
In the ORS 656.260 Managed Care Dispute of

DAVE W. BENTHIN, Claimant

Contested Case No: H04-136

FINAL ORDER

June 21, 2005

DAVE W. BENTHIN, Petitioner

SAIF CORP. and MANAGED HEALTHCARE NORTHWEST, Respondent
Before John Shilts, Administrator, Workers' Compensation Division

Claimant, through his attorney Philip H. Garrow, filed exceptions to Office of Administrative Hearings Administrative Law Judge (ALJ) Catherine P. Coburn's January 19, 2005 Proposed and Final Order. This matter comes before the director for issuance of a final order. The only issue is attorney fees. The director adopts and affirms the proposed order as modified below.

The underlying issue is whether insurer is liable for an October 17, 2003 office visit with a non-MCO provider and physical therapy provided by a non-MCO provider from October 17, 2003 through February 17, 2004. The Medical Review Unit, by Administrative Order dated July 15, 2004, found that insurer was not liable for the services. On review the ALJ reversed and remanded, finding that insurer is liable for the October 17, 2003 office visit but remanding on the issue of the physical therapy for further development of the record. The ALJ found that because of the remand claimant did not finally prevail and was not entitled to an attorney fee.

Claimant argues that because he did prevail on the first issue he is entitled to a partial fee. The director agrees and awards a fee as calculated below. Claimant requests an additional fee for time spent on the exceptions process. Insurer, through its attorney James Booth, responds that claimant is not entitled to a fee for time devoted to the issue of attorney fees. The director agrees; the only issue raised in the exceptions is attorney fees. Accordingly, claimant's attorney is entitled to a partial fee for time devoted to the hearing process, insofar as he prevailed on one issue, but is not entitled to a fee for time devoted to the exceptions process.

Under ORS 656.385(1) and OAR 436-001-0265, primary consideration is given to the results achieved and the time devoted. The fee may not fall outside the ranges of the director's matrix nor exceed \$2,000 absent agreement of the parties or a showing of extraordinary circumstances. Claimant's attorney's statement of services shows 5.15 attorney hours and 5.10 legal assistant hours. The estimated results achieved fall within the lowest range of the matrix. For prevailing on the issue of insurer's liability for the October 17, 2003 office visit, claimant's attorney is awarded \$400.

IT IS HEREBY ORDERED the January 19, 2005 Proposed and Final Order is adopted and affirmed as modified. Claimant's attorney is awarded \$400 for prevailing on one of two issues in dispute.