

In the ORS 656.245 Medical Services Dispute of

Reese Blacknall, Jr., Claimant

Contested Case No: 07-072H

PROPOSED & FINAL ORDER

November 13, 2007

REESE BLACKNALL, JR., Petitioner

TRANSPORTATION INSURANCE CO., Respondent

Before Robert A. Davis, Administrative Law Judge

A hearing date was scheduled in this matter, but prior to hearing, the parties, through counsel, advised the undersigned that the matter could be submitted on the documentary record with written closing argument. Claimant has been represented by his attorney, Jacqueline M. Jacobson. The insurer, Transportation Insurance Company, and the processing agent, Cambridge Integrated Services Group, Inc., have been represented by their attorney, Ronald C. Holloway. The record closed October 11, 2007, upon receipt by the Hearings Division of the final written argument.

EXHIBITS

The following exhibits are admitted into evidence: Exhibits 1 through 24 as received from the Department of Consumer and Business Services. The exhibits are admitted without objection. See Fister v. South Hills Health Care, 149 Or App 214 (1997).

ISSUES

The issue presented to the Director concerned whether the insurer is liable for payment of certain interim medical benefits.

FINDINGS OF FACT

Claimant is a male who experienced a low-back condition. At times relevant to the issue in the present proceeding, he was not covered by a health benefit plan. He filed a worker's compensation claim, which was denied by the processing agent in early September 2005.

Prior to the date of the compensability denial, claimant incurred various charges for medical services provided to him in association with the low-back condition.

On January 31, 2007, claimant's attorney wrote to the processing agent for the insurer and included information concerning unpaid medical bills from five providers. Claimant's attorney asserted that the bills were due and payable pursuant to ORS 656.247 under provisions as to interim medical benefits.

Claimant, through counsel, sought resolution of the dispute over payment of the medical billings and presented the matter to the Workers' Compensation Division of the Department of Consumer & Business Services. The insurer took the position that some of the bills claimed for

payment had been paid and the remaining unpaid bills had not been appropriately processed through claimant's private health insurance prior to submission under the workers' compensation claim.

On May 23, 2007, a reviewer for the Medical Section of the Workers' Compensation Division, issued an order finding that the processing agent had made payment to three providers, but had not made payment to two providers. The Order found that claimant did not have coverage under a health benefit plan. The order held that under those circumstances, the workers' compensation insurer is not required to pay for interim medical benefits.

OPINION AND ORDER

ORS 656.247(1) provides in relevant part that medical services incurred by a worker in the period between the claim and acceptance or denial of the claim are payable in accordance with subsection (4) of the section. Those certain interim services that are payable are diagnostic procedures required to identify appropriate treatment or to prevent disability, medication required to alleviate pain, and services required to stabilize the claimed condition and prevent further disability.

ORS 656.247(4)(b) provides in relevant part that if a workers' compensation claim is denied and a health benefit plan provides benefits to the worker, the benefit plan is the first payer of expenses for medical services pursuant to the terms of the plan. Then, after payment by the plan, the workers' compensation insurer is to pay any balance remaining for the certain services.

OAR 436-009-0035(7) provides in relevant part that if a worker has no health benefit plan, the worker's compensation insurer is not required to pay for interim medical benefits.

Claimant argues that ORS 656.247 does not require a worker to be covered by a health benefit plan in order to receive payment for interim medical benefits, and therefore, the interim medical benefits should be covered by the workers' compensation carrier whether or not claimant has his own health insurance coverage.

I am unable to agree with claimant's interpretation of ORS 656.247. That statute specifically provides that payment of interim benefits is to be "in accordance with subsection (4)" of the section. Subsection (4)(b) provides for payment of interim benefits by the workers' compensation carrier if the claim is denied and a health benefit plan provides benefits to the worker. Claimant argues that subsection (4) merely provides clarification of the order of payment (first by the health benefit plan and then by the workers' compensation carrier).

The plain language of ORS 656.247(4)(b) makes a worker's coverage by a health benefit plan a condition precedent to any payment of interim bills by the workers' compensation carrier. The workers' compensation carrier pays only the balance remaining on bills after the health plan has made payment. I find that OAR 436-009-0035(7) is consistent with ORS 656.247(4)(b). Consequently, because claimant does not have a health benefit plan, the workers' compensation carrier is not required to pay interim medical benefits.

ORDER

IT IS HEREBY ORDERED:

The May 23, 2007 Administrative Order—MS 07-458—is affirmed.