

In the Matter of an ORS 656.245 Medical Services Dispute of

Massingale, Frank A., Claimant

Contested Case No: H02-086

PROPOSED & FINAL ORDER

December 13, 2002

ROSEBERG FOREST PRODUCTS, Petitioner

FRANK A MASSINGALE, Respondent

Before John L. Shilts, Workers' Compensation Division Administrator

HISTORY OF THE CASE

The petitioner, Roseburg Forest Products (insurer), appeals an administrative order finding it liable for medical services provide to claimant. On November 22, 2002, Hearing Officer Paul Vincent conducted a telephone hearing in this matter. Petitioner appeared and was represented by attorney H. Scott Plouse. The respondent appeared and was represented by attorney Christine Jensen. The Workers' Compensation Division (WCD) waived appearance at the proceeding. No testimony was taken.

The record of this proceeding, consisting of a tape recording of the hearing, all evidence received, and all hearing papers filed, has been considered. The findings of fact and conclusions of law are based upon the entire record.

ISSUE

Pursuant to the Notice of Hearing dated September 16, 2002, the issue is whether Roseburg Forest Products is liable for reimbursement to claimant for out-of-pocket expenses incurred from September 18, 2001 through January 3, 2002 under ORS Chapter 656 and OAR Chapter 436.

EVIDENTIARY RULINGS

WCD Exhibits 1-29 were received without objection.

FINDINGS OF FACT

Having reviewed the order and the record in its entirety, I adopt the findings of fact contained in the Administrative Order MS 02-480. I make the following supplementary findings:

Claimant submitted requests for reimbursement of prescriptions filled on September 18, October 15, November 9 and December 6, 2001 to insurer. (Ex. 9). On December 17, 2001, insurer notified claimant that they would not consider reimbursement because they had "yet to receive a copy of the prescriptions or medical justification from Dr. Bilder." (Ex. 10). Dr. Bilder is claimant's attending physician.

(Exs. 6, 16, 23). On January 3, 2002, in response to a request for information from the WCD Sanctions Unit, insurer notified WCD that reimbursement requests filed by claimant on September 18, 2001 and October 15, 2001 had not been paid. Insurer cited the lack of medical documentation including a copy of the prescriptions as the reason for not considering the request. (Ex. 11). On January 15, 2002, insurer notified claimant that it had received requests for reimbursement of prescriptions filed on December 6, 2001 and January 3, 2002. The insurer stated that they had “yet to receive a copy of the prescriptions or medical justification from Dr. Bilder...so that we may consider reimbursement.” (Ex. 12). On January 17, 2002, insurer notified claimant that it was still awaiting a copy of the prescription and medical justification before reimbursement could proceed on submitted reimbursements dated September 9, 2001; October 25, 2001; November 9, 2001; December 12, 2001; and January 3, 2002. (Ex. 13).

On February 28, 2002, Dr. Bilder prepared a letter summarizing the claimant’s course of treatment with him since 1994. He explained the need for the prescribed drugs as follows:

“[Claimant] is on Oxycontin and Nortriptyline in an effort to control his arthritic and neurogenic pain so that he can function satisfactorily at his job and with a reasonable life style. He has been on these medications for a long time and they are controlling his symptoms reasonably well and are certainly needed.” (Ex. 16).

On April 22, 2002, Stanley Donahoo, MD, reviewed the claimant’s medical history and performed an insurer’s medical examination of the claimant. He noted that while he would not have prescribed the narcotics administered to claimant, he could not say that they were contraindicated except as to his own standards of care. (Ex. 23).

On June 12, 2002, in response to a request from claimant’s attorney, Dr. Bilder listed the medications currently being prescribed for claimant’s work related back condition. The medications listed included the disputed Oxycontin and Nortriptyline. He opined that the major contributing cause for these prescription medications was the May 5, 1994 work related injury. (Ex. 25).

CONCLUSIONS OF LAW

Roseburg Forest Products is liable for reimbursement to claimant for out-of-pocket expenses incurred from September 18, 2001 through January 3, 2002 under ORS Chapter 656 and OAR Chapter 436.

OPINION

Medical service disputes are not matters concerning a claim under ORS 656.704(3) and are within the Director’s jurisdiction. See Larry Archer, 7 WCSR 76 (2002). The Director has captioned this matter as an “ORS 656.245 Medial Services Dispute.” In the past, the director has treated these cases as subject to de novo contested case review pursuant to ORS 656.245. See Archie M. Ulrich, 2 WCSR 152, 153 (1997);

OAR 436-010-0225(1). However, I find that the standard of review for this dispute is now governed by ORS 656.327. ORS 656.245(6) now generally authorizes WCD to conduct administrative review of a disapproved medical service “pursuant to ORS 656.260 or 656.327.” Based on this statutory directive, I find that my standard of review is governed by ORS 656.327. Therefore, I may modify the director's administrative order in this matter only if it is not supported by substantial evidence in the record, or reflects an error of law. ORS 656.327(2). In order to determine whether substantial evidence exists, I am required to:

"[L]ook at the whole record with respect to the issue being decided, rather than one piece of evidence in isolation. If an agency's finding is reasonable, keeping in mind the evidence against the finding as well as the evidence supporting it, there is substantial evidence. For instance, and in the context which is likely frequently to occur in workers' compensation cases, if there are doctors on both sides of a medical issue, whichever way the [director] finds the facts will probably have substantial evidentiary support. *** The difference between the 'any evidence' rule and the substantial evidence test * * * will be decisive only when the credible evidence apparently weighs overwhelmingly in favor of one finding and the [director] finds the other without giving a persuasive explanation." *Armstrong v. Asten-Hill Co.*, 90 Or App 200, 206 (1988).

Petitioner assigns error to MRU's finding that insurer is liable for the requested reimbursement in the absence of a copy of the original prescriptions and further medical documentation provided to insurer. Insurer argues that it was not until June 2002 that Dr. Bilder provide anything that demonstrated what he was prescribing for the compensable injury, and has never produced copies of the prescriptions. Insurer argues that OAR 436-010-0230(1) and (3)¹ justify the insurer's refusal to compensate claimant. While insurer is correct that the cited rules allow an insurer to request further information, the decision before me is whether the record contains substantial evidence to support the conclusion that at the time of the director's administrative decision (July 15, 2002) the record supported the conclusion that Roseburg is liable for the requested reimbursements. On that point I agree with claimant that no later than February 28, 2002, the record demonstrates substantial evidence existed to support the directors conclusion. On that date, Dr. Bilder notified insurer that the disputed narcotic medications were being provided for claimant's compensable condition. The additional medical evidence provided after February 28, 2002, including reports from Drs. Bilder and Donahoo, support the same conclusion and were all prepared prior to MRU's decision of July 15,

¹ OAR 436-010-0230(1) and (3) state in relevant part:

(1) Medical services provided to the injured worker shall not be more than the nature of the compensable injury or the process of recovery requires. Services which are unnecessary or inappropriate according to accepted professional standards are not reimbursable.

(3) Insurers have the right to require evidence of the frequency, extent, and efficacy of treatment.

2002. While insurer may still wish to see a copy of the original prescriptions, MRU was satisfied that the evidence presented showed that the prescriptions were necessary, proper and reimbursable even in their absence. This was a decision MRU was entitled to make on the evidence presented as of July 15, 2002. I cannot say that the evidence weighs overwhelmingly against this decision and therefore affirm the order.

ORDER

IT IS HEREBY ORDERED that the Medical Review Unit Order dated July 15, 2002, MS 02-480, is affirmed.

DATED this 13th day of December, 2002.

Paul Vincent
Hearing Officer
Hearing Officer Panel