

In the ORS 656.245 Medical Services of

Ranee Champion, Claimant

Contested Case No: 09-015H

PROPOSED & FINAL ORDER

June 26, 2009

RANEE CHAMPION, Petitioner

SAIF CORPORATION, Respondent

Before Robert Pardington, Administrative Law Judge

A hearing in the above-captioned matter was scheduled for May 4, 2009, in Portland, Oregon, before Administrative Law Judge Robert Pardington. Claimant is represented by attorney Bennett Dalton. The employer, Powell Valley Assisted Living, and its insurer, SAIF Corporation, are represented by attorney Janelle Irving. Prior to hearing, the parties agreed to submit the case on the record with written closing arguments. The record closed on receipt of claimant's reply argument on June 16, 2009.

Exhibits 1 through 16 (provided by the Workers' Compensation Division) are hereby admitted.

ISSUE

Whether the WCD erred in dismissing claimant's request for review of SAIF's refusal to pay for a prescription from Dr. Gross, where the request for review was made prior to acceptance of her claim. Claimant has appealed the January 15, 2009 Order of Dismissal. (Ex. 15).

FINDINGS OF FACT

The Court of Appeals has held that "findings" of fact are not appropriate on a substantial evidence standard of review. *See* ORS 656.327(2). *Liberty Northwest Insurance Corp v. Kraft*, 205 Or App 59, 62-63 (2006). Accordingly, I adopt the WCD's Findings of Fact as supported by substantial evidence. (Ex. 15).

CONCLUSIONS OF LAW AND OPINION

In this medical services dispute, the WCD's Administrative Order of Dismissal may be modified only if it is not supported by substantial evidence in the record or if it reflects an error of law. ORS 656.327(2); OAR 436-001-0225(2).

The WCD concluded that claimant's request for Director review of SAIF's refusal to pay for a prescription medication was premature because at the time that it was made, SAIF had not yet accepted the claim. (Ex. 15-2). The WCD cited ORS 656.262(6)(a) and ORS 656.247.

ORS 656.262(6)(a) provides that, except as provided in ORS 656.247, pending acceptance or denial of a claim, compensation payable to a claimant does not include the costs of medical expenses.

ORS 656.247(1) provides that medical services from the date of the employer's notice or knowledge of the claim until the claim is accepted or denied shall be payable in accordance with subsection (4).

ORS 656.247(4)(a) provides that, if the claim is accepted (as it eventually was here, on December 3, 2008), the insurer shall make payment for such services, "subject to the limitations and conditions of this chapter." (*See Ex. 10*). ORS 656.247(2) and ORS 656.247(4)(b), referenced or alluded to by the parties, apply to situations in which a claim is denied and are not applicable here. *Compare Jimmy D. Monroe, Jr.*, 13 CCHR 101 (2008); *Reese Blacknall, Jr.*, 12 CCHR 316 (2007).

At the time of claimant's November 19, 2008 Request for Administrative Review, SAIF's alleged duty to pay for that medical service had not yet accrued because claimant requested review of SAIF's refusal to pay prior to the December 3, 2008 date of acceptance. (*See Exs. 7, 10*). ORS 656.247(4)(a).

Accordingly, I agree with the WCD that claimant's November 19, 2008 Request for Review was premature. The January 15, 2009 Administrative Order of Dismissal is therefore affirmed.

ORDER

The January 15, 2009 Administrative Order is affirmed.