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In the Matter of the ORS 656.245 Medical Services Dispute of

**Rowe, Lori A., Claimant**

Contested Case No: HH10-104

**PROPOSED & FINAL ORDER**

April 4, 2002

LORI ANNE ROWE, Petitioner

COSTCO WHOLESALE CORP., Respondent

Before John L. Shilts, Workers' Compensation Division Administrator

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Claimant appeals an Administrative Order dated August 15, 2001 issued by the Medical Review Unit (MRU) of the Workers' Compensation Division (WCD), Department of Consumer and Business Services (director or the department). On October 18, 2001, Administrative Law Judge Catherine P. Coburn conducted a hearing in this matter. Petitioner Lori Anne Rowe (claimant) was represented by attorney Aaron E. Clingerman. Respondent self-insured employer Costco Wholesale Corporation and its claims administrator Cambridge Integrated Services Group (insurer) was represented by attorney Leah Sideras. Claimant testified on her own behalf and called Craig Campbell as a witness; insurer called no witnesses.

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 set out below are based upon the entire record.

**ISSUE**

The issue is whether MRU correctly determined that certain meals were not reimbursable pursuant to ORS 656.245(1)(b).

**EVIDENTIARY RULINGS**

Workers' Compensation Division (WCD) Exhibits 1 through 10 were received into the record without objection.

**FINDINGS OF FACT**

I adopt the findings of fact contained in the administrative order on appeal with the following supplementation:

On October 8, 2000, claimant suffered a work-related injury. (Ex. 1). For three weeks in March 2001, claimant attended a pain management program at Progressive Rehabilitation Associates (PRA) and resided in the Beaverton Greenwood Inn at insurer's expense. (Testimony of hotel manager Campbell and claimant). The hotel provided three meals per day to PRA residents at insurer's expense. (Testimony of Campbell). Through a voucher system, the hotel billed insurer only for the eight meals claimant consumed at the hotel. (*Id.*)

Claimant maintained a specialized diet and purchased meals and groceries elsewhere.

(Ex. 10; testimony of claimant). Claimant submitted receipts for two meals she purchased in a restaurant outside the hotel for \$6.45 and \$7.76. (Ex. 10). Claimant also submitted a receipt for one grocery store purchase for \$14.17. (*Id.*) Claimant claimed reimbursement for other food expenses but submitted no receipts. (*Id.*)

### CONCLUSIONS OF LAW AND REASONING

Jurisdiction lies with the director of WCD. ORS 656.245(6). The statute does not specify a standard of review and therefore, I review *de novo*. OAR 436-001-0225(1). See *Archie M. Ulrich*, 2 WCSR 152 (1997).

Pursuant to ORS 656.245(1), an insurer is obligated to provide medical services that are materially related to a compensable injury for such period as the nature of the injury or the process of recovery requires. This obligation continues over the injured worker's lifetime. ORS 656.245(1)(b) defines the parameters of compensable medical services. ORS 656.245(1)(b) provides:

“Compensable medical services shall include medical, surgical, hospital, nursing, ambulances and other related services, and drugs, medicine, crutches and prosthetic appliances, braces and supports and where necessary, physical restorative services. A pharmacist or dispensing physician shall dispense generic drugs to the worker in accordance with ORS 689.515. The duty to provide such medical services continues for the life of the worker.”

OAR 436-010-0270(6) provides:

“Insurer shall reimburse workers for actual and reasonable costs for travel, prescriptions, and other claim related services paid by a worker in accordance with ORS 656.245(1)(d)<sup>1</sup> and OAR 436-060-0070.”

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<sup>1</sup> ORS 656.245(1)(d) provides:

“When the medically stationary date in a disabling claim is established by the insurer or self-insured employer and is not based on the finding of the attending physician, the insurer or self-insured employer is responsible for reimbursement to affected medical service providers for otherwise compensable services rendered until the insurer or self-insured employer provides written notice to the attending physician of the worker's medically stationary status.”

OAR 436-060-0070(1) appears under the heading “Reimbursement of Related Services Costs” and provides in 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.”  
(Emphasis added).

In the administrative order, MRU determined that insurer was not liable for meals claimant purchased outside the hotel. MRU reasoned that since insurer provided all meals within the hotel, “the purchase of any additional meals was unnecessary”. (Ex. 8-1). However, at hearing the hotel manager testified credibly that the hotel billed insurer only for those meals claimant consumed at the hotel. Further, he testified credibly that claimant consumed and insurer paid for only eight meals over the three-week period of her residence in the hotel.

Under the administrative scheme, claimant is entitled to reimbursement for “actual and reasonable” expenses upon production of adequate documentation. Claimant is not entitled to reimbursement for food expenses in the absence of receipts. Claimant submitted receipts totaling \$28.38 (\$6.45 + \$7.76 + \$14.17) for food she purchased other than the eight insurer-paid meals in a three-week period. The receipts establish that claimant actually incurred \$28.38 in food expenses. Furthermore, I conclude that \$28.38 is a reasonable cost for these meals.

Penalty: Claimant asserts that insurer should be assessed a penalty for unreasonable resistance to payment pursuant to ORS 656.262(11)(a). I remand to WCD’s Sanctions Unit for determination of the question whether a penalty is warranted.

Attorney Fees: Claimant has prevailed in a contested case hearing, and therefore, her attorney is entitled to a reasonable attorney fee. ORS 656.385(1). OAR 436-001-0265 lists the following factors to consider in assessing a reasonable attorney fee:

- “(a) The time devoted to the case;
- (b) The complexity of the issue(s) involved;
- (c) The quality of the legal representation;
- (d) The value of the interest involved;
- (e) The nature of the proceedings;
- (f) The benefit secured for the claimant;
- (g) The risk in a particular case that an attorney’s efforts may go uncompensated;
- (h) The assertion of frivolous issues or defenses;
- (i) A statement of services, if submitted within seven days of the hearing date, unless the presiding officer instructs otherwise;
- (j) Any other relevant consideration deemed appropriate by the presiding officer.”

Here, claimant’s attorney submitted a statement of services listing 7.4 hours devoted to the case at an hourly rate of \$160 requesting an attorney fee of \$1,184. The quality of representation is above reproach and I do not question the number hours devoted to the case. However, the amount in dispute is \$28.38 and the benefit to claimant is minimal. Under the circumstances, I find that one half of the requested attorney fee or \$592 constitutes a reasonable fee for claimant’s attorney’s services in the case.

**ORDER**

IT IS HEREBY ORDERED that:

The Administrative Order dated August 15, 2001 is reversed.

Dated this \_\_\_\_\_ day of March 2002

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Catherine P. Coburn, Administrative Law Judge  
Hearing Officer Panel