

In the ORS 656.245 Medical Services Dispute of

SHERMAN SHULTZ, Claimant

Contested Case No: H05-061

PROPOSED AND FINAL ORDER

June 2, 2005

SHERMAN SHULTZ, Petitioner

LIBERTY NORTHWEST INSURANCE CORP., Respondent

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

HISTORY OF THE CASE

Sherman Shultz (Claimant) timely appealed the Administrative Order issued on March 25, 2005 by the Medical Review Unit (MRU) of the Workers' Compensation Division (WCD), Department of Consumer and Business Services. The Order states that Claimant is not entitled to the difference between the costs of his insurance before and after he received a customized van that was purchased for him by Liberty NW Ins. Corp. (Liberty). On April 15, 2005, the WCD referred the matter to the Office of Administrative Hearings (OAH).

On May 26, 2005, Administrative Law Judge Lawrence S. Smith of OAH conducted a telephone hearing. Claimant participated and testified, with his attorney, Nelson Hall. Attorney Ray Smitke represented Liberty. The record closed that day.

ISSUE

Whether MRU's Administrative Order that concluded the difference in Claimant's insurance cost due to his modified van is not compensable is not supported by substantial evidence or reflects an error of law.

EVIDENTIARY RULINGS

WCD Exhibits 1 through 37 were admitted into the record without objection.

FINDINGS OF FACT

(1) Liberty has found Claimant to be permanently and totally disabled after a work injury on September 17, 1999. (Ex. 5.)

(2) On May 8, 2003, WCD found Liberty liable to reimburse Claimant for his purchase price of a 2002 Ford Van that would accommodate Claimant's wheelchair. (Ex. 8.) The Administrative Order at issue also concluded that Liberty was liable for the sales tax for the purchase. (Ex. 29.)

(3) Claimant seeks the difference in costs between his insurance before purchase and the additional cost to cover his new van because he contends that this difference is a result of his compensable injury. (Ex. 31.)

(4) On March 22, 2005, Claimant's insurance company reported that Claimant \$229.39 of each six-month's premium is due to the van modification. This increase is due to Claimant electing to an increase in the comprehensive coverage and to include collision and car rental and travel coverage. (Exs. 16, 35, and 36.)

(5) Claimant lives in California, where by law, he is only required to have liability insurance in order to drive. (Test. of Claimant.)

CONCLUSION OF LAW

MRU's Administrative Order is supported by substantial evidence and does not reflect an error of law.

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 proving a fact or position is on the proponent. ORS 183.450(2).

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)(a). Liberty was ordered to provide a modified van for Claimant because it was materially related to his compensable condition as a prosthetic device. Claimant seeks to be reimbursed for his increased cost of insurance for his van. This increase was due to his decision to obtain additional comprehensive coverage and collision and car rental coverage. Claimant is not required by California law to have more than liability insurance in order to drive, so the additional coverage is not required.

Claimant's increased cost for auto insurance is because he sought further coverage not required by California law. Such additional coverage may make sense in order to protect Liberty's investment because if the van becomes disabled for reasons not covered by insurance, Claimant will be without a van and Liberty may be liable for the purchase price of another van. Nevertheless, Claimant is not required to have the comprehensive, collision, and rental vehicle coverage. Because such coverage was not legally required, it is not medically necessary. See *SAIF v. Glubrecht*, 156 Or App 339, fn. 5 (1998), in which the court cited with approval the following language from *Polk County Bd. Of Comm'rs v. Varnado*, 576 So.2d 833, 838 (Fla App 1 Dist 1991):

¹ OAR 436-001-0225(1) states:

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.

The law does not require the [employer/carrier] to be responsible for all expenses of operation, although costs uniquely attributable to the provision of a facility or service which is necessitated by an accident and found to be medically necessary, may be awarded. Absent unique circumstances, however, the carrier is not required to bear the costs of normal living expenses not necessitated by the accident.

Claimant has not shown that the Administrative Order that denied payment for the additional insurance cost lacks substantial evidence or reflects an error of law.

ATTORNEY FEES

Claimant has not prevailed and is not entitled to an attorney fee. ORS 656.385(1).

ORDER

The Administrative Order dated March 25, 2005, is affirmed.