
In the ORS 656.245 Medical Services Dispute of

Reese Blacknall, Jr., Claimant

Contested Case No: 07-072H

FINAL ORDER

May 9, 2008

REESE BLACKNALL, JR., Petitioner

TRANSPORTATION INSURANCE CO., Respondent

Before John Shilts, Workers' Compensation Division Administrator

Claimant, through his attorney Jacqueline M. Jacobson, timely filed exceptions to Workers' Compensation Board Administrative Law Judge (ALJ) Robert Davis' November 13, 2007 Proposed and Final Order. Insurer, through its attorney Ronald C. Holloway, responded to the exceptions. This matter comes before the director for a final order. The issue is whether insurer is liable for payment of certain interim medical benefits when claimant did not have coverage by a health benefit plan. I adopt and affirm.

I adopt the ALJ's findings of fact.

Claimant argues that ORS 656.247 does not require the worker to be covered by a health benefit plan to receive payment for interim medical benefits. Therefore, claimant argues that the insurer should cover the interim medical benefits whether or not claimant has his own health benefit plan.

Insurer responds that payment of interim medical bills is conditioned upon a health benefit plan providing benefits to the worker.

I agree with ALJ Davis and insurer. ORS 656.247(1) provides that interim medical bills are payable in accordance with subsection (4) of that section. ORS 656.247(4)(b) provides that if the workers' compensation claim is denied and a health benefit plan provides benefits to the worker, the health benefit plan is the first payer of interim medical bills. OAR 436-009-0035(7) provides that "[i]f the worker has no health benefit plan, the workers' compensation insurer is not required to pay for interim medical benefits." As ALJ Davis found, ORS 436-009-0035(7) is consistent with ORS 656.247(4)(b). Claimant did not have a health benefit plan. Therefore, insurer is not required to pay interim medical benefits.

Lastly, claimant's attorney is not entitled to a fee because he has not prevailed. ORS 656.385(1); OAR 436-010-0008(12).

IT IS HEREBY ORDERED the November 13, 2007 Proposed and Final Order is adopted and affirmed.