
In the ORS 656.245 Medical Services Dispute of

Craig L. Grasty, Claimant

Contested Case No: 06-089H

PROPOSED & FINAL ORDER

December 11, 2006

CRAIG L. GRASTY, Petitioner

LIBERTY NW INSURANCE CORP., Respondent

Before Emerson G. Fisher, Administrative Law Judge

Claimant appeals the Director's Administrative Order issued on May 1, 2006 by the Medical Review Unit (MRU) of the Workers Compensation Division (WCD), Department of Consumer and Business Services (director or department).

In lieu of proceeding to hearing on August 16, 2006, the parties submitted this matter to the undersigned Administrative Law Judge for a decision based on the exhibits and their written arguments. Claimant is represented in these proceedings by attorney Robert Carlson. The employer, Clear Pine Moldings, and its insurer, Liberty Northwest Insurance Corporation, are represented by attorney Kathryn Olney.

The documentary evidence consists of Exhibits 1 through 36.

The record closed on December 6, 2006.

ISSUE

Whether the insurer is liable for medical services provided to claimant by Dr. Carpentier between February 17, 2004 and November 7, 2005.

CONCLUSIONS OF LAW AND OPINION

MRU's Order of May 1, 2006 may be modified only if it is not supported by substantial evidence in the record or if it reflects an error of law. OAR 436-0001-0225(2). Insofar as review of factual findings is concerned, if a finding by MRU is reasonable, keeping in mind the evidence against the finding as well as the evidence supporting it, there is substantial evidence. *See Liberty Northwest Insurance Corporation v. Kraft*, 205 Or App 59, 62 (2006); *Armstrong v. Asten-Hill Co.*, 90 Or App 200, 206 (1988).

The pertinent facts, as determined by MRU, are as follows:

- (1) Claimant was compensably injured on October 23, 1987; the insurer accepted a lumbar strain and right foraminal stenosis at L5-S1;

- (2) The claim closed on July 31, 2002, following a June 18, 2002 declaration by attending physician Fitzpatrick that claimant's condition was medically stationary;
- (3) On February 17, 2004, the insurer issued a current condition denial, and declined to accept an L4-5 disc protrusion/bulge;
- (4) A January 18, 2005 Opinion and Order set aside the current condition denial;
- (5) A January 18, 2005 Own Motion Order set aside the denial of the L4-5 disc condition;
- (6) On August 10, 2005, the insurer accepted lumbar strain, L4-5 disc herniation, and L5-S1 herniation;
- (7) The Own Motion claim was closed on November 7, 2005;
- (8) Dr. Carpentier provided claimant with chiropractic services from February 17, 2004 through November 7, 2005, but prepared no treatment plans for any of those services;
- (9) When the insurer declined to pay for Dr. Carpentier's services, claimant sought administrative review.

Relying on OAR 436-010-0230(4)(a) and (c), MRU concluded that Dr. Carpentier's failure to prepare treatment plans for the disputed services rendered the disputed services non-reimbursable.¹ (Ex. 34-3).

¹ OAR 436-010-0230(4) provides, in pertinent part:

“(a) Except as otherwise provided by an MCO, ancillary services including but not limited to physical therapy or occupational therapy, by a medical service provider other than the attending physician, authorized nurse practitioner, or specialist physician will not be reimbursed unless prescribed by the attending physician, authorized nurse practitioner, or specialist physician and carried out under a treatment plan prepared prior to the commencement of treatment and sent by the ancillary medical service provider to the attending physician, authorized nurse practitioner, or specialist physician, and the insurer within seven days of beginning treatment. The treatment plan shall include objectives, modalities, frequency of treatment, and duration. The treatment plan may be recorded in any legible format including, but not limited to, signed chart notes. Treatment plans required under this subsection do not apply to services provided under ORS 656.245(2)(b)(A);

”(c) Medical services prescribed by an attending physician, specialist physician, or authorized nurse practitioner and provided by a chiropractor, naturopath, acupuncturist, or podiatrist will be

Claimant argues that because the disputed services were rendered while the claim was in open status, Dr. Carpentier was not required to prepare a treatment plan for the services she rendered between February 17, 2004 through November 7, 2005. As explained below, I disagree.

First, there is nothing in the language of OAR 436-010-0230(4)(a) and (c) that limits their application to palliative care. Second, the Court has already addressed this issue for an earlier version of the Administrative Rules. *See Aetna Casualty & Surety Company v. Blanton*, 139 Or App 283, 286-87 (1996). *Blanton* is controlling.

Accordingly, MRU's Order of May 1, 2006 must be affirmed.

ORDER

MRU's Order of May 1, 2006 is affirmed.

subject to the treatment plan requirements set forth in subsection (4)(a) and (b) of this rule.”