

In the ORS 656.245 Medical Services of

David A. Hitt, Claimant

Contested Case No: 09-119H

PROPOSED & FINAL ORDER

November 18, 2009

DAVID A. HITT, Petitioner
SAIF CORPORATION, Respondent

Before Chuck Mundorff, Administrative Law Judge

A hearing convened on October 26, 2009 in Eugene, Oregon before Administrative Law Judge Chuck Mundorff. The claimant was not present but was represented by his attorney Christine Jensen. The employer, Oregon Family Support Network, Inc., and its insurer, the SAIF Corporation (SAIF) were represented by attorney Dennis Ulsted. The record closed on October 26, 2009 following recorded argument.

ISSUES & EXHIBITS

Whether SAIF is liable for mileage reimbursement for medical services rendered on February 9, 2009. The issue regarding reimbursement for mileage on February 10, 2009 was withdrawn at hearing. The documentary record consists of the Exhibits 1-10 submitted by the Medical Section Resolution Team (RT) on August 17, 2009.

CONCLUSIONS OF LAW AND OPINION

An administrative order in a medical services dispute may only be modified if it is not supported by substantial evidence or if it is based on an error of law. ORS 656.247((3)(a); OAR 436-001-0225(2); *Liberty Northwest Ins. Co. v. Kraft*, 205 Or. App. 59, 61-62 (2006).

The pertinent facts are taken from the RT's Findings of Fact in its Administrative Order. (Ex. 9). On February 9, 2009, claimant, who sustained a compensable injury on December 7, 2007, drove three times roundtrip from his home in Veneta, Oregon to three appointment. First, with Dr. Myers in Springfield, Oregon, next to Slocum Physical Therapy in Eugene, Oregon, and finally to River Road Physical Therapy in Eugene, Oregon.

On April 21, 2009 claimant sought reimbursement for his mileage for the three trips noting in his request for reimbursement that he had to return to home to pick up his minor children from school between appointments. Those requests were for 50 miles to Dr. Myers, 45 miles for Slocum Physical Therapy and 34 miles to River Road Physical Therapy. Dr. Myers appointment was scheduled at 9:10 a.m.. Slocum Physical Therapy appointment was scheduled for 11:30 a.m.. The River Road Physical Therapy appointment was scheduled for 3:30pm. (Ex. 2).

On May 11, 2009 SAIF provided claimant with an explanation of benefits which allowed the mileage to Dr. Myers but disallowed the mileage to Slocum and River Road Physical Therapy respectively.

The Administrative Order affirmed SAIF's payment for one trip on February 9, 2009. (Ex. 9). The RT reviewer found that the need for claimant's multiple roundtrips from Veneta to Eugene/Springfield was due to claimant's childcare issues and thus were not reasonably related to his compensable injury.

ORS 656.245(1)(a)(b) provides:

"For every compensable injury, the insurer or the self-insured employer shall cause to be provided medical services for conditions caused in material part by the injury for such period as the nature of the injury or the process of the recovery requires, subject to the limitations in ORS 656.225, including such medical services as may be required after a determination of permanent disability. In addition, for consequential and combined conditions described in ORS 656.005 (7), the insurer or the self-insured employer shall cause to be provided only those medical services directed to medical conditions caused in major part by the injury.

(b) Compensable medical services shall include medical, surgical, hospital, nursing, ambulances and other related services, and drugs, medicine, crutches and prosthetic appliances, braces and supports and where necessary, physical restorative services. A pharmacist or dispensing physician shall dispense generic drugs to the worker in accordance with ORS 689.515."

OAR 436-009-0025(2)(b) provides:

"Reimbursement of the costs of meals, lodging, public transportation and use of a private vehicle shall be reimbursed as provided in this section."

"(c) Mileage when using a personal vehicle based on the beginning and ending addresses."

There is no factual dispute that the appointments claimant attended on February 9, 2009 were related to his compensable injury. SAIF argues that the actual mileage claimed was unreasonable, and the RT reviewer concurred, noting that there was no information provided as to why the appointments could not have been scheduled around the time claimant needed to pick up his children.

The statute and rule cited above require the carrier to reimburse the use of private vehicle mileage for *actual* mileage using the beginning and ending addresses for the trips requested. The Administrative Order did not address the fact that claimant had three appointments each at least two hours apart. The record contains evidence that the first trip of the day, from Veneta to Dr. Myers office, took one hour and ten minutes to complete. (Ex. 8-1). The RT reviewer's determination that claimant was only entitled to the roundtrip mileage of all three appointments would require claimant to leave his house at 7:50am and not return home until 4:30pm.

Under the substantial evidence standard, the reviewing body examines the entire record, rather than focusing on any single piece of evidence. If the agency's finding is reasonable, considering both the evidence supporting and opposing the agency's decision, there is substantial evidence. *Liberty Northwest Ins. Co. v. Kraft*, 205 Or. App. 59, 61-62 (2006). Here, I do not find that the Administrative Order conforms with the statute and rule requiring reimbursement of actual expenses, nor do I find that claimant's need to return home between appointments was unreasonable in light of the timing of those appointments.

Claimant seeks a penalty for unreasonable resistance to the payment of compensation and a penalty based attorney fee. As there was support for SAIF's interpretation of the rule in light of the Administrative Order, I do not find that SAIF acted unreasonably in disallowing the initial request for reimbursement.

Claimant's counsel is entitled to an assessed attorney fee pursuant to ORS 656.385(1). Taking into consideration the factors outlined in OAR 436-010-0008(12), I find that a reasonable fee for claimant's attorney's services at the Hearings Division is \$500.00.