
In the Matter of the ORS 656.245 Medical Services Dispute of

RANDALL L. PARR, Claimant

Contested Case No: H05-128

PROPOSED AND FINAL ORDER

December 1, 2005

RANDALL L. PARR, Petitioner

SAIF CORP., Respondent

Before Catherine P. Coburn, Administrative Law Judge, Administrative Hearings

HISTORY OF THE CASE

Claimant appeals the Administrative Order issued on July 29, 2005 by the Medical Review Unit (MRU) of the Workers' Compensation Division (WCD), Department of Consumer and Business Services (department or director). On September 9, 2005, the department referred the matter to the Office of Administrative Hearings (OAH). On October 26, 2005, Administrative Law Judge Catherine P. Coburn conducted a hearing in Beaverton, Oregon. Attorney Randy M. Elmer represented petitioner Randall L. Parr (claimant). Attorney David L. Runner represented respondent SAIF Corporation (insurer). Claimant testified on his own behalf and the record closed on November 2, 2005 following a stipulation of facts.

ISSUE

Whether MRU correctly determined that insurer is not liable for a new medically modified vehicle.

EVIDENTIARY RULINGS

WCD Exhibits 1 through 32, as well as Claimant's Supplementary Exhibit 2A, were admitted into the record without objection.

FINDINGS OF FACT

(1) On December 17, 1991, claimant suffered a compensable low back injury while working as a long-haul truck driver. (Ex. 2; testimony of Claimant.) Claimant subsequently underwent four back surgeries, began using a wheelchair, and was declared permanently, totally disabled. (Ex. 2-1; testimony of claimant.)

(2) On July 31, 2000, claimant and insurer entered into a stipulation whereby insurer contributed \$12,500 toward the purchase of a vehicle and assumed responsibility for the medical modifications. (Ex. 2A.) Following this agreement, claimant purchased his current vehicle, which is a medically modified 1999 1500 4x4 Dodge pickup truck. (Ex. 15-1; testimony of claimant.)

(3) Since he purchased the Dodge pickup, claimant has replaced the tires twice, the brakes four times, the power steering pump three times, and the drive belt twice. (Ex. 18;

testimony of claimant.) Claimant uses the truck to tow a 27-foot travel trailer on camping trips with his family. (Testimony of claimant.)

(4) On August 20, 2004, claimant requested a new truck. Claimant prefers not to drive a vehicle because the towing capacity is inadequate for his travel trailer. (Ex. 5-1.)

(5) On September 20, 2004, insurer denied the request for a new vehicle, indicating that the Dodge truck continued to meet claimant's medical needs. (Ex. 6-1.) Claimant requested administrative review. (Exs. 7 and 9.)

(6) On November 1, 2004, attending physician Patricia Wheeler, MD recommended that claimant use a vehicle and opined that a truck was not medically necessary. (Ex. 8-2.) On February 8, 2005, Dr. Wheeler opined that the following vehicle amenities were not medically necessary: diesel engine, four-wheel drive, 8 foot truckbed, power sun roof and power rear window. Dr. Wheeler opined that power seats and heated mirrors were medically necessary. (Ex. 14.)

(7) On February 9, 2005, Matt Stoenner, service advisor for an authorized Dodge dealer, examined claimant's 1999 Dodge truck, which had 76,800 miles. (Ex. 15-1.) He stated:

Upon review of the vehicle itself, I found it to be in good shape. There were no pressing problems with the vehicle that would render it unsafe or problematic within its manufacturer's specified use guidelines. The vehicle was not worn out or defective, but the vehicle had normal wear and tear due to usage that is consistent with its age and mileage. Items seen as wear and tear on this vehicle are consistent with same or similar vehicles of the same age and same mileage. I estimate that the vehicle had an estimated useful, appropriate and safe life left of about 40-50 percent. This is based on current condition and current mileage. (Ex. 15-1.)

(8) On July 6, 2005, Dr. Wheeler opined that claimant does not need power seats. (Ex. 28-2.)

CONCLUSION OF LAW

MRU correctly determined that insurer is not liable for a new medically modified vehicle.

OPINION

WCD has jurisdiction over medical service disputes. ORS 656.704(3) and ORS 656.245(6). The Administrative Order is reviewed for substantial evidence or error of law. OAR 436-001-0225(1).¹ The burden of presenting evidence to support a fact or position falls

¹ OAR 436-001-0225(1) states:

upon the proponent. ORS 183.450(2). In that regard, claimant bears the burden of proving by a preponderance of the evidence that the administrative order is incorrect. *Harris v. SAIF*, 292 Or 683 (1982) (general rule regarding allocation of proof is that burden is on the proponent of the fact or position); *Cook v. Employment Div.*, 47 Or App 437 (1980) (in the absence of legislation adopting a different standard, the standard of proof in an administrative hearing is by a preponderance of the 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 (1998).

MRU determined that insurer is not liable for a new vehicle because claimant's current vehicle meets his current medical necessity. Claimant contends that the administrative order is not supported by substantial evidence. In support of his position, claimant argues that the current vehicle is unsafe and an upgrade is necessary to accommodate the weight of his wheelchair and to tow a travel trailer on camping trips. In contrast, insurer contends that the administrative order is correct and should be affirmed.

Under ORS 656.245(1)(a), an insurer is obligated to provide medical services that are materially related to a compensable condition as long as the nature of the injury or the process of recovery requires. ORS 656.245(1)(b) provides:

Compensable medical services shall include medical, surgical, hospital, nursing, ambulances and other related services, and drugs, medicine, crutches and **prosthetic appliances, braces and supports** and where necessary physical restorative services.

(Emphasis added.)

In *SAIF Corp. v. Glubrecht*, 156 Or App 339 (1998), the court interpreted this passage to require reimbursement to a quadriplegic worker for home remodeling services required to accommodate his wheelchair. Subsequently, the Director has ruled that, under some circumstances, an insurer may be liable for a wheelchair assessable vehicle. See *Ronald Gillis*, H00-046 (2000); *Mike A. Going*, 5 WCSR 88 (2000).

Here, I must uphold the administrative order if it is supported by substantial evidence. Substantial evidence exists to support a finding "when the record, viewed as a whole, would permit a reasonable person to make that finding." ORS 183.482(8)(c). To determine whether substantial evidence exists, an ALJ is required to:

Scope of Review/Limitations on the Record

(1) Review of medical service (ORS 656.245 and 656.247(3)(a)) and treatment (ORS 656.327 and 656.260) disputes is for substantial evidence or error of law. New medical evidence or issues may not be considered at the contested-case hearing.

[L]ook at the whole record with respect to the issue being decided, rather than one piece of evidence in isolation. If an agency's finding is reasonable, keeping in mind the evidence against the findings as well as the evidence supporting it, there is substantial evidence. *** For instance, and in the context which is likely frequently to occur in workers' compensation cases, if there are doctors on both sides of a medical issue, whichever way the (director) finds the facts will probably have substantial evidentiary support. The ALJ would not need to choose sides. The difference between the "any evidence rule" and the substantial evidence test *** will be decisive only when the credible evidence apparently weighs overwhelmingly in favor of the finding and the (director) finds the other without giving a persuasive explanation. *Armstrong v. Asten-Hill Co.*, 90 Or App 200, 206 (1998).

MRU relied on the opinions of the attending physician and a service advisor at an authorized car dealership. These opinions establish that the current vehicle is adequate to meet claimant's medical necessity. Moreover, these opinions constitute substantial evidence. Accordingly, finding no basis for modifying the administrative order, I affirm.

ATTORNEY FEES

Claimant has not prevailed in a contested case hearing and is not entitled to an attorney fee. ORS 656.385(1).

ORDER

IT IS HEREBY ORDERED that:

The Administrative Order dated July 29, 2005 is affirmed.