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In the Matter of the Compensation of  
**PAUL SPRADLIN, Claimant**  
WCB Case Nos. 10-04356, 10-03656  
ORDER ON REVIEW  
Moore & Jensen, Claimant Attorneys  
Julie Masters, SAIF Legal, Defense Attorneys

Reviewing Panel: Members Lowell and Biehl.

Claimant requests review of Administrative Law Judge (ALJ) Wren's order that upheld the SAIF Corporation's denial of claimant's medical services claim for right shoulder, cervical and lumbar, and lower extremity conditions. On review, the issue is medical services. We reverse.

FINDINGS OF FACT

Claimant sustained a compensable cervical and lumbar injury on March 9, 2009. On March 9, 2010, the parties stipulated that SAIF accepted cervical, lumbar and left wrist strains, and that no conditions were denied. (*See Exs. 5, 6*).

SAIF enrolled claimant in a managed care organization (MCO). Claimant sought treatment from Dr. Carrell, who requested authorization for right shoulder, bilateral knee, and bilateral foot imaging. The MCO denied the request. Claimant requested a hearing.

CONCLUSIONS OF LAW AND OPINION

Reasoning that the medical services were not directed to an accepted condition, the ALJ found that the claim was not compensable. The ALJ relied on *Cameron C. Horner*, 62 Van Natta, 2904, 2905 (2010), where we held that, for the purposes of establishing the compensability of medical services "for" an "ordinary" condition under the first sentence of ORS 656.245(1)(a), the treatment must be necessitated in material part by the "compensable injury," which is the condition previously accepted. 62 Van Natta at 2095 (citing *SAIF v. Martinez*, 219 Or App 182, 190-91 (2008)).

Claimant argues that *Horner* does not apply to diagnostic medical services claims, reasoning that the disputed services are designed to determine the cause or extent of the accepted condition. Even assuming that the *Horner* rationale applies, we find the claimed medical services compensable. We reason as follows.

ORS 656.245(1)(a) provides:

“For every compensable injury, the insurer or the self-insured employer shall cause to be provided medical services for conditions caused in material part by the injury for such period as the nature of the injury or the process of the recovery requires, subject to the limitations in ORS 656.225, including such medical services as may be required after a determination of permanent disability. In addition, for consequential and combined conditions described in ORS 656.005(7), the insurer or the self-insured employer shall cause to be provided only those medical services directed to medical conditions caused in major part by the injury.”

There is no contention that the proposed medical services are directed to a consequential or combined condition. Accordingly, because the claimed medical services are “for” an “ordinary” condition, the first sentence of ORS 656.245(1)(a) governs the compensability of medical services. *SAIF v. Sprague*, 346 Or 661, 672 (2009). For the purposes of establishing the compensability of medical services “for” an “ordinary” condition under the first sentence of ORS 656.245(1)(a), the treatment must be necessitated in material part by the “compensable injury,” which is the condition previously accepted. *Horner*, 62 Van Natta at 2095.

If diagnostic services are necessary to determine the cause or extent of a compensable injury, those services are compensable whether or not the condition that is discovered as a result of them is compensable. *Counts v. Int’l Paper Co.*, 146 Or App 768, 771 (1997); *see also Roseburg Forest Products v. Langley*, 156 Or App 454, 463 (1998) (tests were for determining extent of compensable injury and not for establishing the existence of a new or consequential condition).

Here, SAIF accepted cervical, lumbar, and left wrist strain injuries. Dr. Carrell, claimant’s treating physician, provided the medical evidence addressing the proposed diagnostic imaging services (an MRI of the neck and shoulder area, an MRI or CT scan of the knees, and bilateral foot x-rays). Dr. Carrell initially suspected a right shoulder rotator cuff tear; bilateral knee osteoarthritis and possible meniscal damage; and plantar fascial nodules. (Ex. 8-2). He also agreed that it was medically probable that the requested CT scan is a reasonable diagnostic tool to evaluate the extent and nature of the industrial injuries, adding: “[to] See if Spinal Cord injury.” (Ex. 15).

Claimant's counsel wrote to Dr. Carrell, asking:

“Given the fact that SAIF Corporation has accepted [claimant's] industrial injury which involved a slip and fall in February 2009 \* \* \*is the proposed CT scan [] a reasonable diagnostic tool to evaluate the extent and nature of the industrial injuries and is it likely that [the injury is] at least a material cause of the need to have the CT scan that you requested?” (Ex. 14)

Dr. Carrell responded, acknowledging the accepted neck injury. He sought authorization for imaging studies to determine the extent of the “neck injury,” referring to claimant's shoulder, low back, knee, and foot symptoms. (Ex. 16). Thus, Dr. Carrell's opinion supports a conclusion that the accepted cervical strain was at least a material contributing cause of the proposed studies.<sup>1</sup> Moreover, Dr. Carrell's undisputed opinion establishes that the requested imaging studies were also necessary to determine the extent of claimant's compensable neck injury; *i.e.*, his accepted cervical strain. Consequently, we conclude that the disputed diagnostic medical service claim is compensable. *See Marcelo Hernandez-Rolon*, 63 Van Natta 120, *recons*, 63 Van Natta 853 (2011) (medical evidence established that diagnostic EMG studies and lumbar MRI were necessary to determine whether the claimant's continued symptoms were related to and to determine the extent of the accepted gluteal strain); *Rafael R. Soto-Regalado*, 63 Van Natta 720 (2011) (cervical MRI was proposed, at least in part, for the purpose of determining whether the claimant's accepted thoracic strain and right pectoralis muscle strain were causing his symptoms); *John D. Swartz*, 62 Van Natta 570, 575 (2010) (proposed lumbar facet injections were necessary to determine whether the claimant's current lumbar symptoms were caused by the accepted lumbar contusion and to determine the extent of the compensable injury).

Claimant's attorney is entitled to an assessed fee for services at hearing and on review. ORS 656.386(1). After considering the factors set forth in OAR 438-015-0010(4) and applying them to this case, we find that a reasonable fee for claimant's attorney's services at hearing and on review is \$8,000, payable by SAIF. In reaching this conclusion, we have particularly considered the time devoted to the case (as represented by claimant's counsel's attorney fee, SAIF's

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<sup>1</sup> We recognize that Dr. Carrell considered the possibility that causes other than the accepted injury *also* contributed to claimant's symptoms.

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objection, the hearing record, and claimant's appellate briefs), the complexity of the issue, the value of the interest involved, and the risk that counsel may go uncompensated.<sup>2</sup>

Finally, claimant is awarded reasonable expenses and costs for records, expert opinions, and witness fees, if any, incurred in finally prevailing over the denial, to be paid by SAIF. *See* ORS 656.386(2); OAR 438-015-0019; *Nina Schmidt*, 60 Van Natta 169 (2008); *Barbara Lee*, 60 Van Natta 1, *recons*, 60 Van Natta 139 (2008). The procedure for recovering this award, if any, is prescribed in OAR 438-015-0019(3).

### ORDER

The ALJ's order dated November 30, 2010 is reversed. The SAIF Corporation's denial is set aside and the claim is remanded to it for processing according to law. For services at hearing and on review, claimant's attorney is awarded an assessed fee of \$8,000, to be paid by SAIF. Claimant is awarded reasonable expenses and costs for records, expert opinions, and witness fees, if any, incurred in finally prevailing over the denial, to be paid by SAIF.

Entered at Salem, Oregon on July 13, 2011

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<sup>2</sup> Claimant moves to strike SAIF's objection to his counsel's attorney fee request. Because SAIF's objection was filed within 14 days of claimant's counsel's request, it was timely filed. OAR 438-015-0029(3). Consequently, the motion to strike is denied.