

In the ORS 656.245 Medical Services of

Kevin P. Smith, Claimant

Contested Case No: 09-067H

FINAL ORDER

December 7, 2009

KEVIN P. SMITH, Petitioner

SAIF CORPORATION, Respondent

Before John Shilts, Workers' Compensation Division Administrator

Claimant Kevin P. Smith (claimant) was injured at work. However insurer SAIF Corporation (insurer) found the injury not compensable. Claimant incurred medical expenses before insurer denied the claim. Insurer asserted those costs were not compensable as claimant did not have medical insurance. ORS 656.247.¹ The Workers' Compensation Division Resolution Team (RT) found those expenses were not compensable in an Administrative Order. After a hearing, Administrative Law Judge Kathryn A. Poland affirmed RT's order. Claimant filed exceptions. I affirm RT's Administrative Order and the ALJ's Proposed and Final Order.

FACTUAL SUMMARY

I adopt the facts as found by the ALJ and RT. Claimant was injured while at work on September 8, 2008. Insurer denied compensability of claimant's injuries on November 21, 2008. Claimant received medical services related to these injuries between September 8, 2008, and November 21, 2008. Claimant was not covered by a health benefit plan during this period.

Claimant requested administrative review seeking payment for charges for medical services incurred between September 8, 2008, and November 21, 2008. RT issued an Administrative Order on April 13, 2009, finding insurer was not liable for the interim medical costs because claimant had not been covered by a health benefit plan.

Claimant requested a hearing on the RT order. On October 6, 2009, ALJ Poland issued her Proposed and Final Order. ALJ Poland found insurer was not responsible for claimant's interim medical expenses because he had not been covered by a health benefit plan during the relevant period. Claimant requested director review of the ALJ's order.

¹ ORS 656.247 provides in part:

(1) [P]ayment for medical services provided to a subject worker in response to an initial claim for a work-related injury . . . from the date of the employer's notice or knowledge of the claim until the date the claim is accepted or denied shall be payable in accordance with subsection (4) of this section

* * * * *

(4)(b) If the claim in which medical services are provided under subsection (1) of this section is denied and a health benefit plan provides benefits to the worker, the health benefit plan shall be the first payer of the expenses for medical services according to the terms, conditions and benefits of the plan. . . . [A]fter payment by the health benefit plan, the workers' compensation insurer . . . shall pay any balance remaining for such services

CONCLUSIONS OF LAW

The facts are not in dispute. The only issue is a question of law. The issue is whether a workers' compensation insurer must pay medical costs incurred for a non-compensable injury between the time of the injury and denial where the worker is not covered by a health benefit plan.

I have previously addressed this issue in *Reese Blacknall, Jr.*, 13 CCHR 77 (2008), *pet. for rev. filed July 8, 2008*. 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 workers' compensation insurer will pay those amounts the health benefit plan does not pay. OAR 436-009-0035(7) states that "[i]f the worker has no health benefit plan, the workers' compensation insurer is not required to pay for interim medical benefits." The controlling statute only requires the workers' compensation insurer to pay interim benefits where the worker has other health insurance. As claimant here did not have such insurance insurer is not liable for these charges.

Claimant asserts that ORS 656.247(1) creates a general rule that interim expenses are compensable and that subsection (4) only establishes the order of payment where there is both a health benefit plan and workers' compensation insurance covering the worker. Claimant misreads the plain language of subsection (1). That subsection states interim benefits ". . . shall be payable in accordance with subsection (4) of this section" Thus, the express language of subsection (1) provides that interim benefits will only be paid if the conditions stated in subsection (4) are met. Subsection (4) divides the circumstances in which interim benefits will be paid into two cases; where the claim is accepted and where the claim is denied. Paragraph (4)(b) says that interim benefits will be paid where the claim is denied and the worker has health insurance. There is no provision in the statute stating that interim benefits will be paid where the claim is denied and the worker does not have health insurance.

Claimant also argues this interpretation of the statute is not reasonable. Claimant points out that ORS 656.247(5) authorizes an insurer to recover overpayments made under subsection (1). Claimant contends that "if ORS 656.247 is interpreted as argued by [insurer], there is no situation in which a workers (sic) compensation insurer will ever need to be repaid for medical expenses because according to [insurer] the workers (sic) compensation insurer *never* has to pay out medical expenses prior to a denial (emphasis in original)." This is neither insurer's argument nor what the statute provides. An insurer does have to pay interim benefits, assuming other conditions are met, if the claim is accepted or if the claim is denied and the worker is covered by a health benefit plan. It is only true that a workers' compensation insurer will not have to pay interim benefits where the claim is denied if the worker does not have health insurance.

IT IS HEREBY ORDERED RT's April 13, 2009, Administrative Order and the ALJ's October 6, 2009, Proposed and Final Order are affirmed.