

In the ORS 656.245 Medical Services Dispute of
Watts, Eric, Claimant

Contested Case No: HH02-054

GRANTING MOTION TO STAY

October 16, 2002

LIBERTY NORTHWEST INSURANCE CORPORATION , Petitioner
ERIC M. WATTS, Respondent

Before John L. Shilts, Workers' Compensation Division Administrator

This matter involves an appeal of an administrative decision made by the Workers' Compensation Division, Medical Review Unit (MRU). The matter was determined to be and was characterized in the Notice of Hearing as arising under ORS 656.245. There is currently pending before the Workers Compensation Division a transmitted question in the matter of the ORS 656.245 Medical Services Dispute of Warren D. Amrein, Contested Case No: H02-010, that seeks to determine whether contested cases held under this statute are subject to substantial evidence review pursuant to ORS 656.327 or *de novo* review. The transmitted question states:

1. In light of the 1999 amendment to ORS 656.245(6)¹ and ORS 656.704(3)², does WCD lack subject matter jurisdiction over

¹ Former ORS 656.245(6) (1999) provides:

If a claim for medical services is disapproved for any reason other than the formal denial of the compensability of the underlying claim and this disapproval is disputed, the injured worker, the insurer or self-insured employer shall request administrative review by the director pursuant to this section, ORS 656.260 or 656.327. The decision of the director is subject to the contested case review provisions of ORS 183.310 to ORS 183.550.

ORS 656.245(6) provides:

Subject to the provisions of ORS 656.704, if a claim for medical services is disapproved, the injured worker, the insurer or self-insured employer may request administrative review by the director pursuant to ORS 656.260 or 656.327. *See* Or Laws 1999, Ch 926 Sec. 1.

² ORS 656.704(3) provides:

For the purpose of determining the respective authority of the director and the board to conduct hearings, investigations and other proceedings under this chapter, and for determining the procedure for the conduct and review thereof, matters concerning a claim under this chapter are those matters in which a worker's right to receive compensation, or the amount thereof, are directly in issue. However, subject to paragraph (b) of this subsection, such matters do not include any disputes arising under ORS 656.245, 656.248, 656.260, 656.327, any other provisions directly

medical service disputes?

2. In light of the 1999 amendment to ORS 656.245(6), is the record closed in a medical service contested case hearing?
3. In light of the 1999 amendment to ORS 656.245(6), what is the standard of review in a medical service contested case? Does the standard of review continue to be *de novo* as set forth in OAR 436-001-0225(1), OAR 436-001-0225(6) and *Archie Ulbrich*, 2 WCSR 152, 153 (1997)? In the alternative, is the standard of review substantial evidence and error of law pursuant to ORS 656.260 or ORS 656.327?
4. Is OAR 436-001-0225(1)³(eff.9-15-98) consistent with ORS 656.245(6) as amended in 1999?
5. Does OAR 436-001-0225(6)⁴ apply to medical service disputes?
6. Did the 1999 amendment to ORS 656.245(6) overrule *Archie Ulbrich*, 2 WCSR 152, 153 (1997)(Since ORS 656.245 prescribes no standard of review, the standard in a medical service contested case hearing is *de novo*.)?

Pursuant to OAR 137-003-0600, I am staying further action in this matter until such time as an answer is received from the Workers' Compensation Division in the above-mentioned matter. If an answer is received from the Workers' Compensation Division in that matter, the parties to this hearing will be provided with a copy and may submit written argument in reply within fourteen (14) days of mailing.

relating to the provision of medical services to workers or any disputes arising under ORS 656.340 except as those provisions may otherwise provide.

³ OAR 436-001-0225(1) provides:

Medical services disputes arising under ORS 656.245 shall be reviewed *de novo*.

⁴ OAR 436-001-0225(6) provides:

All other disputes shall be reviewed *de novo* unless otherwise prescribed by statute or administrative rule.

DATED this _____ day of October 2002.

Ella D. Johnson
Administrative Law Judge
Hearing Officer Panel