

In the ORS 656.245 Medical Services Dispute of

**MARK A. JUDD, Claimant**

Contested Case No: H05-049

**PROPOSED AND FINAL ORDER**

MAY 26, 2005

SAIF CORP. Petitioner

MARK A. JUDD, Respondent

Before Catherine P. Coburn, Administrative Law Judge, Administrative Hearings

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**HISTORY OF THE CASE**

Insurer appeals the Administrative Order issued on February 9, 2005 by the Medical Review Unit (MRU) of the Workers' Compensation Division (WCD), Department of Consumer and Business Services (department or director). On March 30, 2005, the department referred the matter to the Office of Administrative Hearings (OAH). On May 6, 2005, Administrative Law Judge Catherine P. Coburn conducted a hearing in Beaverton, Oregon. Attorney David Runner represented petitioner SAIF Corporation (insurer). Pursuant to OAR 137-003-0050(1), claimant's guardian and conservator, Darlene K. Judd, represented respondent Mark A. Judd (claimant) without benefit of counsel. Claims Examiner Mindy Johnson testified on insurer's behalf and Ms. Judd testified on claimant's behalf. The record closed on the date of hearing.

**ISSUE**

Whether insurer is liable for out-of pocket expenses claimant incurred from May 7, 2003 through June 23, 2004.<sup>1</sup>

**EVIDENTIARY RULINGS**

WCD Exhibits 1 through 17 were admitted into the record without objection.

**FINDINGS OF FACT**

(1) On March 13, 1987, claimant was seriously injured in a logging accident and was later declared permanently, totally disabled. (Ex. 1; testimony of Ms. Judd.)

(2) On June 13, 2003, claimant traveled to a medical appointment and purchased groceries, including a chicken dinner. (Ex. 9.) Insurer reimbursed claimant \$6.99 for this expense. (Ex. 10; testimony of Johnson.) On June 23, 2004, claimant traveled to a medical appointment and purchased groceries, including a chicken dinner. (Ex. 7.) Insurer reimbursed claimant \$6.49 for this expense. (Ex. 10; testimony of Johnson.)

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<sup>1</sup> The out-of-pocket expenses in dispute are purported meals purchased during trips to medical appointments. Insurer does not dispute that claimant is entitled to reimbursement for meals for two people since his wife provides transportation to medical appointments. Additionally, insurer does not dispute reimbursement for meals claimant obtained on June 13, 2003. However, insurer disputes reimbursement for expenses claimed for the following dates: May 7, 2003, June 30, 2003, August 4, 2003, November 14, 2003, November 24, 2003, June 23, 2004. (Ex. 14-3.)

(3) From May 7, 2003 through June 23, 2004, claimant traveled to several medical appointments. Claimant submitted grocery receipts reflecting general household expenses but not listing specific meals consumed during trips to medical appointments.<sup>2</sup> (Exs. 7-2, 7-3, 7-4, 7-6, 9-2.) Insurer declined to reimburse claimant for these grocery expenses. (Ex. 10; testimony of Johnson.)

### CONCLUSION OF LAW

Insurer is not liable for disputed out-of pocket expenses claimant incurred from May 7, 2003 through June 23, 2004.

### OPINION

The director has jurisdiction over medical service disputes. ORS 656.704(3) and ORS 656.245(6). I review for substantial evidence or error of law. OAR 436-001-0225(1). The burden of proving a fact or position falls upon the proponent. ORS 183.450(2). As petitioner, insurer bears the burden of proving by a preponderance of evidence that the administrative order is incorrect. *Cook v. Employment Div.*, 47 Or 437 (1982) (In the absence of legislation adopting a different standard, the standard of proof in an administrative hearing is preponderance of evidence). Proof by a preponderance of the evidence means that the fact finder is persuaded that the facts asserted are more likely true than false. *Riley Hill General Contractors v. Tandy Corp.*, 303 Or 390 (1989).

MRU determined that insurer is liable to reimburse claimant for the disputed out-of-pocket expenses for meals. MRU interpreted OAR 436-009-0025(1), OAR 436-010-0270(7) and OAR 436-009-0025(2) to mean that, in the absence of comprehensible documentation, insurer is liable to reimburse injured workers for claimed expenses at the rate of reimbursement prescribed for State of Oregon employees in Bulletin 112. In the alternative, MRU apparently found that grocery receipts listing ordinary household expenses and identifying no specific meal constitute “reasonable documentation” of “actual expenses.”

Insurer contends that the administrative scheme requires “reasonable documentation” of an injured worker’s “actual” expenses in order to establish reimbursability. Insurer further contends that grocery receipts listing ordinary household expenses do not constitute “reasonable documentation” of meals “actually” consumed during trips to medical appointments. In contrast, claimant contends that he should have the option of purchasing a either a separate meal or general groceries and making a meal to be consumed during a trip to a medical appointment. Claimant further contends that he should obtain payment for meals as a per diem cash allowance to be spent on meals as he chooses. Having reviewed the record, I agree with insurer’s position.

Pursuant to ORS 656.245(1)(a), an insurer is obligated to provide medical services that are materially related to a compensable condition for so long as the nature of the injury or the

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<sup>2</sup> For example, the grocery receipt from Ray’s Market on November 14, 2004 lists one package of plastic forks, one package of paper plates, one pound unidentified item reduced for quick sale, one celery, 15 pounds of juice carrots twice, and one avocado. (Ex. 17-2.)

process of recovery requires. This obligation continues over the worker's lifetime. ORS 656.245(1)(b) and ORS 656.245(1)(c)(A). Pursuant to ORS 656.245(1)(e),<sup>3</sup> an insurer is obligated to reimburse injured workers for out-of-pocket expenses, including meals incurred during trips to medical appointments.

OAR 436-009-0025 is titled "Reimbursement of Related Services Costs" and provides in pertinent part:

(1) The insurer shall notify the worker at the time of claim acceptance that actual and reasonable costs for travel, prescriptions and other claim-related services paid by the worker will be reimbursed by the insurer upon request. The insurer may require **reasonable documentation** to support the request. Insurers shall date stamp requests for reimbursement upon receipt and shall reimburse the costs within 30 days of receiving the worker's written request and supporting documentation, if the request clearly shows the costs are related to the accepted compensable injury or disease. If the insurer cannot determine if the costs are related to the accepted compensable injury or disease, the insurer shall inform the worker what information is needed before the request for reimbursement can be processed. On deferred claims, requests which are at least 30 days old at the time of claim acceptance become due immediately upon claim acceptance and shall be paid within 14 days. If there is a claim for aggravation or a new medical condition on an accepted claim, reimbursement of related services is not due and payable until the aggravation or new medical condition is accepted. If the claim is denied, requests for reimbursement shall be returned to the worker within 14 days.

(2) Reimbursement of the costs of meals, lodging, public transportation and use of a private vehicle reimbursed at the rate of reimbursement for State of Oregon classified employees, as published in Bulletin 112, complies with this section. Reimbursement may exceed these rates where special transportation or lodging is needed.

(Emphasis added.)

Additionally, OAR 436-010-0270 provides in pertinent part:

(7) Insurers must reimburse workers for **actual** and reasonable **costs** for travel, prescriptions, and other claim related services paid

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<sup>3</sup> ORS 656.245(1)(e) provides:

(e) Except for services provided under a managed care contract, out-of-pocket expense reimbursement to receive care from the attending physician shall not exceed the amount required to seek care from an appropriate attending physician of the same specialty who is in a medical community geographically closer to the worker's home. For the purposes of this paragraph, all physicians within a metropolitan area are considered to be part of the same medical community.

by a worker in accordance with ORS 656.245(1)(e), 656.325, and 656.327.

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(d) When the director decides travel reimbursement disputes at administrative review or contested case level, the determination will be based on principles of reasonableness and fairness within the context of the specific case circumstances as well as the spirit and intent of the law.

(Emphasis added.)

“It is “\*\*\*a fundamental principle of administrative law that when an agency has authority to adopt rules and does so, it must follow them.” *Aetna Casualty & Surety Company v. Sue Blanton*, 139 Or App 283 (1996). Here, MRU ordered insurer to reimburse claimant for meals at the rate specified for State of Oregon employees without reference to any documentation of expenses claimant actually incurred. MRU apparently determined that the exact amount of claimant’s “actual” expenses was indecipherable from the grocery receipts he submitted, and in lieu of specific amounts, applied the rate of reimbursement specified in Bulletin 112. However, MRU erred by disregarding the terms “documentation” of “actual” expenses as contained in OAR 436-009-0025 and OAR 436-010-0270(7).

In interpreting the meaning of a rule, I apply the same method of analysis employed in determining the meaning of a statute, that is, to determine the meaning of the words used, giving effect to the intent of the enacting body, which in this case is the department. *Abu-Adas v. Employment Dept.*, 325 Or 480, 485 (1997); *Larry Hemenway*, 5 WCSR 33 (2000). In *Springfield Education Ass’n v. School District*, 290 Or 217 (1980), the court identified three classes of statutory terms, each conveying a different degree of deference. Here, the parties dispute the meaning of the term “actual” as contained in OAR 436-010-0270(7). Within the context of “actual and reasonable cost”, MRU ignored the first prong of the test. Claimant contends that the grocery receipts are adequate to establish reimbursability and insurer disagrees. I classify the term “actual” as an inexact term. Consequently, according to *Springfield*, I apply the analysis set forth *PGE v. Bureau of Labor and Industries*, 317 Or 606, 610-611 (1993). In order to discern the intent of the enacting body, which is the department, the first level of analysis is to examine the text and context of the rule. If the intent is unclear, I consider legislative history, and if still unclear, I apply the general maxims of statutory construction. *Id.*

The term “actual” is defined as “existing in reality or in act; not merely possible, but real.” *Webster’s New World Dictionary*, 1968 p. 15. Here, grocery receipts listing ordinary household expenses do not reflect claimant’s “actual” expenses incurred for meals during trips to medical appointments. Consequently, the disputed out-of-pocket expenses are not reimbursable.

Next, the parties dispute the meaning of the term “reasonable documentation” contained in OAR 436-009-0025(1). I classify the term “reasonable documentation” as an inexact term. Consequently, according to *Springfield*, I apply the analysis set forth *PGE* at 610-611. Within the context of OAR 436-010-0270 which requires reimbursement of “actual” expenses, I find that the grocery receipts claimant submitted do not constitute “reasonable documentation”

because they fail to identify specific amounts that claimant spent on meals during trips to medical appointments.

In conclusion, I find that MRU erred by ignoring the terms “actual” contained in OAR 436-010-0270(7) and “reasonable documentation” contained in OAR 436-009-0025(1). Furthermore, I find that the grocery receipts claimant submitted do not constitute “reasonable documentation” of “actual” costs. Therefore, the insurer is not liable for the disputed costs. Finally, inasmuch as the administrative order reflects errors of law, I reverse.

#### ORDER

IT IS HEREBY ORDERED that:

The Administrative Order dated February 9, 2005 is reversed.