

In the Medical Services of
Hector Rojo-Heredia, Claimant

Contested Case No: 06-114H

PROPOSED & FINAL ORDER

December 21, 2006

HECTOR ROJO-HEREDIA, Petitioner
LIBERTY NW INSURANCE CORPORATION, Respondent
Before Nicholas M. Sencer, Administrative Law Judge

Pursuant to notice, the hearing in the captioned matter was scheduled to convene on October 20, 2006 in Portland, Oregon before Administrative Law Judge Nicholas M. Sencer. Pursuant to stipulation, the case was submitted for decision based on the admitted exhibits and written closing arguments. Lourdes Sanchez represents claimant. Sally A. Curey represents the employer, Don G. Averill & Jo L. Averill Trucking Dairies, and its insurer, Liberty Northwest. Exhibits 1 through 22 are admitted into the record. The record closed on November 22, 2006 upon my receipt of Ms. Sanchez's letter advising that claimant would not be filing a reply argument.

ISSUES

Claimant challenges the June 15, 2006 Administrative Order of the Medical Review Unit. The issue is claimant's entitlement to reimbursement for prescription medications.

This review is subject to ORS 656.327(2), which provides: "The Administrative Order may be modified at hearing only if it is not supported by substantial evidence in the record or if it reflects an error of law. No new medical evidence or issues shall be admitted."

As discussed below, I conclude that the Administrative Order reflects an error of law. Accordingly it will be modified.

FINDINGS OF FACT

The following facts are not in dispute.

Claimant sustained a compensable injury on November 23, 2001. The insurer accepted the claim for the conditions identified as lumbar strain and L4-5 disc herniation. In December 2003 claimant entered into a Claims Disposition Agreement that retained his medical rights for the accepted claim.

Claimant's attending physician is Navnit Kaur-Jayaram, M.D. At all relevant times Dr. Kaur-Jayaram employed Joe Knaus as a nurse practitioner.
(Ex 21, p 1).

Dr. Kaur-Jayaram examined claimant on May 31, 2005, at which time he reviewed claimant's current medications. (Ex 4). The prescribed medications included Effexor, Zonegran,

Celebrex and Skelaxin. (Ex 4).

Claimant submitted to the insurer a drug/prescription reimbursement form for prescriptions dated December 21, 2005. (Ex 5, p 1). The insurer refused to reimburse the Zonegran and Celebrex prescriptions because they were written by Mr. Knaus, the nurse practitioner, rather than by Dr. Kaur-Jayaram.

Dr. Kaur-Jayaram examined claimant again on January 31, 2006, and again reviewed the current medications. (Ex 7). In addition to those previously prescribed, Dr. Kaur-Jayaram noted the addition of Amitriptyline. (Ex 7). Claimant submitted a drug/prescription reimbursement form to the insurer for prescriptions dated January 28, 2006. (Ex 8, p 1). Again, the insurer refused to reimburse the Celebrex prescription because it was prescribed by Mr. Knaus. (Ex 8, p 1). The total value of the denied prescription reimbursements is \$552.08.

The Medical Review Unit concluded that the insurer was not liable for reimbursement of the disputed prescriptions because Mr. Knaus had failed to comply with OAR 436-010-0210(7). (Ex 21). That rule provides:

Effective October 1, 2004, in order to qualify as an authorized nurse practitioner, a nurse practitioner must certify in a form provided by the director that the nurse practitioner has reviewed a packet of materials which the director will provide upon request to any nurse practitioner after April 1, 2004.

CONCLUSIONS OF LAW AND OPINION

There is no dispute concerning the compensability of the denied prescriptions. In other words, claimant requires these medicines to treat his compensable injuries. Moreover, Dr. Kaur-Jayaram's authority to prescribe claimant's medications has not been challenged. The only challenge goes to whether the prescriptions signed by Mr. Knaus, a nurse practitioner employed by Dr. Kaur-Jayaram, must be reimbursed.

The insurer argues that "Mr. Knaus is not authorized by the director to provide medical services to injured workers." (11-14-06 Argument, p 2). However, the applicable rule provides: "Attending physicians and authorized nurse practitioners may authorize time loss and manage medical services subject to the limitations of these rules." OAR 436-010-0210(1) (emphasis added). In other words, the requirement of OAR 436-010-0210(7) that nurse practitioners certify that they have reviewed the director's packet of materials to become "authorized" only pertains to the authority of nurse practitioners to authorize time loss and manage medical services; it does not pertain to their authority to examine workers or sign prescriptions at the direction of the attending medical doctor.

There is no evidence in the record that Mr. Knaus was managing claimant's medical services. Rather, Dr. Kaur-Jayaram remained claimant's attending physician and was responsible for managing claimant's medical services at all relevant times. Moreover, Mr. Knaus was Dr. Kaur-Jayaram's employee and was acting under his direction and control.

The MRU relied on OAR 436-010-0210(7) and concluded that because Mr. Knaus was not an “authorized” nurse practitioner, prescriptions issued by him were not entitled to reimbursement. Since the relied upon rule does not bar nurse practitioners from rendering treatment and issuing prescriptions under the direction and control of a duly qualified attending physician, I conclude that claimant is entitled to reimbursement for the disputed prescriptions. Accordingly, the June 15, 2006 Administrative Order will be reversed.

Attorney Fee

Claimant’s attorney is entitled to an assessed attorney fee pursuant to ORS 656.385(1). Pursuant to that statute, “The attorney fee must be based on all work the claimant’s attorney has done relative to the proceeding at all levels before the department. The attorney fee assessed under this section must be proportionate to the benefit to the injured worker.” The department has promulgated a rule that sets forth a matrix of fees to be awarded, absent a showing of extraordinary circumstances, in cases of this kind. OAR 436-001-0265.

Claimant’s attorney has not submitted a statement of services. Based on the contents of the file, I conclude that she devoted between 2.1 and 4.0 professional hours to this matter. Pursuant to the matrix, and giving special consideration to the quality of the legal representation and the risk in a particular case that an attorney’s efforts may go uncompensated, I award claimant’s attorney a fee in the amount of \$700.00.

ORDER

IT IS HEREBY ORDERED that the June 15, 2006 Administrative Order in MS 06-633 is reversed. The insurer shall reimburse claimant for the cost of the disputed prescription medications in the amount of \$552.08.

IT IS FURTHER ORDERED that pursuant to ORS 656.385(1), the insurer shall pay an assessed attorney fee in the amount of \$700.00 directly to claimant’s attorney.