

In the Medical Services of  
**Coriena R. Hanke, Claimant**

Contested Case No: 06-053H

**PROPOSED & FINAL ORDER**

February 9, 2007

CORIENA R. HANKE, Petitioner  
LIBERTY NORTHWEST INSURANCE CORP, Respondent  
Before Elizabeth Fulsher, Administrative Law Judge

---

Pursuant to notice, a hearing was held and the record was closed on January 23, 2007 in Portland, Oregon before Administrative Law Judge Fulsher. Claimant was present and represented herself.<sup>1</sup> The employer, Oregonian Publishing, and its insurer, Liberty Northwest Insurance Corporation, were represented by their attorney, Scott Monfils.

Exhibits 1 through 22 were admitted into evidence at the hearing.

**ISSUE**

Whether the insurer is liable to reimburse claimant for home health care services provided by Edith Hanke and Joyce Jones from December 10, 2003 through February 23, 2004.

**SUMMARY OF FINDINGS**

Claimant was compensably injured on December 9, 2003. The claim was accepted for a closed rupture of the left Achilles tendon. Dr. Heusch was claimant's attending physician.

Claimant's mother, Edith Hanke, provided services such as assistance with bathing, housework, grocery shopping and other errands, for claimant from December 10 through February 23, 2004. Joyce Jones also provided such services for claimant on January 9 and 10, 2004.

Claimant paid Edith Hanke and Jocye Jones a total of \$1,560 for their services and sought reimbursement from the insurer. The insurer denied reimbursement. Claimant sought administrative review before the Director. A February 22, 2006 Administrative Order found that the insurer was not liable to reimburse claimant for out of pocket expenses for home healthcare services provided by Edith Hanke and Joyce Jones. Claimant requested a hearing.

---

<sup>1</sup> Claimant's former attorney withdrew from representation at the time of the hearing. Both off the record before the hearing and during the hearing, claimant confirmed that she wanted to proceed with the hearing and represent herself and that she did not seek a postponement to obtain counsel.

## CONCLUSIONS OF LAW AND OPINION

In medical service disputes under ORS 656.245, the administrative law judge (ALJ) may modify the Director's order only if it is not supported by substantial evidence in the record or if it reflects an error of law. No new medical evidence or issues may be admitted or considered. OAR 436-001-0225(2). Review by the ALJ is for substantial evidence and the ALJ may not supplement the evidentiary record developed by the medical review unit (MRU). *Liberty Northwest Ins. Corp. v. Kraft*, 205 Or App 59 (2006).<sup>2</sup>

The February 22, 2006 Administrative Order determined that without a prescription or notation in the chart notes from claimant's attending physician, the insurer was not liable for the disputed home health care services. In reaching this conclusion, the order relied on OAR 436-010-0210(3). That rule provides that:

“Attending physicians may prescribe treatment or services to be carried out by persons not licensed to provide a medical service or treat independently only when such services or treatment is rendered under the physician's direct control and supervision. Reimbursement to a worker for home health care provided by a worker's family member is not required to be provided under the direct control and supervision of the attending physician if the family member demonstrates competency to the satisfaction of the attending physician.”

Claimant argues that the doctor who treated her in the emergency room for her injury told her she was not to drive or bear weight and that her attending physician agreed with these restrictions. She argues that no one told her she had to have a prescription for home healthcare services. Claimant argued that she was given a handbook with general information on workers' compensation and that this handbook did not explain that she had to have a doctor's prescription to get home healthcare services reimbursed. The insurer argued that the housekeeping and grocery shopping services claimed by claimant are not considered medical services and are not intended by ORS 656.245 to be reimbursed. In support of its argument, the insurer cited *Baar v. Fairview Training Center*, 139 Or App 196 (1996). That case held that the legislature did not intend housekeeping services to be compensable medical services under ORS 656.245(1)(b).

The insurer further argued that under OAR 436-010-0210(3), in order to have a non-family member provide healthcare services, the doctor has to provide direct supervision. If a family member provides the services, the doctor must determine the family member's competency before services are provided. The insurer cited *Paul Ingraham*, 10 CCHR 175 (2005); *Troy Smith*, 10 CCHR 131 (2005) and *Rocky L. Gordon*, 9 CCHR 341 (2004), which support its position.

---

<sup>2</sup> Claimant wished to testify and also called her mother, Edith Hanke, to testify. I allowed claimant to present this testimony as an offer of proof, but explained that because my review of the Director's order was for substantial evidence, it would not be considered in reaching my opinion. Claimant was allowed to submit a September 27, 2006 letter from Dr. Dale Long. The letter was not admitted into evidence, but was placed in the file as an offer of proof.

In this case, the record does not contain the necessary approval from the attending physician of the home healthcare services that are at issue. In addition, based on the court case cited by the insurer, the housekeeping services are not compensable under ORS 656.245. While I am sympathetic with claimant's argument that she was not aware of the administrative rule requirements for reimbursement of home healthcare services, I have authority to modify the Director's order only if it is not supported by substantial evidence in the record or if it reflects an error of law. Here, the Administrative Order is supported by substantial evidence and contains no error of law. Thus, it must be affirmed.

**ORDER**

The Administrative Order dated February 22, 2006 is affirmed.