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In the ORS 656.260 Managed Care Dispute of

**Sandra D. Ellis, Claimant**

Contested Case No: 09-044H

**ORDER ON REMAND**

October 19, 2009

SAIF CORPORATION, Petitioner

STIMSON LUMBER COMPANY, Respondent

Before Emerson G. Fisher, Administrative Law Judge

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This matter is before me on remand from the Director to clarify whether the attorney fee awarded by my July 13, 2009 Proposed and Final Order was in addition to the fee awarded in the February 20, 2009 Director's Administrative Order or a "total fee" that included the earlier award. In the Order on Remand, the Director further authorized me to consider the parties' arguments concerning the amount of the fee. Among other things, the parties disagree over whether the fee awarded is pursuant to ORS 656.385(1) or ORS 656.385(3), and whether the fee matrix set forth in OAR 436-001-0265 is applicable.

A fee can be awarded under ORS 656.385(1) in (1) a dispute over compensation benefits pursuant to ORS 656.245, 656.247, 656.260, 656.327, or 656.340, where (2) the claimant finally prevails after (3) a proceeding has commenced. Either the director or the ALJ will order the fee. The fee must be reasonable, based on all work done relative to the proceeding at all levels before the department; be proportionate to the benefits to the injured worker; and may not exceed \$2,000 absent a showing of extraordinary circumstances. *See James A. Miller*, 105 CCHR 105, 108 (2007).

A fee can be awarded under ORS 656.385(3) where (1) compensation has been awarded to a claimant under ORS 656.245, 656.247, 656.260, 656.327, or 656.340, (2) the insurer initiated a request for a contested case hearing, and (3) the director or ALJ finds that the compensation awarded should not be disallowed or reduced. The fee must be reasonable and in an amount set by the director or ALJ, and is for legal representation of the claimant at hearing. *Id.*, at 109.

This case initiated as a dispute over Managed Care benefits under ORS 656.260. SAIF requested the hearing. Claimant prevailed, in that the compensation awarded by MRU was not disallowed or reduced. Under these circumstances, claimant's counsel is entitled to a fee under ORS 656.385(3) for his legal representation of claimant at hearing.

In *James A. Miller*, 105 CCHR at 110, the director determined that the rules adopted pursuant to ORS 656.385(1); *i.e.*, OAR 436-001-0265, should be applied in determining what would be a reasonable fee awarded under ORS 656.385(3). *Miller* is controlling. Therefore, I apply OAR 436-001-0265 in determining a reasonable fee for claimant's counsel's services at hearing.

It appears from the file that claimant's counsel's time devoted to the hearing was a little more than four hours. The estimated benefit achieved was approximately \$720. Applying the

matrix provided in OAR 436-001-0265, I find that a reasonable fee for claimant's counsel's services at the hearing is \$750. Said fee is payable by SAIF directly to claimant's counsel.

**ORDER**

In lieu of the \$1,200 attorney fee awarded by my July 13, 2009 Proposed and Final Order, claimant's counsel is awarded a \$750 attorney fee pursuant to ORS 656.385(3), payable by SAIF. Said fee is in addition to the fee awarded to claimant's counsel by the February 20, 2009 Director's Administrative Order.