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In the Matter of the ORS 656.245 Medical Treatment Dispute of

**Rippey, John, Claimant**

Contested Case No: HH10-125

**AMMENDED PROPOSED & FINAL ORDER**

April 3, 2002

MARY ANN GRIBBS , Petitioner

CIS WORKERS COMPENSATION GROUP, Respondent

Before John L. Shilts, Workers' Compensation Division Administrator

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On October 22, 2001, Mary Ann Gibbs, DC, (petitioner) filed a request for hearing concerning a workers' compensation medical treatment dispute. On December 27, 2001, Hearing Officer Paul Vincent conducted a show cause hearing in this matter by telephone in Salem, Oregon. Petitioner appeared pro se. Insurer CIS Workers Compensation Group (insurer or CIS) appeared through attorney Bob Radler.

**EVIDENTIARY RULING**

WCD Exhibits 1 through 4 were admitted into evidence.

**FINDINGS OF FACT**

On August 6, 2001, the Medical Review Unit (MRU) of the Workers' Compensation Division (WCD) issued an administrative order finding that CIS was not liable for office visits provided by Dr. Gibbs from August 28 through December 19, 2000. The order contained a Notice of Appeal Rights that notified Dr. Gibbs "no review shall be granted unless the request ... is postmarked within 30 days from the date of this order." (Ex. 1).

On September 6, 2001, Dr. Gibbs submitted a Request for Contested Case Hearing to WCD. The Request is postmarked September 6, 2001. (Ex. 2).

On September 25, 2001, WCD notified Dr. Gibbs that the Request was untimely filed and therefore the request for a contest case hearing on the administrative order was denied; however, the notice provided for a "show cause hearing" to determine whether the request for contested case hearing was timely filed. (Ex. 3).

On October 22, 2001, Dr. Gibbs requested a show cause hearing to determine whether the request for a contested case hearing was timely filed. (Ex. 4).

Dr. Gibbs explains the circumstances of her failure to timely request a hearing as follows: "In preparing our request for a contested case hearing on 09/05/01, I realized that a form 2839 was required. Since we do not have a fax, I contacted the Workers' Compensation Division and requested that a copy of Form 2839 be faxed to Lazerquick. I obtained the form from Lazerquick on 09/06/01 and spoke with Shelly Cochran at the Workers' Compensation Division She spoke with her supervisor and called back to recommend that we file the 2839 to preserve

our right to appeal.”

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

Oregon law requires a party to request appeal of an MRU administrative order within 30 days from the issuance of the order. OAR 436-010-0008. Here, I find that the order was issued and mailed to petitioner on August 6, 2001. The 30<sup>th</sup> day from date of the issuance of the order was September 5, 2001. Petitioner submitted a request for contested case hearing on September 6, 2001. Accordingly, the request was one day late and petitioner is not entitled to a contested case in this matter. Petitioner’s request for a contested case on Administrative Order MS 01-795 is denied.

### **ORDER**

IT IS HEREBY ORDERED that the WCD’s denial of a request for contested case hearing order in this matter, dated September 25, 2001, is affirmed.

DATED this 3rd day of April, 2002.

By: \_\_\_\_\_  
Paul Vincent, Hearing Officer  
Hearing Officer Panel