

In the Matter of ORS 656.248 Medical Fee Dispute of

**Baines, Sherry Y., Claimant**

Contested Case No: HH01-145

**PROPOSED & FINAL ORDER**

March 19, 2002

SHERRY Y. BAINES , Petitioner

LIBERTY NORTHWEST INSURANCE CORPORATION, Respondent

Before John L. Shilts, Workers' Compensation Division Administrator

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**PROCEDURAL HISTORY**

Claimant appeals an Administrative Order dated December 7, 2001 finding Insurer liable for certain medical services. On February 15, 2002, Hearing Officer Paul Vincent conducted a contested case hearing. Petitioner Sherry Y. Baines was represented by attorney James Dodge. Respondent Liberty Northwest Insurance Corporation (LNW or insurer) was represented by attorney Kathryn Olney. The Workers' Compensation Division waived appearance. The record closed on the date of hearing.

**ISSUE**

The issue, pursuant to a hearing notice issued January 15, 2002, is whether insurer correctly disallowed payments for the medical services provided to claimant by Les Goldman, PhD (Psychology) on September 29 and October 15, 2000, and whether insurer correctly reduced payment for Dr. Goldman's November 1, 2000 report under ORS chapter 656 and OAR chapter 436.

**EVIDENTIARY RULINGS**

WCD Exhibits 1-24 were received without objection. Petitioner's Exhibit P1 was received without objection.

**FINDINGS OF FACT**

The claimant did not dispute the factual findings of Administrative Order MF 01-1249, dated December 7, 2001, and I adopt and incorporate the findings of fact contained in that order, Exhibit 23, in their entirety. I make the following supplementary findings:

Claimant's physician requested payment for services performed on September 29, October 15 and November 1, 2000. The services involved the preparation of a neuropsychological evaluation of claimant. The examination was done "to determine whether Ms. Baines is currently suffering from any neuropsychological impairments which may have occurred as a result of her head injury on June 12, 2000." The treatment was for claimant's accepted condition of "concussion" and "post concussion headaches." (Exs. 4, P1).

The insurer opposed payment for the services rendered on September 29, October 15 and

November 1, 2000 on the grounds that they were for a non-accepted inner ear condition, rather than for the then accepted conditions. (Ex. 22).

Claimant did not request a penalty for late payment of medical billings until she filed a request for contested case hearing on December 21, 2001. (Exs. 1-23). On that date claimant filed a Request for Contested Case Hearing in which she checked the following boxes under the heading "Request is made for a hearing concerning one or more of the reasons checked below:" Medical fee, Penalty (Sole issue), Attorney Fees. (Ex. 24).

### **CONCLUSIONS OF LAW AND REASONING**

Jurisdiction over this medical services dispute lies with the director. ORS 656.248; OAR 436-010-0008(1). Since ORS 656.248 prescribes no standard of review, I review *de novo*. *Archie M. Ulrich*, 2 WCSR 152, 153 (1997); OAR 436-010-0225(1). The burden of proving a fact or position rests with the proponent. ORS 183.450(2). As petitioner, insurer bears the burden of proving by a preponderance of the evidence that the administrative order is incorrect. See *Cook v. Employment Div.*, 47 Or 437 (1982) (In the absence of contrary legislation, the standard of proof in an administrative hearing is preponderance of evidence).

In the administrative order that I review, insurer was found to have incorrectly denied reimbursement for the services provided by Dr. Goldman on November 1, 2000. In addition, the director noted that since Liberty had agreed to pay for the medical services rendered on September 29 and October 15, 2000 and found that the claimant's "request for dispute resolution for those dates of service is granted." (Ex. 23-2). At hearing claimant did not dispute the findings of the administrative order, but instead contended that MRU erred by not finding insurer liable for a penalty. Claimant noted that the record demonstrated that the disputed services were rendered and billed for accepted concussion condition, not for the disputed condition, and therefore a penalty was due from insurer for late payment.

The record before me contains no evidence showing that the request for penalty was raised at any time prior to the request for a contested case hearing. Accordingly, I affirm the administrative decision and order that a copy of the order in this matter be submitted by MRU to the WCD Compliance Section, Sanctions Unit for further consideration of whether the insurer unreasonably refused or delayed payment of medical services. See ORS 656.262(11), ORS 656.745, OAR 436-060-0155.

### **ATTORNEY FEES**

Claimant has not prevailed in a contested case hearing, and therefore, his attorney is not entitled to a fee. ORS 656.385(1).

### **ORDER**

IT IS HEREBY ORDERED that:

The Director's Review and Order dated December 7, 2001 is affirmed. The director shall submit a copy of the order in this matter to the WCD Compliance Section, Sanctions Unit for

further consideration of whether the insurer unreasonably refused or delayed payment of medical services.

DATED this \_\_\_\_\_ day of March 2002.

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Paul Vincent  
Hearing Officer  
Hearing Officer Panel