pursuant to ORS 656.385.

**SUMMARY OF FINDINGS OF FACT**

Claimant suffered a compensable back injury on June 20, 2009. SAIF enrolled claimant in Healthcare Northwest/Caremark Comp (Caremark), the managed care organization (MCO) on October 23, 2009.

Dr. Brett evaluated claimant on March 17, 2010 and recommended a lumbar MRI. On March 22, 2010, claimant underwent a lumbar MRI at Portland Medical Imaging. On April 26, 2010, SAIF disallowed the charge for the MRI, as the provider was not in the MCO. On September 10, 2010, SAIF accepted the claim and closed the claim on the same day. On October 11, 2010, claimant through his attorney, requested administrative review.

On October 26, 2010, SAIF responded that the bill was initially disallowed because the provider was outside the MCO. SAIF paid for the MRI because it said the MRI was a diagnostic procedure that was helpful in the overall management of claimant's claim.

The Director's initial order which issued on October 29, 2010, found that the disputed bill for the MRI was due and payable. It awarded claimant's attorney an assessed fee of \$675. SAIF requested reconsideration, contending that the provider listed on the bill was not an MCO physician for Caremark and that therefore, the bill was not payable and attorney fees were not due. On reconsideration, the Director found that SAIF was not obligated to pay the bill and that his attorney was therefore not entitled to an attorney fee.

### CONCLUSIONS OF LAW AND OPINION

The Director found that though SAIF voluntarily paid the bill for the MRI, it was not obligated to pay for the medical services because the medical services were performed by a provider who was outside the MCO. In reaching the conclusion that an attorney fee was not due, the Director cited ORS 656.262(10), which provides that merely paying or providing compensation shall not be considered acceptance of a claim or an admission of liability. Claimant seeks an attorney fee under ORS 656.385(1), contending that his attorney was instrumental in obtaining payment of the bill prior to a decision by the Director. SAIF argues that the medical services were not due or payable and that no compensation was awarded and that consequently, no attorney fee is payable. The parties agree that SAIF paid the bill for the MRI on October 15, 2010, following claimant's request for administrative review. (Exs. 5; 7).

Pursuant to OAR 436-001-0225(2), the administrative law judge may modify the director's order only if it is not supported by substantial evidence in the record or if it reflects an error of law. In addition, new medical evidence or issues may not be admitted or considered.

SAIF argues that ORS 656.248 applies to this matter and that therefore, ORS 656.385 is inapplicable. However, I conclude that ORS 656.260 is the applicable statute because this matter involved a dispute with an MCO over medical services.

As noted above, claimant seeks an attorney fee under ORS 656.385(1). The relevant portions of ORS 656.385(1) provide that, in all cases involving a dispute over compensation benefits pursuant to ORS 656.260 where a claimant finally prevails after a proceeding has commenced, the Director or Administrative Law Judge (ALJ) shall require the insurer to pay a reasonable attorney fee to claimant's attorney. In such cases where an attorney is instrumental in obtaining a settlement of the dispute prior to a decision by the Director or ALJ, the Director or ALJ shall require the insurer to pay a reasonable attorney fee to the claimant's attorney.

The first sentence of ORS 656.385(1) refers to disputes over "compensation benefits." Although the second sentence of the statute which deals with settlements of disputes does not reiterate this phrase, the text and context of the statute suggests that it pertains to disputes over "compensation benefits." In this case, the disputed medical services were voluntarily paid for by SAIF but were apparently performed by a medical provider who was outside the MCO and were therefore not due and payable and did not constitute "compensation benefits." Based on this, ORS 656.385(1) would not provide for an attorney fee. Consequently, the Director's order is supported by substantial evidence and should be affirmed.

### ORDER

The November 15, 2010 Administrative Order on Reconsideration is affirmed.