

In the Matter of the Medical Services Disputes of
Rodriguez, Cirilo, Claimant

Contested Case No: H01-032 & H01-044

FINAL ORDER

January 24, 2002

CIRILO RODRIGUEZ, Petitioner
PAULA INSURANCE CO., Respondent

Before John L. Shilts, Workers' Compensation Division Administrator

This matter involves two consolidated requests for contested case hearing. In case No. H01-032, claimant appealed a February 16, 2001 administrative order of the Medical Review Unit (MRU), (MRU order no. MS 01-140), which found the insurer not liable for medical services provided by Meridian Imaging Center (Meridian) on October 7 and November 2, 1999. In case No. H01-044, the insurer appealed an April 3, 2001 MRU administrative order (MRU order no. MS 01-281), which found it liable for a July 27, 2000 lumbar discography as a compensable diagnostic medical service. On July 13, 2001, Hearing Officer Catherine P. Coburn conducted a telephone hearing regarding the consolidated cases. Claimant Cirilo Rodriguez was represented by his attorney, James Guinn. Attorney David Levine represented Paula Insurance Company (insurer). The Department of Consumer and Business Services, Workers' Compensation Division (WCD) waived appearance. No witnesses testified.

On August 10, 2001, Hearing Officer Coburn issued a Proposed and Final Order of Dismissal on the ground that, at the time of hearing, claimant withdrew his request for hearing regarding MRU administrative order no. MS 01-140. Accordingly, the hearing officer dismissed the case with prejudice. However, the order incorrectly cited contested case number H01-044. There is no indication that either party challenged the dismissal order. The August 10, 2001 Proposed and Final Order of Dismissal is therefore affirmed, with the following correction: contested case number H01-032 is dismissed with prejudice.

On August 9, 2001, Hearing Officer Coburn issued a Proposed and Final Contested Case Hearing Order that affirmed MRU administrative order (no. MS 01-281), which found that the July 27, 2000 lumbar discography was a compensable medical service. The insurer filed exceptions to this order.¹ Claimant filed a response to the insurer's exceptions, to which the insurer replied. The WCD did not respond to the exceptions.

Before the Director, the issue is diagnostic medical services. The entire record, consisting of a tape recording of the hearing, all evidence received, and all documents filed, has been considered.

FINDINGS OF FACT

Claimant sustained a compensable low back injury on October 15, 1996, which the

¹ The order, however, incorrectly listed contested case number H01-032. That portion of the case caption is corrected to list Contested Case No.: H01-044.

insurer accepted for a right L4-S1 disc herniation. (Exs. 3, 9, 15). Claimant experienced low back pain radiating into the right leg. (Ex. 2). Dr. James Calhoun, neurosurgeon, performed a L4-5 microdiscectomy in May 1997. (Exs. 11, 32). The surgery resolved the leg pain, but the low back pain persisted. (Ex. 32). On December 1, 1997, Dr. Calhoun declared claimant medically stationary, but with expected waxing and waning of low back pain. (Exs. 19, 26). A January 14, 1998 Notice of Closure awarded 17 percent unscheduled permanent disability for the low back. (Ex. 22). Claimant continued to have intermittent back pain. He also sought treatment for a cervical and upper extremity condition.

In June 1998, claimant began treating with Dr. Eric Long for complaints of right neck/arm pain and of low back/right leg pain. Dr. Long diagnosed persisting low back pain, which was probably discogenic; neck and right upper extremity pain; and suspected right C5 radiculopathy. Dr. Long reported that claimant's symptoms had materially worsened. He scheduled a lumbar MRI. (Exs. 31, 32). The MRI revealed transitional lumbosacral vertebra, and a mild annulus bulge or recurrent disc herniation at L5-S1. (Ex. 33).

Claimant filed a claim for aggravation of his accepted back condition and a claim for his cervical condition. (Exs. 36, 43). These claims were resolved pursuant to a March 17, 2000 Disputed Claim Settlement (DCS). (Ex. 44). The parties subsequently entered into a Claims Disposition Agreement (CDA) of the accepted back claim, which the Board approved on March 28, 2000. (Exs. 44, 45).

In the interim, on August 31, 1999, Dr. Long referred claimant to Dr. Roy Slack for initial spinal diagnostic procedures. (Ex. 32-7). Dr. Slack saw claimant on October 7, 1999 and provided C5-6 selective epidural steroid injection. The C5-6 disc segment appeared to be one source of his pain. (Exs. 32-9, 37). Dr. Slack performed bilateral L4-5 selective epidural injections on November 2, 1999, which indicated that the L4-5 disc appeared to be the primary pain generator of his low back and lower extremity symptoms. Prior to the injections, claimant rated his back pain as 9/10. (Ex. 40).

Dr. Slack performed a provocative lumbar discography at L3-4, L4-5, L5-S1, and S1-S2 on July 27, 2000. Dr. Slack was uncertain if the bottom disc was a transitional S1-S2 disc or the L5-S1 disc. Claimant rated his back and leg pain as 10/10. Claimant had abnormal, painful discs at L3-S1; the S1-S2 was a transitional disc. (Ex. 46).

The insurer refused payment of the discography, asserting that: MRU lacked jurisdiction given the DCS and CDA; there had been no request for authorization of the discography; and the discography was not reasonable and necessary treatment. In its exceptions, the insurer's argument is limited to whether Dr. Long, the attending physician, authorized the discography.

CONCLUSIONS OF LAW AND OPINION

Standard of Review

This case involves a dispute as to whether medical services to be provided after a worker is medically stationary are compensable within the meaning of ORS 656.245(1)(c). The issue is

whether the July 2000 lumbar discography is a compensable diagnostic medical service. That issue involves the application of ORS 656.245(1)(c), which does not specify any standard of review, and therefore my review is *de novo*. *Archie M. Ulbrich*, 2 WCSR 152, 153 (1997).

Authorization of the Discography

MRU found that claimant experienced increased symptoms, the same symptoms he experienced since the injury, and that a previous MRI had suggested discogenic pain. MRU determined that the discography was provided to further investigate claimant's accepted condition and, thus, was reasonable and necessary diagnostic services. Lastly, MRU determined that diagnostic services rendered pursuant to ORS 656.245(H) do not require preauthorization. (Ex. 58.) The hearing officer also found that the disputed discography did not require preauthorization because it did not constitute palliative care, as defined in ORS 656.005(20). She, therefore, concluded that ORS 656.245(1)(c)(J)'s preauthorization requirement did not apply.

The insurer contends that the discography performed by Dr. Slack is not reimbursable because it was not authorized by claimant's attending physician. Specifically, the insurer argues that there was no valid referral from the attending physician, Dr. Long, to Dr. Slack to perform the discography and that the insurer did not authorize the discogram. I disagree.

For simultaneous or concurrent treatment, written request by the attending physician, with a copy of the request sent to the insurer, is required. OAR 436-010-0220(2). For palliative treatment, insurer approval is required. ORS 656.245(1)(c)(J); OAR 436-010-0290. Here, Dr. Slack was not providing concurrent curative or palliative treatment. Rather, the inquiry is whether the attending physician made a referral to Dr. Slack for a discogram. Thus, in this context, a written request, although preferable, is not required. As discussed below, I find that Dr. Long did refer claimant to Dr. Slack for a diagnostic discogram.

Dr. Long, physiatrist, is claimant's attending physician. Dr. Long reported on August 31, 1999 that he thought claimant was a candidate for lumbar diagnosis. He referred claimant to Dr. Slack for "initial spinal diagnostic procedures ... to clarify why [claimant] has low back and right lower extremity pain ***" and to determine whether his worsened condition was a consequence of the 1996 work injury. This report was copied to the insurer. (Ex. 32 pp. 6-8). Dr. Slack's November 2, 1999 procedure note stated that claimant was "referred by Eric Long, MD, Physiatrist, for selective injections." Dr. Slack performed bilateral L4-5 epidural steroid injections to address claimant's low back and right leg pain. The L4-5 disc appeared to be the primary pain generator. (Exs. 39, 40). Claimant reported complete relief of his back and right leg pain. Claimant's response to the injections indicated that irritation of the right L4 and L5 nerve roots was inflammatory rather than mechanical. (Ex. 41).

There is no record of treatment between the November 1999 epidural injections and the July 2000 discography. In his July 27, 2000 procedure note, Dr. Slack stated the claimant was "referred by Eric Long, MD, for provocative lumbar diskography." (Ex. 46). Given that the November 1999 referral was for a specific procedure (epidural steroid injections) and that the July 2000 referral also indicated a specific procedure (lumbar discography), these notations are

sufficient to establish that Dr. Long referred claimant to Dr. Slack for the specified procedures, including the discogram.² Dr. Long's referrals for diagnostic procedures did not require preauthorization by the insurer.

The insurer does not otherwise dispute the compensability of the discogram. Accordingly, the hearing officer's order finding the discogram compensable diagnostic medical services is affirmed.

IT IS HEREBY ORDERED that the August 9, 2001 Proposed and Final Contested Case Hearing Order, as corrected, is affirmed.

DATED this 24th day of January, 2002.

**MARY NEIDIG, DIRECTOR
DEPARTMENT OF CONSUMER
AND BUSINESS SERVICES**

By: _____
John Shilts, Administrator
Workers' Compensation Division