

In the ORS 656.245 Medical Services Dispute of

Kerry R. Lumley, Claimant

Contested Case No: 07-002H

PROPOSED & FINAL ORDER

May 2, 2007

KERRY R. LUMLEY, Petitioner

LIBERTY NW INSURANCE CORP, Respondent

Before Martha J. Brown, Administrative Law Judge

Pursuant to notice, a hearing was held and the record closed on April 2, 2007 in Salem, Oregon before Administrative Law Judge Martha J. Brown. Claimant was present and was represented by his attorney, Matthew Roy. The employer, McMinnville City Sanitary Services, and its insurer, Liberty Northwest Insurance Corporation, were represented by their attorney, Raymond Smitke.

At hearing, Exhibits 1 through 36 and supplemental exhibit A were admitted into the record.

ISSUES

1. Palliative care. Claimant has appealed the Department's December 20, 2006 Administrative Order, which declined to approve palliative care. (Ex. 35).

2. Attorney fees.

FINDINGS OF FACT

Claimant was compensably injured on July 8, 1999. The insurer accepted numerous conditions, and by way of stipulation, on March 6, 2006, the insurer also accepted claimant's new medical conditions of head injury with scalp laceration, cephalgia, and motion disorder. The parties subsequently entered into a Claim Disposition Agreement that settled all issues with the exception of medical services.

On March 14, 2006, claimant sought treatment with Dr. Scott, for headaches. Dr. Scott recommended osteopathic manipulation treatment, every 4-6 weeks, not to exceed 180 days. She further noted that acupuncture and chiropractic care would be provided by claimant's other doctors and such care had allowed him to continue his work as a pastor.

On March 31, 2006, claimant was notified by the insurer that his claim qualified for closure and further medical care or the passage of time was not likely to improve his condition.

On June 30, 2006, the insurer notified Dr. Scott that palliative treatment in the form of manipulation, adjustments and acupuncture was not authorized because there was no documentation that, without such care, claimant was unable to maintain full time gainful employment, and there was no indication of the conditions for which the care was being

requested.

On August 24, 2006, an Administrative Order of Dismissal issued, finding that claimant did not request administrative review within 120 days of the submission of the palliative care request.

On August 28, 2006, Dr. Scott wrote to the insurer outlining the request for palliative care. Dr. Scott stated that, when claimant did not get such care, his symptoms worsened and he was not able to perform his job requirements.

On September 27, 2006, the insurer wrote to Dr. Scott and denied the request for palliative care on the ground that the treatment plan was not detailed and there was no evidence that, without such care, claimant would be unable to continue employment.

On October 3, 2006, claimant requested administrative review by the Department.

An Administrative Order issued on December 20, 2006, which agreed with the insurer that palliative care was not correctly requested.

CONCLUSIONS OF LAW AND OPINION

Pursuant to ORS 656.704, hearings regarding Department orders addressing medical services disputes are conducted by an Administrative Law Judge (ALJ) of the Workers' Compensation Board. In medical and treatment disputes an ALJ may modify the Department's order only if it is not supported by substantial evidence in the record or it reflects an error of law. New medical evidence or issues may not be admitted or considered. ORS 656.327(2); OAR 436-001-0225(2).

Here, claimant contends that there is no substantial evidence to support the order's conclusion that the attending physician has not described how the requested care is related to the compensable condition. Claimant further contends that the order is not support in regard to the conclusion that the attending physician has not described how the requested care will enable the worker to continue current employment and the possible adverse effect if the care is not approved.

OAR 436-010-0290 provides, in pertinent part, that a written request for palliative care must be submitted by the attending physician to the insurer for approval. The request must:

- (A) Describe any objective findings;
- (B) Identify by ICD-9-CM diagnosis, the medical condition for which palliative care is requested;
- (C) Detail a treatment plan which includes the name of the provider who will render the care, specific treatment modalities, and frequency and duration of the care, not to exceed 180 days.

(D) Explain how the requested care is related to the compensable condition; and

(E) Describe how the requested care will enable the worker to continue current employment, or a current vocational training program, and the possible adverse effect if the care is not approved.

Here, the director concluded that Dr. Scott, the attending physician, had not complied with sections (D) and (E). Specifically, the director found that Dr. Scott had not explained how conditions such as foot drop and right leg weakness were related to the compensable conditions. Claimant argues that he has been treated throughout for such conditions and that his treatment has been for accepted conditions. Claimant therefore contends that Dr. Scott's statement that if he does receive ongoing treatment, he will worsen, is a sufficient explanation with regard to section (C).

After reviewing the record and the order, I find that the director's conclusion in this regard is supported by substantial evidence. Dr. Scott's letter does not sufficiently explain how the proposed chiropractic, acupuncture and manipulation treatments are related to the compensable condition, which primarily involves a head injury. Her statement that there will be a worsening if claimant does not receive such care does not address the relationship between the treatment and the compensable condition.

Finally, claimant disagrees with the director's conclusion that Dr. Scott has not described how the requested care will enable the worker to continue current employment, and the possible adverse effect if the care is not approved. Dr. Scott's response was that if claimant did not receive such care, his symptoms would worsen. While the outcome for claimant and possible adverse effects could be surmised from the attending physician's response, they are not explicitly answered by the doctor. Therefore, I conclude that the director's decision in this regard is also supported by substantial evidence.

Accordingly, I conclude that there is substantial evidence in the record to support the director's conclusion that palliative care was not correctly requested by the attending physician, and the order is affirmed.

ORDER

IT IS HEREBY ORDERED THAT:

The December 20, 2006 Administrative Order is affirmed, and the relief requested by claimant is denied.