
In the ORS 656.245 Medical Services Dispute of

MICHAEL G. JONES, Claimant

Contested Case No: H05-008

PROPOSED AND FINAL ORDER

June 24, 2005

SEDGWICK CLAIMS MGMT. SERVICES, Petitioner

MICHAEL G. JONES, Respondent

Before Daina Upite, Administrative Law Judge, Administrative Hearings

HISTORY OF THE CASE

Insurer, Sedgwick Claims Management Services, appeals the Administrative Order issued on December 27, 2004 by the Medical Review Unit (MRU) of the Workers' Compensation Division (WCD), Department of Consumer and Business Services (department or director). On March 14, 2005, Administrative Law Judge Daina Upite conducted a hearing in Salem, Oregon. Petitioner, Sedgwick Claims Management Services (Insurer), was present and represented by its attorney, Michael Bostwick. Attorney Peter Hansen represented Michael G. Jones (Claimant). No witnesses were called to testify.

The record remained open after the hearing to receive a missing page of Exhibit 65 (the ALJ's copy was missing page 2 of Claimant's Brief), and to receive copies of cases that Mr. Bostwick referred to in his argument. The documents were received and the record closed later in the day on March 14, 2005.

ISSUE

Whether the insurer is liable for providing a new, modified wheelchair-accessible van for claimant, as prescribed by Dr. Hitzman.

EVIDENTIARY RULINGS

Workers' Compensation Division (WCD) Exhibits 1 through 65 were received without objection.

FINDINGS OF FACT

(1) On May 29, 1978, claimant sustained a work injury in a logging accident, resulting in a skull fracture and T9 fracture, which was reduced with placement of Harrington rods from T5 to T12. As a result of the injury, claimant became a complete paraplegic with some spasticity in his lower extremities. (*See Exs. 4, 17, 26.*)

(2) SAIF Corporation initially processed the claim. (*See Ex. 2.*) On March 5, 1980, SAIF notified claimant that it would not purchase a van, but would assist with the expense of certain modifications. At hearing on May 7, 1986, SAIF agreed to reimburse claimant for the cost of a used van that he had purchased. (*Ex. 4 at 2-3.*) In September 1986, the parties resolved

the issues of reimbursement for the van and modifications, as well as an attendant award of attorney fees and penalties. Therefore, the administrative law judge did not address the van reimbursement issue in his Supplemental Opinion and Order dated October 2, 1986. (Ex. 5.)

(3) In October 1986, claimant's attending physician, Keith Harcourt, M.D., prescribed a new 4x4 van to allow claimant independence in driving due to a lack of mobility and/or extremity function with a need for transportation during winter. (Ex. 6.) On November 20, 1986, SAIF denied the request. (Ex. 7.)

(4) Claimant became medically stationary on April 14, 1987 with an award of permanent and total disability. (Ex. 8.)

(5) By stipulation dated August 19, 1987, SAIF agreed to purchase or reimburse claimant for a 4x4 van as prescribed by Dr. Harcourt, but subsequently SAIF denied responsibility for certain additional features. (Ex. 9, 10.) By an Order on Reconsideration dated September 6, 1988, the Workers' Compensation Board (WCB) ordered SAIF to purchase a new 4x4 one-ton Ford van with a 460 cubic inch engine equipped per Dr. Harcourt's prescription. (Ex. 14.) A 1989 model van was purchased for claimant. (See Exs. 30 at 3; 32.)

(6) On July 3, 2001, claimant began treating with Dr. Hitzman, who became claimant's attending physician. (Ex. 30.) By letter dated August 6, 2003, claimant explained that his 1989 van would not stay in park, despite the transmission mechanic removing the transmission three times. (Ex. 32.) By letter dated November 18, 2003, Sedgwick (the current claims processor) advised claimant that it would pay for necessary modifications to a van that claimant purchased. (Ex. 33.)

(7) On January 22, 2004, Dr. Hitzman prescribed a new 2004 Chevy 4x4 Express all-wheel drive van as an extension of claimant's wheelchair to maintain claimant's driving independence. Dr. Hitzman explained that claimant needed the van due to a lack of mobility and/or extremity function with need for transportation especially during the winter season. Dr. Hitzman noted that the van would need to be modified with an extended roof, parking brake extension, remote headlight dimmer, steering knob, right and left remote control side mirrors, and Mach I type hand controls, unless something better is available. Dr. Hitzman specified that the van would require the Braun Vangater II through RI Mobility servicing in Independence, Oregon. (Ex. 34.)

CONCLUSION OF LAW

The Administrative Order correctly determined that the insurer is required to pay for a new, wheelchair-accessible van with modifications as prescribed by Dr. Hitzman.

OPINION

Jurisdiction over this medical services dispute lies with the director. ORS 656.245(6); OAR 436-010-0008(1). I review for substantial evidence and errors of law. OAR 436-001-0225(1). The burden of proving a fact or position rests with the proponent. ORS 184.450(2).

As petitioner, Insurer bears the burden of proving by a preponderance of the evidence that the administrative order is incorrect. *See Cook v. Employment Div.*, 47 Or App 437 (1980) (In the absence of contrary legislation, the standard of proof in an administrative hearing is preponderance of evidence). Proof by a preponderance of evidence means that the factfinder is persuaded that the facts asserted are more likely true than false. *Riley Hill General Contractors v. Tandy Corp.*, 303 Or 390 (1989).

MRU determined that the insurer is liable to pay for a new, modified, wheelchair-accessible van, as prescribed by Dr. Hitzman. MRU reasoned that due to claimant's exceptional disability, a wheelchair is a prosthetic device that enables claimant to be mobile, and that a modified, wheelchair-accessible van is necessary so that claimant has meaningful mobility with his wheelchair. In this case, MRU found that claimant must remain seated in the wheelchair during ingress and egress; without that capability, claimant would realize no benefit from the wheelchair. The insurer does not dispute its responsibility for paying for modifications to an appropriate van, but contends that it is not responsible for the full price of a new van. Claimant contends that the director's decision should be affirmed.

Pursuant to ORS 656.245(1)(a), 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, including medical services that may be required after a determination of permanent disability. ORS 656.245(1)(b) lists compensable medical services, which shall include prosthetic appliances. After the medically stationary date, medical services continue to be compensable for a worker who has been determined to be permanently and totally disabled. ORS 656.245(1)(c)(A).

This forum has previously held that a wheelchair-accessible van is a "compensable medical service" when it facilitates a worker's use of a wheelchair and enables the worker to be independently mobile outside the home. *SAIF Corporation v. Ronald Gillis*, Proposed and Final Contested Case Hearing Order, issued January 26, 2001; *Mike A. Going*, 5 WCSR 88 (2000). These orders follow the decision in *SAIF Corp. v. Glubrecht*, 156 Or App 339 (1998) where the court interpreted "compensable medical services" in ORS 656.245(1)(b) to require reimbursement to a quadriplegic worker for home remodeling services required to accommodate his wheelchair. In *Glubrecht*, the court reasoned that such services were "compensable medical services" because the modifications facilitated claimant's use of his wheelchair, were an extension of the wheelchair itself, and without them the wheelchair could not assist claimant in being independently mobile in his home.

Furthermore, in this case, it has already been determined that a wheelchair-accessible, modified van is a compensable medical service for claimant. The Workers' Compensation Board has previously ordered the insurer to purchase a new van and pay for appropriate modifications. The 16-year-old van is now malfunctioning, and claimant's physician has ordered a replacement van. MRU's decision ordering the insurer to purchase a new, wheelchair-accessible van modified pursuant to Dr. Hitzman's prescription is consistent with the above-cited decisions and applicable law.

There is no evidence that claimant owned a van at the time of his injury in 1978, and claimant cannot now purchase any vehicle of his choice and have it appropriately modified. Claimant requires the specific type of vehicle and modifications prescribed by his physician.

Therefore, the insurer is required to purchase the van, as well as pay for appropriate modifications. *See Mike A. Going*, 5 WCSR at 92. The insurer also argues that it should not be liable for the purchase of a new van because there may be less expensive alternatives. The insurer, however, has not presented evidence of less costly alternatives. Therefore, I do not find this argument persuasive.

The department's order is supported by substantial evidence in the record, and does not reflect an error of law. Therefore, the order must be affirmed.

ATTORNEY FEES

Claimant has prevailed in a contested case hearing and is entitled to a reasonable attorney fee. ORS 656.385(1). Considering the factors listed in OAR 436-001-0265, \$1,650 is a reasonable fee for claimant's attorney's services in this matter.

ORDER

IT IS HEREBY ORDERED that:

- (1) The Administrative Order dated December 27, 2004 is affirmed.
- (2) Insurer shall pay claimant's attorney a fee of \$1,650.