

In the ORS 656.245 Medical Services Dispute of

**Kerry Lumley, Claimant**

Contested Case No: 07-095H

**FINAL ORDER**

May 9, 2008

KERRY LUMLEY, Petitioner

LIBERTY NORTHWEST INSURANCE CORP., Respondent

Before John Shilts, Workers' Compensation Division Administrator

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Claimant, through attorney Matthew L. Roy, timely filed exceptions to Workers' Compensation Board Administrative Law Judge (ALJ) Martha J. Brown's November 19, 2007 Proposed and Final Order. Insurer, through attorney David O. Wilson, responded. This matter comes before the director for a final order. The issue is whether it was appropriate for the Medical Section Resolution Team (RT) to dismiss the provider's request for review of a palliative care dispute until claimant requested formal acceptance of specific new or omitted conditions, and whether RT considered claimant's position prior to making a decision. I affirm the dismissal because RT and the director lack statutory authority to determine issues of causation.

I adopt the ALJ's findings of fact. Therese M. Scott, D.O., submitted a request for palliative care to insurer on March 5, 2007. The requested care includes osteopathic manipulation, acupuncture, and chiropractic care. When Dr. Scott did not receive a response from insurer, she requested administrative review. On the Specification of Disputed Medical Issues form, insurer checked the box indicating that the care is for a new or omitted condition which the worker has not asked be accepted. RT issued an Administrative Order of Dismissal on July 11, 2007. The order indicated that "[t]his matter may be most expeditiously resolved simply by the worker 'clearly requesting formal written acceptance' of the specific new or omitted condition(s) in writing. \* \* \* After the question of the accepted conditions is resolved, if there is still a dispute concerning the palliative care, the parties may again request Administrative Review by the director."

Claimant appealed. ALJ Brown affirmed, finding that RT's order is supported by substantial evidence in the record and does not contain an error of law. The ALJ found that several of the diagnoses provided by Dr. Scott in her March 5, 2007 request are conditions that have not been accepted. ALJ Brown further found that RT was within its discretion to request that the parties proceed with properly processing the claim prior to considering the matter.

Claimant first takes exception to the ALJ's finding that several of the conditions listed in the March 5, 2007 request for palliative care are not accepted conditions, arguing that the conditions are either specifically accepted, or are symptoms of or related to the accepted cerebral concussion. Claimant next takes exception with the fact that the department did not consider his position prior to making a decision. Finally, claimant takes exception to the ALJ's finding that RT's order was supported by substantial evidence, arguing that there is no evidence that the conditions listed in the palliative care request are not related to the accepted conditions or that they are new conditions that need to be accepted.

Insurer responds that there are discrepancies between the diagnoses for which Dr. Scott seeks palliative care and the conditions that have been accepted, and the connection between the diagnoses and conditions is tenuous.

Palliative care is compensable when prescribed by the worker's attending physician and necessary to enable the worker to continue current employment or a vocational training program. ORS 656.245(1)(c)(J); OAR 436-010-0290(1). Medical services, including palliative care, must be for conditions caused in material part by the compensable injury. ORS 656.245(1)(a). Under ORS 656.704(3)(b)(C), "[a]ny dispute that requires a determination of whether a sufficient causal relationship exists between medical services and an accepted claim to establish compensability is a matter concerning a claim."

In the March 5, 2007 request for palliative care, Dr. Scott states that all symptoms and diagnoses will be treated, and the diagnoses are all related to the cerebral concussion. The diagnoses listed are: headache; head injury, with CNS compression, unspecified; motion disorder: tremor not otherwise specified; tinnitus; strain cervicals; internuclear ophthalmoplegia; and somatic dysfunction cranium. The record shows that the following conditions have been accepted: cerebral concussion, facial laceration, right and left arm and left knee contusions, cervical strain, tinnitus, internuclear ophthalmoplegia, head injury with scalp laceration, cephalgia, and motion disorder.

Four of the diagnoses listed by Dr. Scott – motion disorder, tinnitus, strain cervicals, and internuclear ophthalmoplegia – are accepted conditions. Cephalgia is defined by Merriam-Webster's on-line medical dictionary<sup>1</sup> as "headache," which is also an accepted condition. However, how the remaining diagnoses listed by Dr. Scott – head injury with CNS compression unspecified and somatic dysfunction cranium – relate to the remaining accepted conditions – head injury with scalp laceration and cerebral concussion – is not as evident.

Claimant argues that the diagnoses that are not specifically accepted are symptoms of or related to the accepted cerebral concussion, as stated by Dr. Scott. Claimant also argues there is no evidence that the diagnoses are not related to the accepted conditions or are new conditions. However, the authority to make the determination that the requested palliative care is sufficiently related to the accepted conditions lies with the Workers' Compensation Board, not with the director.

The Resolution Team dismissed Dr. Scott's request for review and suggested that claimant request that conditions that had not been accepted be accepted. The ALJ found that RT was within its discretion to request that the parties proceed with properly processing the claim prior to reviewing the matter. I agree with RT that this matter should be dismissed, but for slightly different reasons. If claimant is not inclined to request acceptance of new or omitted medical conditions, then the parties must bring the causation issue to the Workers' Compensation Board for resolution under ORS 656.704(3)(b)(C) prior to RT reviewing whether the palliative care request should be approved under ORS 656.245(1)(c)(J) and OAR 436-010-0290.

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<sup>1</sup> <http://medical.merriam-webster.com/medical/cephalgia>

**IT IS HEREBY ORDERED** the November 19, 2007 Proposed and Final Order and the July 11, 2007 Administrative Order of Dismissal are affirmed. This matter is dismissed.