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In the Matter of the Medical Services Dispute of

**Castro, Cindy R., Claimant**

Contested Case No: H02-033

**FINAL ORDER**

June 9, 2003

OLD REPUBLIC INSURANCE CO., Petitioner

CINDY R. CASTRO, Respondent

Before John L. Shilts, Workers' Compensation Division Administrator

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Petitioner, insurer Old Republic Insurance Co. and Constitution State Service Co., through their attorney Daniel L. Myers, filed exceptions to Hearing Officer Vincent's December 13, 2002 Proposed and Final Contested Case Hearing Order. Claimant, unrepresented by an attorney, did not respond to insurer's exceptions.

The entire record, including the exhibits in evidence, audio recordings of the telephone hearings, and the parties' arguments, has been reviewed. The director issues this Final Order adopting and affirming the December 13, 2002 proposed order with modifications.<sup>1</sup>

Insurer raises two issues in its exceptions. The first is that the proposed order contains inconsistencies in the dates of the services provided by Hinck Medical for which insurer is liable. The insurer asserts that the correct interpretation is that insurer is not liable for services provided by Hinck Medical from September 18, 2000 through May 18, 2001.

In the proposed order on the top of page three (under the heading "Conclusions of Law"), it is stated: "Insurer is not liable for medical services provided to claimant by Hinck Medical, Inc. from *September 18, 2000* through May 18, 2001" (emphasis added). Then, on the top of page five (under the heading "Order"), it states: "Constitution is not liable for services provided by Hinck Medical from *October 18, 2000* through May 18, 2001" (emphasis added). Contrary to insurer's assertion, it appears the correct interpretation is that insurer is liable for services provided by Hinck between September 18, 2000 and October 18, 2000. The statement in the "Order" is supported by the reasoning on pages three and four (under the heading "Opinion") of the proposed order, particularly in the last paragraph on the bottom of page four --

“ \*\*\* [T]he insurer explicitly notified Hinck Medical, Inc. that it would only authorize reimbursement of the TENS unit for 30 days. Here, because the insurer explicitly told the provider that only one month of TENS treatment would be compensated, there is no basis for the director to require insurer to *further* compensate \*\*\*.”  
(Emphasis added.)

-- and the accompanying footnote: "Here, the treatment is compensable only because of the

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<sup>1</sup> The dispute as framed by the parties has been primarily factual. The director's review is limited to the arguments raised by the parties in the exceptions, and to the form of the proposed order.

insurer's implied representation that it would be."

The proposed order when read in its entirety supports the conclusion that the hearing officer found insurer liable for the first 30 days of the TENS unit that were authorized, from September 18, 2000 to October 18, 2000. (Ex. 13-2, 14-2, 18-2). Insurer's first exception therefore fails, and the "Conclusions of Law" paragraph of the December 13, 2002 proposed order is so modified.

The proposed order contains a second inconsistency that insurer does not raise. On the top of page three (under the heading "Conclusions of Law") it is stated, in part: "Insurer is liable for medical services provided to claimant by Providence Medford Medical Center from August 28 through *December 24, 2000*" (emphasis added). Then, on the top of page five (under the heading "Order"), it states, in part: "Constitution is liable for the medical services provided and ordered at Providence Medford Medical Center from August 28 through *December 4, 2000*" (emphasis added). Again, the proposed order when read in its entirety supports the conclusion that the "Order" is correctly stated. While services may have been provided through December 24, 2000, Ms. Castro's claim was denied on December 4, 2000. The administrative order found that insurer was liable to Providence only for services provided through December 4, 2000 (Ex. 20-3), and the hearing officer did not reverse the administrative order in that regard. The insurer is liable only for services provided by Providence through December 4, 2000, and the "Conclusions of Law" paragraph of the December 13, 2002 proposed order is so modified.

Insurer's second exception raises many issues: the standard of review in this dispute is *de novo*; the hearing officer should have considered the testimony of the witnesses at hearing in reaching his conclusion; the overwhelming weight of the evidence supports its contention that the services provided by Providence are not compensable; and the 1999 amendment to ORS 656.327(2) and the substantial evidence review violates the due process clause of the 14th amendment of the U.S. Constitution.

The insurer's second exception is not well taken. Its constitutionality argument is raised for the first time before the director. Moreover, insurer based its March 6, 2002 request for hearing on "the reason that the Administrative Order dated February 13, 2002 is not supported by substantial evidence." (Ex. 21-1.) The proposed order indicates that the hearing officer did indeed consider the testimony of the parties in reaching his conclusion. His supplementary findings of fact are based on the testimony of both claimant and insurer's witness (proposed order, page 2), and he further refers to the "credible testimony of both claimant and Williams" (proposed order, page 4). Insurer asserts that the overwhelming weight of the evidence supports its contentions, but points to nothing specific in the record. The director is not otherwise persuaded to disturb the hearing officer's findings or to modify the hearing officer's analysis.

IT IS HEREBY ORDERED that the December 13, 2002 Proposed and Final Contested Case Hearing Order is adopted and affirmed, as modified above, as follows:

- (1) Insurer is liable for the medical services provided to claimant by Providence Medford Medical Center from August 28, 2000 through December 4, 2000.

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(2) Insurer is liable for the medical services related to the TENS unit provided to claimant by Hinck Medical, Inc. from September 18, 2000 to October 18, 2000.

DATED this 9<sup>th</sup> day of June, 2003.

**CORY STREISINGER, DIRECTOR  
DEPARTMENT OF CONSUMER  
AND BUSINESS SERVICES**

By: \_\_\_\_\_  
John Shilts, Administrator  
Workers' Compensation Division