

In the ORS 656.260 Managed Care Dispute of

**Kaelynn Hollingsworth , Claimant**

Contested Case No: 09-054H

**PROPOSED & FINAL ORDER**

September 17, 2009

SAIF CORPORATION, Petitioner

KAELYNN HOLLINGSWORTH, Respondent

Before Nicholas M. Sencer, Administrative Law Judge

Pursuant to notice, the hearing was scheduled to convene on July 14, 2009 in Bend, Oregon before the undersigned Administrative Law Judge (ALJ). By agreement of the parties, the case was submitted for decision based on the admitted exhibits and written closing arguments. Philip H. Garrow represents claimant. James Booth represents the employer, Bright Wood Corporation, and its insurer, SAIF Corporation. Exhibits 1 through 37 are admitted into the record. The insurer's submission of proposed exhibit 20A is excluded because there has been no showing that the proposed exhibit was included in the record below. The record closed on September 2, 2009 upon my receipt of the insurer's reply argument.

**ISSUES**

The insurer appeals the March 6, 2009 Administrative Order of the Workers' Compensation Division, Medical Section (WCD) and requests a finding that it is not liable for ambulance services rendered to claimant on October 25, 2008. Claimant asserts that the order should be affirmed and requests an assessed attorney fee in the event she prevails.

**SCOPE OF REVIEW**

The WCD's Order may be modified only if it is not supported by substantial evidence in the record or if it reflects an error of law. OAR 436-001-0225(2). Insofar as an ALJ's review of factual findings is concerned, if a finding by the WCD is reasonable, keeping in mind the evidence against the finding as well as the evidence supporting it, the finding is considered to be supported by substantial evidence. *Liberty Northwest Insurance Corp. v. Kraft*, 205 Or App 59, 62 (2006); *Armstrong v. Asten-Hill Co.*, 90 Or App 200, 206 (1988).

**FINDINGS OF FACT**

I adopt the following findings of fact taken from the WCD's March 6, 2009 Order.

Claimant sustained a compensable injury on December 26, 2007. The insurer accepted a lumbar strain, L5-S1 disc protrusion and right SI radiculitis caused by the L5-S1 disc protrusion.

On or about October 22, 2008 claimant felt something give way in her back, resulting in excruciating pain. On October 25, 2008, claimant sought medical treatment for her pain at the St. Charles Medical Center emergency room in Redmond where she was told she would have an extended wait due to other emergency situations at the hospital. Claimant decided to seek treatment at the St. Charles emergency room in Bend. However, claimant's vehicle became

undriveable and she returned home. Thereafter, her mother recommended that she call an ambulance, which she did.

On October 25, 2008, the City of Redmond Ambulance transported claimant from her home to St. Charles Medical Center in Bend where Dr. Cianflone admitted her into the hospital. Also on October 25, 2008, Mark Belza, M.D. examined claimant and ordered an MRI. The following day, October 26, 2008, Dr. Belza performed a microlumbar discectomy, right L5-S1 and microscopic decompression of the right S1 nerve root. In his operative report, Dr. Belza wrote, "The S1 nerve root was noted to be splayed posteriorly and identified [*sic*] a very large disc rupture." (Ex 20).

On January 9, 2009, the insurer mailed the City of Redmond Ambulance Service an explanation of benefits advising that it was disallowing payment for the October 25, 2008 ambulance service. Claimant requested administrative review.

There is evidence that prior to October 25, 2008, claimant used narcotic pain relievers inappropriately. Claimant was also warned that she should not use emergency rooms for non-emergent reasons and that she must seek medical treatment using MCO providers.

On review, WCD determined that claimant's use of the ambulance service on October 25, 2008 was not excessive, inappropriate, ineffectual or in violation of medical service rule OAR 436-010-0230(1). WCD relied on Dr. Cianflone's emergency room notes and Dr. Belza's operative findings to support its conclusion that claimant's use of an ambulance was appropriate.

### **CONCLUSIONS OF LAW AND OPINION**

The insurer asserts that the facts establish that claimant did not need to use an ambulance on October 25, 2008, that she was capable of being driven to the hospital in her personal vehicle had it not broken down and that, in effect, claimant's use of the ambulance was a "\$930 taxi ride in an ambulance because her car was not working."

In its order, WCD considered the insurer's arguments and concluded,

"There is adequate objective medical opinion evidenced by the emergency report of Dr. Cianflone, and the subsequent decision by Dr. Belza to perform surgery and the postoperative findings of a very large disc rupture emanating from a large central annular tear and S1 nerve root splayed posterior to persuade the director the ambulance transport to the hospital was appropriate and SAIF is liable."

After considering the evidence against the WCD's findings as well as the evidence supporting them, I conclude that the WCD's findings are supported by substantial evidence. As there is no evidence that the Administrative Order reflects an error of law, it will be affirmed.

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**ATTORNEY FEES**

Attorney fees in medical disputes must be proportionate to the benefit and primary consideration must be given to the results achieved and the time devoted to the case. ORS 656.385(1). Moreover, the director has adopted a matrix for determining assessed attorney fees in medical dispute cases. OAR 436-001-0265,

436-010-0008(12). The total attorney fee award for services at all levels may not fall outside the ranges in the matrix nor exceed \$2,000 absent a showing of extraordinary circumstances. Here, there is no assertion of extraordinary circumstances.

Claimant submitted a summary of his services prior to the insurer's appeal of the March 6, 2009 order that sets forth 3.15 hours devoted to this case. Based on the size of the record and claimant's written argument, I conclude that claimant's attorney devoted a total of between 4.1 and 6 hours to this matter. Accordingly, I award claimant an assessed fee in the amount of \$750.

**ORDER**

IT IS HEREBY ORDERED that the WCD's March 6, 2009 Administrative Order is affirmed. Claimant's counsel is awarded an assessed attorney fee in the amount of \$750 for services rendered at all stages in this proceeding.