
In the Matter of the ORS 656.260 Managed Care Organization Dispute of

Curtis, Michelle, Claimant

Contested Case No: H01-107

AMMENDED FINAL ORDER

November 12, 2002

MICHELLE CURTIS, Petitioner

TRAVELERS INDEMNITY OF ILLINOIS AND PROVIDENCE VANTAGE MCO,

Respondent

Before John L. Shilts, Workers' Compensation Division Administrator

On October 21, 2002, the Director issued a Final Order, which modified in part and affirmed in part the June 10, 2002 Amended Proposed and Final Contested Case Order. Specifically, the Director held that: (1) claimant was properly enrolled in the MCO and was properly notified that Dr. Brett did not qualify as a primary care physician; (2) claimant was entitled to receive treatment outside the MCO during the period her aggravation claim was in denied status; and (3) the \$5,500 assessed attorney fee awarded by the hearing officer be reduced to \$2,500 for services at the contested case hearing. Claimant sought an additional attorney fee. Because the Final Order failed to address the additional attorney fee, claimant requests reconsideration of the portion of that order regarding the attorney fee issue.

Having considered claimant's affidavit in support of her attorney fee request and the insurer's response, the Director amends the Final Order as follows.

Procedurally, this contested case matter began on September 20, 2001 with claimant's request for hearing appealing MRU's August 23, 2001 administrative order. The initial hearing on this matter was held on December 5, 2001. Hearing Officer Johnson issued her Proposed and Final Contested Case Hearing Order on February 8, 2002, in which she awarded a \$5,500 assessed attorney fee based on claimant's February 7, 2002 Affidavit in Support of Attorney's Fees. On February 15, 2002, the insurer filed a two page Motion for Abatement and Reconsideration of the order. Claimant responded on February 19, 2002 with a three paragraph letter. WCD thereafter referred the matter to the hearing officer to conduct further hearing.

On May 9, 2002, Hearing Officer Johnson conducted further hearing to address the arguments raised by the insurer in its motion. The hearing lasted approximately 10 minutes and consisted of oral argument. On June 10, 2002, Hearing Officer Johnson issued her Amended Proposed and Final Contested Case Hearing Order, which reaffirmed her prior decision. The insurer filed exceptions on June 27, 2002. Claimant timely responded to the exceptions.

Claimant's counsel stated that he spent approximately six hours for services for the May 9, 2002 rehearing and on the exceptions process and requests an additional \$1,500 attorney fee. The time expended included reviewing the insurer's brief, reviewing case law, and drafting a response. The insurer submits that a fee in the range of \$300-400 is more reasonable, contending that only a third of claimant's response to its exceptions dealt with the merits and the remainder dealt with defending the attorney fee award.

As stated in the Final Order, the factors to be considered in determining an appropriate attorney fee are: 1) time devoted to the case; 2) the complexity of the issues; 3) the value of the interest involved; 4) the nature of the proceedings; 5) benefit secured for the claimant; 6) risk in a particular case that an attorney's efforts may go uncompensated; 7) assertion of frivolous issues or defenses; 8) a statement of services; and 9) any other relevant consideration deemed appropriate. OAR 436-001-0265.

Claimant's initial statement of services, dated February 7, 2002, predated services rendered during the May 9, 2002 rehearing and the exceptions process. Thus, an additional fee for services rendered after issuance of the February 8, 2002 Proposed and Final Contested Case Hearing order is appropriate. Again, claimant's subsequent statement of services was not specific as to the time expended on the services performed during rehearing and exceptions. Thus, the Director assumes a broader range of discretion in awarding a fee. *Clyde Keeland*, 6 WCSR 342 (2001). Claimant is not entitled to additional attorney fees for defending the attorney fee award. *Dotson v. Bohemia*, 80 Or App 233 (1986). Based upon the above, and considering the factors set forth in OAR 436-001-0265(1), in particular the complexity of the legal issues, the Director finds that claimant is entitled to an additional \$1,000 attorney fee award for services rendered for the rehearing and the exceptions process. Therefore, the employer shall pay claimant's attorney an assessed fee in the amount of \$3,500 for services rendered in this matter.

On reconsideration, as amended herein, the Director republishes her prior order. The parties' rights of appeal shall run from the date of this order.

IT IS SO ORDERED.

DATED this day of November, 2002.

**MARY NEIDIG, DIRECTOR
DEPARTMENT OF CONSUMER
AND BUSINESS SERVICES**

By: _____
John Shilts, Administrator
Workers' Compensation Division