
In the ORS 656.260 Managed Care Dispute of

Greg A. Harsha, Claimant

Contested Case No: 05-148H

ORDER ON REMAND

January 29, 2007

CHOICE CABLEVISION SERVICES INC., Petitioner

GREG A. HARSHA, Respondent

Before John Mark Mills, Administrative Law Judge

Hearing convened and closed before Administrative Law Judge Mills in Portland, Oregon, on January 12, 2007. Claimant was present and represented by his attorney, James Dodge. The employer, Choice Cablevision, and their insurer, Safeco, were represented by their attorney, Neil Jones. The WCD record on review, exhibits 1 through 393, were received into evidence.

ISSUES

The insurer contests the Administrative Order entered in this matter on September 19, 2005, which found that the proposed surgery in dispute was reasonable and necessary, and approved that surgery. Claimant defends the Order and seeks an assessed attorney fee. The Order was issued by the Medical Review Unit (MRU) of the Workers' Compensation Division (WCD).

FINDINGS OF FACT

I adopt the findings of fact set forth in the Administrative Order. No additional findings of fact are made. The scope of review in this case, which concerns medical treatment denied by a managed care organization (MCO), is limited to the substantial evidence and error of law standard. While OAR 436-001-0225(2) arguably suggests that some type of new evidence can be received during such a hearing, the Court of Appeals has made it clear that substantial evidence review does not contemplate that the reviewing body will make additional or supplemental findings of fact. *Liberty Northwest Ins. Co. V. Kraft*, 205 Or App 59 (2006).

CONCLUSIONS AND OPINION

The threshold issue raised by the insurer at the time of the hearing was its contention that MRU had no jurisdiction over this MCO treatment dispute because claimant did not file a timely request for review before MRU in response to the MCO's denial of the proposed treatment. This issue was raised by the insurer after MRU took jurisdiction over the dispute (exs. 366, 369). This jurisdictional and threshold issue raises factual and legal issues which were not addressed in the MRU order. Accordingly, the Order, with respect to this particular issue, is insufficient for purposes of review under a substantial evidence or error of loss standard. Accordingly, I remand for further proceedings to address the jurisdictional issue.

IT IS SO ORDERED.