
In the Matter of the 656.245 Medical Services Dispute of

Rowe, Lori A, Claimant

Contested Case No: HH01-104

FINAL ORDER

June 13, 2002

LORI ANNE ROWE, Petitioner

COSTCO WHOLESALE CORP, Respondent

Before John L. Shilts, Workers' Compensation Division Administrator

The Medical Review Unit (MRU) of the Department of Consumer and Business Services, Workers' Compensation Division (WCD) issued an administrative order on August 15, 2001 that found respondent not liable for reimbursement for petitioner's outside meals and teacher expenses incurred while attending a pain management program. On October 18, 2001, Hearings Officer Catherine P. Coburn conducted a telephone hearing. Attorney Aaron E. Clingerman represented petitioner, Lori Anne Rowe (claimant). Respondent, Costco Wholesale Corporation and its claims administrator, Cambridge Integrated Services Group (employer), were represented by attorney Leah Sideras. The WCD waived appearance. Claimant and Craig Campbell testified on claimant's behalf. No other witnesses testified.

The petitioner filed exceptions to Hearings Officer Coburn's March 4, 2002 Proposed and Final Contested Case Hearing Order, which found respondent liable for reimbursement of the reasonable costs of meals. The respondent timely responded to the exceptions. Before the Director, the issues are petitioner's entitlement to reimbursement and penalty. The entire record, consisting of a tape recording of the hearing, all evidence received, and all documents filed, has been considered.

Findings of Fact

I adopt the hearing officer's findings of fact with two exceptions. Her findings regarding claimant's submission of receipts, contained in the last three sentences of the findings of fact, are replaced and supplemented as follows:

Claimant requested the employer to reimburse her for \$95.66 for meals purchased outside the hotel restaurant. Claimant saved her receipts and enclosed them with the reimbursement request. Claimant did not advise the employer of her dietary restrictions.

I correct the hearing officer's finding that the hotel provided three meals per day to PRA residents, contained in the second paragraph of the findings of fact. The evidence in the record supports the finding that the hotel provided two, rather than three, meals per day. The hearing officer's finding is replaced with:

The hotel provided two meals per day to PRA residents at insurer's expense.
(Testimony of Campbell).

Conclusions of Law and Opinion

Claimant lived in Keizer, Oregon and attended a pain management program at Progressive Rehabilitation Associates (PRA) in Beaverton, Oregon. For three weeks, excluding weekends, claimant resided at the Greenwood Inn while she attended a pain management program. The hotel provided two meals per day to PRA residents. The hotel provided claimant with vouchers to purchase meals from a designated menu in its restaurant. The hotel billed the employer only for vouchers used by claimant. Because claimant had a specialized diet, she purchased meals and groceries elsewhere.

Relying on the testimony of Craig Campbell, hotel general manager of the Greenwood Inn, the hearing officer found that the hotel billed the employer only for the eight meals claimant consumed at the hotel. Claimant sought reimbursement in the amount of \$95.66 for meals purchased outside the hotel. The hearing officer found that claimant had provided receipts for two meals she purchased (\$6.45 and \$7.76) and for \$14.17 in groceries. However, because claimant failed to produce receipts for the other claimed meals, the hearing officer determined that claimant was not entitled to reimbursement for those expenses. She, therefore, concluded that claimant was entitled to be reimbursed \$28.38 as the “actual and reasonable” cost for meals.

In her exceptions, claimant submitted a “cleaner” copy of exhibit 10, which shows that she is entitled to \$95.66 for meals. The employer responded that it was inappropriate to resubmit exhibits at the exceptions process, and that, in any event, claimant’s reimbursement request was not substantiated by receipts.

OAR 436-060-0070 provides in relevant part:

“(1) The insurer shall notify the worker at the time of claim acceptance that the actual and reasonable costs for travel, prescriptions and other claim-related services paid by the worker will be reimbursed by the insurer upon request. The insurer may require reasonable documentation to support the request. ***”

“(2) Reimbursement of the costs of meals, lodging, public transportation and use of a private vehicle reimbursed at the rate of reimbursement for State of Oregon classified employees complies with this section. Reimbursement may exceed these rates where special transportation or lodging is needed.”

Former OAR 436-60-070 was at issue in *Safeway Stores, Inc. v. Cornell*, 148 Or App 107 (1997) as it related to reimbursement for travel expenses. The court construed the rule as requiring both a showing that the actual cost was reasonable and that it was reasonable for the claimant to use the particular mode of transportation (taxi) in question. The determination of reasonableness depended on the specific circumstances of the claimant. The employer was ordered to reimburse the claimant the actual amount he spent in taxi fares for transportation to medical appointments.

Here, based on the court’s analysis in *Cornell*, the issue is twofold: (1) has claimant shown that the actual cost of her meals was reasonable and (2) was it reasonable for claimant to

purchase meals outside the motel? The hearing officer implicitly determined that it was reasonable for claimant to purchase meals outside the motel because she maintained a specialized diet. Claimant has dietary restrictions due to her hypoglycemia.¹ During her three-week stay at the hotel, claimant ate eight meals at the hotel restaurant. The hotel restaurant was otherwise unable to accommodate claimant's dietary restrictions. Claimant ate at outside restaurants three times, but bought most of her food at Nature's Northwest. Based on claimant's specific circumstances, it was reasonable for her to eat meals other than the meals provided by the hotel.

On the first issue, the hearing officer determined that claimant failed to meet her burden of proof because she had not provided documentation in the form of receipts to support her request. Receipts are a reasonable form of documentation to support claimant's reimbursement request. In her reimbursement request, claimant claimed she had spent \$95.66 for meals outside the motel's restaurant and indicated that receipts were enclosed. (Ex. 10).² Claimant testified that she saved all her receipts and that exhibit 10 was a true and accurate list of receipts for her meals. The meals purchased at the hotel restaurant cost between \$7.50 and \$15.00. The outside meals and food purchased by claimant were within or less than these amounts and, thus, were reasonable costs. Based on the documentary evidence and claimant's credible testimony, the director finds that the employer is liable to reimburse claimant the actual and reasonable cost of her meals--\$95.66.

Penalties

Claimant requested a penalty and attorney fee for the employer's alleged unreasonable failure to reimburse her meal expenses. The issue was raised before MRU, but not reached due to MRU's conclusion that the employer was not liable for the reimbursements. The issue was also raised at the contested case hearing, but was remanded to the Sanctions Unit of WCD for resolution. Because the director has jurisdiction to consider all issues raised by the parties and based on the scope of the director's *de novo* review of this matter, the director proceeds with her review of this issue. *Archie M. Ulbrich*, 2 WCSR 152 (1997) (the standard of review in a ORS 656.245 medical service dispute is *de novo*); OAR 137-003-0665. Moreover, the record at the contested case hearing was adequately developed to resolve this issue.

Penalties may be assessed when an employer "unreasonably delays or unreasonably refuses to pay compensation." ORS 656.262(11). The standard for determining the unreasonable resistance to the payment of compensation is "whether, from a legal standpoint, [the insurer] had a legitimate doubt as to its liability. *** 'Unreasonableness' and 'legitimate doubt' are to be considered in the light of all evidence available to the insurer." *Brown v. Argonaut Ins. Co.*, 93 Or App 588, 591 (1988)(citations omitted).

¹ There is no indication in the record that claimant's hypoglycemia is a compensable condition.

² Claimant's "cleaner" copy of exhibit 10, which was submitted with her exceptions, is treated as a motion to remand for further hearing. OAR 137-003-655(1). The motion is denied. The proffered evidence was available at the time of hearing, and is otherwise unduly repetitious.

Claimant had been advised that meals were provided through the PRA program. The

hotel provided claimant with meal vouchers and billed the employer directly for the vouchers used. The employer had paid the hotel for these vouchers. In response to claimant's request for meal reimbursement, the employer stated that meals were provided through the PRA program and, therefore, food claimant had bought personally was not reimbursable. The employer also requested statutory authority for such reimbursement. (Ex. 1). Claimant failed to respond to the employer's request. (Exs. 3, 4). In addition, although claimant had talked to PRA regarding her dietary restrictions, this information and information regarding the hotel's inability to accommodate claimant's dietary restrictions were not provided to the employer. Thus, based on the information available to the employer, it had a reasonable doubt as to its liability to reimburse claimant for food and meals she had purchased on her own. A penalty, therefore, is not warranted.

IT IS HEREBY ORDERED that the March 4, 2002 Proposed and Final Contested Case Hearing Order is modified. The employer shall reimburse claimant \$95.66 for her actual and reasonable costs of meals. The assessment of a penalty under ORS 656.262(11) is denied. The underlying award of \$592 for claimant's attorney's fee is affirmed.

DATED this ____ day of June, 2002.

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

By: _____
John Shilts, Administrator
Workers' Compensation Division