

In the Matter of the ORS 656.245 Treatment Dispute of

**Larry Dugger, Claimant**

Contested Case No: H04-103

**INTERIM ORDER REMANDING**

September 10, 2004

LARRY DUGGER, Petitioner

BIRMINGHAM FIRE INSURANCE COMPANY and CRAWFORD AND COMPANY  
INSURANCE ADJUSTERS, INC., Respondent

Before Ella D. Johnson, Administrative Law Judge, Office of Administrative Hearings

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Insurer appeals a May 19, 2004 Administrative Order issued by the Medical Review Unit (MRU) of the Workers' Compensation Division, Department of Consumer and Business Services (WCD or the department) which determined that insurer is liable for payment of medical services provided by Ruth Lowengart, MD from November 20, 2002 through August 5, 2003 and prescriptions purchased from Ben Franklin Drug from January 30, 2003 through March 30, 2003. The matter was referred to the Office of Administrative Hearings (OAH) for hearing on July 2, 2004.

On August 12, 2004, OAH Administrative Law Judge (ALJ) Ella D. Johnson conducted a telephone hearing in this matter in Salem, Oregon. Attorney Gordon T. Clark represented petitioner, Birmingham Fire Insurance Company and its claims processing agent Crawford & Company Insurance Adjusters, Inc. (insurer or Birmingham). Attorney at Law Heather Holt represented respondent Larry Dugger (claimant). No witnesses testified. The record closed on following the hearing.

This case involves responsibility among two insurers, SAIF Corporation (SAIF) and Birmingham, for medical services and prescriptions directed to a trapezius strain when both insurers have accepted cervical strain injuries. At hearing insurer argued and claimant agreed that MRU's order incorrectly found that Birmingham was liable because it "withdrew their issue regarding causation \* \* \*[insurer] must take responsibility as to causation of these disputed medical services and prescription medications." (MRU Administrative Order at page 2.) The procedural history of this case is somewhat complicated. The matter was originally filed with WCD and then deferred and transferred to the Workers' Compensation Board (WCB) on January 23, 2004. By Opinion and Order dated April 15, 2004, WCB Administrative Law Judge I. Terri Myzak dismissed the case, stating:

Because the insurer does not dispute the casual relationship of the requested medical services **to one of the accepted injury claims**, the issue pending before the Hearings Division is moot. Dismissal of the request for hearing is appropriate.

(Opinion and Order at page 3.) (Emphasis added.)

In other words, Judge Myzak found that WCB was without jurisdiction because insurer

did not contest that the medical services and prescriptions were compensable as to one of the two injuries accepted by SAIF or Birmingham and was requesting that the Director determine the issue of responsibility for the medical services between the two insurers. MRU did not do that. Moreover, SAIF apparently was not joined or was somehow dropped from the underlying dispute. Accordingly, inasmuch as the question of responsibility between the two insurers was not addressed and SAIF was not a part of the underlying administrative review, I find that remand to WCD is warranted.

### **ATTORNEY FEES**

Claimant has not finally prevailed in this matter and therefore is not entitled to an attorney fee at this time.

### **ORDER**

*IT HEREBY ORDERED* that MRU's May 19, 2004 Administrative is REVERSED AND REMANDED TO WCD WITH INSTRUCTIONS to join SAIF in the administrative review and determined the issue of which of the two insurers are responsible for the billings.