

In the ORS 656.245 Medical Services Dispute of

LENORA L. WILLIAMS, Claimant

Contested Case No: H05-109

PROPOSED AND FINAL ORDER

October 6, 2005

AMERICAN HOME ASSURANC CO., Petitioner

LENORA L. WILLIAMS, Respondent

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

HISTORY OF THE CASE

Insurer appeals the Administrative Order issued on June 20, 2005 by the Medical Review Unit (MRU) of the Workers' Compensation Division (WCD), Department of Consumer and Business Services (department or director). On August 2, 2005, the department referred the matter to the Office of Administrative Hearings (OAH). On September 15, 2005, Administrative Law Judge Catherine P. Coburn conducted a hearing in Beaverton, Oregon. Attorney Rodger Hepburn represented petitioner American Home Assurance Company and its claims administrator, AIG Claim Services, Inc. (insurer). Respondent Lenora L. Williams (claimant) appeared without benefit of counsel and testified on her own behalf. The record closed on the date of hearing.

ISSUES

- (1) Whether MRU incorrectly determined that claimant may choose a new attending physician.
- (2) Whether MRU incorrectly determined that insurer is liable for prospective medical treatment.

EVIDENTIARY RULINGS

WCD Exhibits 1 through 77 were admitted into the record without objection.

FINDINGS OF FACT

(1) On June 14, 2003, claimant suffered a compensable injury while working as a grocery produce stocker. (Ex. 1.) Insurer initially accepted a right fifth finger sprain and later accepted right fifth digit reflex sympathetic dystrophy (RSD). (Exs. 15 and 58.) Claimant has not been enrolled in a managed care organization (MCO). (*Id.*)

(2) Claimant's first attending physician was Kent D. Sharman, M.D. and her second was Jon S. Davis, M.D. (Exs. 4, 11, 14 and 16.) Claimant has not designated a third attending physician. (Ex. 66; testimony of claimant.)

(3) On January 29, 2004, Kenneth P. Butters recommended a pain consultation. (Ex. 40-

2.) On March 9, 2004, Dr. Sharman referred claimant to James Morris, M.D. for pain management. (Ex. 50.) John W. Thompson, M.D., Linda Bufton, M.D. and Anthony J. Smith, M.D. have agreed with the referral for pain management. (Exs. 60-3, 63-2 and 64-8.)

CONCLUSIONS OF LAW

- (1) MRU correctly determined that claimant may choose a new attending physician.
- (2) MRU incorrectly determined that insurer is liable for prospective medical treatment.

OPINION

Jurisdiction lies with the director and I review for substantial evidence or error of law. ORS 656.245(6); OAR 436-001-0225(1). The burden of presenting evidence to support a fact or position falls upon the proponent. ORS 183.450(2). As petitioner, insurer bears the burden of proving by a preponderance of evidence that the administrative order is incorrect. *Cook v. Employment Div.*, 47 Or 437 (1982) (In the absence of legislation adopting a different standard, the standard of proof in an administrative hearing is preponderance of evidence). Proof by a preponderance of the evidence means that the fact finder 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 claimant may choose a third attending physician and that insurer is liable for any medical treatment that physician may provide for the compensable conditions. Insurer does not dispute claimant's right to choose a third attending physician and has issued no denials. However, insurer contends that the administrative order is overly broad because it holds insurer liable for medical services prospectively. On the other hand, claimant seeks treatment from a new attending physician, as yet unidentified. Pursuant to ORS 656.245(1)(a),¹ an insurer is obligated to provide medical services that are materially related to a compensable condition for so long 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).² Furthermore, an injured worker may choose a series of three attending physicians without approval from either insurer or the director. ORS 656.245(2)(a).³ Here, MRU correctly determined that claimant may designate a new

¹ ORS 656.245(1)(a) provides:

(1)(a) For every compensable injury, the insurer or the self-insured employer shall cause to be provided medical services for conditions caused in material part by the injury for such period as the nature of the injury or the process of the recovery requires, subject to the limitations in ORS 656.225, including such medical services as may be required after a determination of permanent disability. In addition, for consequential and combined conditions described in ORS 656.005 (7), the insurer or the self-insured employer shall cause to be provided only those medical services directed to medical conditions caused in major part by the injury.

² ORS 656.245(1)(b) provides:

(b) 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. A pharmacist or dispensing physician shall dispense generic drugs to the worker in accordance with ORS 689.515. The duty to provide such medical services continues for the life of the worker.

³ ORS 656.245(2)(a) provides:

attending physician. However, the question of liability for any medical services provided in the future is not currently ripe for litigation and remains an open question. Accordingly, I affirm the administrative order's ruling concerning the attending physician and reverse it concerning insurer's prospective liability.

ORDER

IT IS HEREBY ORDERED that:

The Administrative Order dated June 20, 2005 is modified. Claimant is free to choose a third attending physician. Insurer's liability for any medical service provided by a new attending physician is undetermined at this time.

(2)(a) The worker may choose an attending doctor or physician within the State of Oregon. The worker may choose the initial attending physician and may subsequently change attending physician two times without approval from the director. If the worker thereafter selects another attending physician, the insurer or self-insured employer may require the director's approval of the selection and, if requested, the director shall determine with the advice of one or more physicians, whether the selection by the worker shall be approved. The decision of the director is subject to a contested case review under ORS chapter 183. The worker also may choose an attending doctor or physician in another country or in any state or territory or possession of the United States with the prior approval of the insurer or self-insured employer.