

In the Matter of

CRAIG L. GRASTY, Claimant

Contested Case No: H05-125

PROPOSED AND FINAL ORDER

November 1, 2005

LIBERTY NORTHWEST INS. CO., Petitioner

CRAIG L. GRASTY, Respondent

Before Lawrence S. Smith, Administrative Law Judge, Administrative Hearings

HISTORY OF THE CASE

Liberty Northwest Ins. (Liberty) appeals the Administrative Order issued on August 1, 2005 by the Medical Review Unit (MRU) of the Workers' Compensation Division (WCD), Department of Consumer and Business Services. On August 26, 2005, WCD referred the matter to the Office of Administrative Hearings (OAH).

On October 14, 2005, Administrative Law Judge Lawrence S. Smith conducted a telephone hearing. Petitioner Liberty was represented by attorney Meg Carman. Respondent Craig L. Grasty (Claimant) was represented by attorney Robert Carlson. The record closed that day.

ISSUE

Whether MRU correctly determined that Claimant's claim was open at the time of the palliative care request from Dr. Fitzpatrick on August 7, 2003, for chiropractic services, and therefore, the services were reimbursable pursuant to ORS 656.245(1)(b).

EVIDENTIARY RULINGS

WCD Exhibits 1 through 39 were admitted into the record without objection.

FINDINGS OF FACT

The findings of fact contained in the administrative order dated August 1, 2005, are adopted and incorporated with the following supplementation:

(1) On October 23, 1987, Claimant suffered a compensable injury. He has received chiropractic palliative care on and off since then. (Exs. 4 and 27.) On April 26, 2001, Liberty accepted lumbosacral sprain/strain and right foraminal stenosis at L5-S1. (Ex. 5.)

(2) Claimant's claim was closed as of July 31, 2002, because his condition was determined to be medically stationary. (Ex. 7.) He continued to receive intermittent chiropractic palliative care that was approved by Liberty. (Ex. 9.)

(3) On August 7, 2003, Claimant's treating physician, Thomas Fitzpatrick, MD,

submitted a palliative care request to Liberty, requesting further chiropractic treatment for Claimant by Nancy Charpentier, DC. The request gave little information besides the request for as-needed chiropractic care. (Ex. 11.)

(4) On October 1, 2003, Liberty denied Dr. Fitzpatrick's request because the "chiropractic treatment does not appear reasonable and necessary in relation to the accepted condition of this claim." (Ex. 13.)

(5) On February 17, 2004, Liberty denied a claim for disk protrusion/bulge at L4-5. (Exs. 19 and 20.) Claimant appealed the denial to the Workers Compensation Board (WCB). WCB issued a January 18, 2005 Opinion and Order that set aside Liberty's denial of compensability. (Ex. 27.) WCB affirmed this Order in a Final Own Motion Order of Dismissal and Own Motion Order. (Ex. 29.)

(6) On May 27, 2005, Liberty submitted further reasons for denying Dr. Fitzpatrick's August 7, 2003 request for palliative care, adding that the request did not meet the specific requirements for a palliative care request in OAR 436-010-0290. (Ex. 31.)

CONCLUSION OF LAW

MRU incorrectly determined that Claimant's claim was open at the time of the palliative care request from Dr. Fitzpatrick on August 7, 2003, for chiropractic services. The requested services are not reimbursable pursuant to OAR 436-010-0290(1).

OPINION

WCD has jurisdiction over this medical service dispute. ORS 656.245 and ORS 656.260. The review is for substantial evidence and error of law. ORS 656.245(6), ORS 656.260(16) and OAR 436-001-0225(1).

Pursuant to ORS 656.245(1), an insurer is obligated to provide medical services for compensable conditions 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). When a worker's condition becomes medically stationary, the medical services for the worker are compensable only if they meet one of the circumstances listed in ORS 656.245(1)(c).

In this case, Claimant's doctor requested approval for further chiropractic care as palliative services. This request clearly did not meet the requirements for a palliative care that are listed in OAR 436-010-0290(1)¹ and Claimant did not claim that it did.

¹ OAR 436-010-0290 provides:

- (1) When the worker's attending physician believes that palliative care is appropriate to enable the worker to continue current employment or a current vocational training program, the attending physician must first submit a written request for approval to the insurer. The request shall:
 - (a) Describe any objective findings;

The main issue is whether Claimant's condition was medically stationary at the time of the request for chiropractic care. His low back condition became medically stationary on July 31, 2002. Dr. Fitzpatrick recommended palliative care on August 7, 2003, when Claimant's condition became medically stationary. Therefore, the request was for palliative care and must meet the requirements listed in OAR 436-010-0290(1), which it does not. The chiropractic care is not compensable, and the Administrative Decision contains a legal error when concluding the care is compensable.

On February 17, 2004, WCB reversed a compensability denial issued February 17, 2004, and reopened Claimant's claim. WCB did not specifically reopen Claimant's claim at the time of the request by Claimant's doctor on August 3, 2003, for palliative care. The ALJ lacks authority to open Claimant's claim earlier.

ATTORNEY FEES

In medical services cases, where a claimant finally prevails in a contested case order by the director, the director shall require the insurer or self-insured employer to pay a reasonable attorney fee to the claimant's attorney. ORS 656.385(1). Claimant did not prevail, so he is not entitled to an attorney fee.

ORDER

The Administrative Order dated August 1, 2005, is reversed. Claimant is not entitled to an attorney fee.

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- (b) Identify by ICD-9-CM diagnosis, the medical condition for which palliative care is requested;
 - (c) Detail a treatment plan which includes the name of the provider who will render the care, specific treatment modalities, and frequency and duration of the care, not to exceed 180 days;
 - (d) Explain how the requested care is related to the compensable condition; and
 - (e) Describe how the requested care will enable the worker to continue current employment, or a current vocational training program, and the possible adverse effect if the care is not approved.