

In the ORS 656.260 Managed Care Dispute of

DEBORAH J. STAMM, Claimant

Contested Case No: H04-175

DEFAULT ORDER

MARCH 7, 2005

DEBORAH J. STAMM, Petitioner

SAIF CORPORATION, Respondent

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

HISTORY OF THE CASE

Claimant appeals the Administrative Order issued on October 28, 2004 by the Medical Review Unit of the Workers' Compensation Division (WCD), Department of Consumer and Business Services (department or director). On December 10, 2004, the department referred the matter to the Office of Administrative Hearings (OAH). On March 1, 2005, Administrative Law Judge Catherine P. Coburn conducted a hearing in Beaverton, Oregon. Petitioner Deborah J. Stamm (claimant), *pro se*, failed to appear. Respondent, SAIF Corporation (insurer) was represented by attorney David L. Runner. No witnesses testified and the record closed on the date of hearing.

Pursuant to OAR 137-003-0670(3) and OAR 436-001-0201, if a party was duly notified of the time of a hearing and failed to appear for reasons not beyond her reasonable control, the administrative law judge may issue an adverse order upon a *prima facie* case on the record. Here, claimant was duly notified of the time of hearing, failed to appear, and has not contacted OAH to explain any circumstances that would justify her failure to appear. Therefore, under the circumstances, I find that a default order is appropriate.

ISSUE

Whether claimant's request for administrative review should be dismissed for untimely filing.

EVIDENTIARY RULINGS

WCD Exhibits 1 through 5 were admitted without objection.

FINDINGS OF FACT

(1) On August 2, 2004, MRU issued an administrative order approving insurer's denial of certain palliative medical services. (Ex. 1.) The department mailed the order to claimant's address in Troutdale and on September 13, 2004, it was rerouted to claimant's new mailing address in Gresham, Oregon. (Ex. 3-3.) Claimant's letter requesting a hearing is dated October 18, 2004 and was mailed to the department on October 25, 2004. (Exs. 3-1 and 3-4.)

(2) On October 28, 2004, MRU issued a second administrative order denying the request for reconsideration for untimely filing. (Ex. 4.) On November 5, 2004, claimant requested a hearing. (Ex. 5-3.)

CONCLUSIONS OF LAW

Claimant's request for administrative review should be dismissed for untimely filing.

OPINION

The director exercises jurisdiction over MCO disputes. ORS 656.260(6). I review for substantial evidence and error of law. ORS 656.260(16). The burden of proving a fact or position rests with the proponent. ORS 183.450(2); *Harris v. SAIF*, 292 Or 683 (1982). As petitioner, claimant bears the burden of proving by a preponderance of evidence that the administrative order is incorrect. *Cook v. Employment Div.*, 47 Or App 437 (1980) (In the absence of contrary legislation, the standard of proof in administrative hearings is preponderance of evidence). Preponderance of evidence means that the factfinder is persuaded that the facts asserted are more likely true than false. *Riley Hill General Contractors v. Tandy Corp.*, 303 Or 390 (1989).

OAR 436-010-0008 provides in pertinent part:

(14) Contested cases before the director: Any party that disagrees with an action or order pursuant to this rule, may request a contested case hearing before the director as follows:

(b) The appeal must be mailed within 30 days of the mailing date of the order or notice of action being appealed.

Here, MRU issued an order dated August 2, 2004 which became final by operation of law on September 2, 2004 and claimant requested administrative review on October 25, 2004, several weeks late. Granting the benefit of doubt to the claimant, the request for administrative review was still untimely. The initial administrative order was rerouted to claimant's new address on September 13, 2004, and the administrative order became final by operation of law at least by October 13, 2004. Thus, in either case, the October 25, 2004 request for review was untimely. Therefore, MRU lacks jurisdiction. Accordingly, I affirm.

ORDER

IT IS HEREBY ORDERED that:

The Administrative Order dated October 28, 2004 is affirmed.