
In the ORS 656.245 Medical Services Dispute of

Mark A. Cavazos, Claimant

Contested Case No: 06-117H

PROPOSED & FINAL ORDER

January 12, 2007

RSG FOREST PRODUCTS INC., Petitioner

MARK A. CAVAZOS, Respondent

Before John Mark Mills, Administrative Law Judge

Hearing convened before Administrative Law Judge Mills in Portland, Oregon, on October 19, 2006. Claimant was present and represented by his attorney, Floyd Shebley. The employer, RSG Forest Products, and their processing agent, Pinnacle, were represented by their attorney, Scott Monfils. Exhibits 1 through 33 were received into evidence.

The record was reopened to send the Workers' Compensation Division a written question pursuant to OAR 436-001-0170(10). A response to that question was received on November 27, 2006. The parties were allowed an additional period of approximately two weeks to respond and provide further argument. No further response was received. Accordingly, the record was closed on December 15, 2006.

ISSUES

Pinnacle contests the Administrative Order dated June 27, 2006, which ordered reimbursement for prescription, mileage and travel expenses. Claimant defends the order and seeks an assessed attorney fee. The Order was issued by the Medical Review Unit (MRU) of the Workers' Compensation Division (WCD).

FINDINGS OF FACT

I adopt the findings of fact set forth in the Administrative Order. No additional findings of fact are made. The scope of review in this case, which concerns medical treatment and associated expenses under ORS 656.245, is limited to the substantial evidence and error of law standard. While OAR 436-001-0225(2) arguably suggests that some types of new evidence can be received during such a hearing, the Court of Appeals has made it clear that substantial evidence review does not contemplate that the reviewing body will make additional or supplemental findings of fact. *Liberty Northwest Ins. Co. v. Kraft*, 205 Or App 59 (2006).

CONCLUSIONS AND OPINION

There are essentially two areas in dispute raised by the processing agent's request for hearing concerning the decision issued by MRU. The first has to do with the fact that, for a

number of reasons, claimant did not file his request for reimbursement until October of 2005, even though the expenses for which he sought reimbursement dated back to 1997. MRU directed reimbursement of those expenses because claimant had not been informed, pursuant to OAR 436-009-0025(1), of the requirements for filing reimbursement expenses, including the two-year limitation on such requests, prior to the time that he actually filed his request for reimbursements.

In response to the Administrative Law Judge's inquiry as to WCD's interpretation of the rules under those circumstances, WCD indicated that it interpreted the two-year limitation rule set forth in OAR 436-009-0025(3) to allow the insurer to disapprove of requests for reimbursements dating back more than two years, even without first providing notice of that limitation. Accordingly, MRU's order is acknowledged to be incorrect in its interpretation of the rule by the Division.

I recognize that claimant has reasons why he did not file his reimbursement request earlier. However, OAR 436-009-0025(3) essentially provides a statute of limitations on such a reimbursement request which is not, pursuant to the rule, subject to exceptions or modification. The director, in promulgating that rule, acted reasonably. As will be discussed below, other rules require documentation of actual and reasonable expenses and under those circumstances, reimbursement requests covering periods of time that are more than two years old would be more difficult for the claimant to establish and for the insurer or processing agent to evaluate, given the passage of time. A two-year limitation on reimbursement requests under those circumstances is not unreasonable.

Accordingly, I modify MRU's Order to the extent that it allows for reimbursement for periods of time in excess of two years prior to claimant's submission of his request for reimbursement.

The second area in dispute has to do with that portion of the Order which required Pinnacle to pay for claimant's expenses on a general per diem basis rather than on the basis of actual expenses or documentation or receipts prior to the point that the processing agent gave claimant notice of the requirement that such information be provided.

Claimant is entitled to reimbursement for actual and reasonable travel expenses pursuant to OAR 436-009-0025(1). Pinnacle is obligated to provide notice of this and provide reimbursement forms under the same provision and provisions such as OAR 436-060-0095(6). Again, in response to the Administrative Law Judge's inquiry, WCD notes that it interprets these rules to allow Pinnacle to require reasonable documentation to support a request for reimbursement of actual expenses, but the rule also requires written notification to the claimant concerning such requests for reimbursement.

In this case, there was evidence before MRU that claimant, at various times, received no information, incomplete information, or conflicting information as to the requirements for filing requests for reimbursement. Substantial evidence supports MRU's finding that claimant was not provided with notice that he was required to file reasonable documentation of actual expenses rather than simply per diem requests until after he filed his reimbursement request. I also find

that MRU could reasonably interpret the different rules to conclude that claimant was entitled to reimbursement at the per diem rate rather than that an actual expense rate for the period prior to being notified that documentation of actual expenses was required. This was not an error of law.¹

In conclusion, I modify that portion of the Order which directed Pinnacle to provide reimbursement for expenses incurred prior to two years before claimant files his request for reimbursement. I otherwise approve the Order.

Attorney Fee

Because I modify the Order such that claimant's expense reimbursement will be reduced, I do not have the authority to assess attorney fees under ORS 656.385(3) and OAR 436-001-0265.

IT IS SO ORDERED.

¹ I do not accept claimant's alternative argument, that he does not need to provide documentation of actual expenses to support his request for reimbursement for meals and lodging because OAR 436-009-0025(2) and Bulletin 112 indicate that payment of reimbursement at the State of Oregon per diem rate complies with the insurer's obligation to reimburse for reasonable expenses. Given that other rules require reasonable documentation and only provide for reimbursement for actual expenses, I interpret the per diem provision to set a cap over which the insurer is not required to reimburse for actual expenses. In other words, when a claimant provides documentation and receipts for actual expenses for meals and lodging, they may very well exceed the per diem rate set for State of Oregon employees. Under those circumstances, the insurer is in compliance with the requirement that it pay for actual and reasonable expenses if it pays up to the per diem rate.