
In the ORS 656.245 Medical Services Dispute of

Kerry R. Lumley, Claimant

Contested Case No: 07-095H

PROPOSED & FINAL ORDER

November 19, 2007

KERRY R. LUMLEY, Petitioner

LIBERTY NW INSURANCE CORP, Respondent

Before Martha J. Brown, Administrative Law Judge

Pursuant to notice, a hearing was held and the record closed on October 24, 2007 in Salem, Oregon before Administrative Law Judge Martha J. Brown. Claimant was present and was represented by his attorney, Matthew Roy. The employer, McMinnville City Sanitary Services, and its insurer, Liberty Northwest Insurance Corp., were represented by their attorney, David O. Wilson.

At hearing, Exhibits 1 through 19 were admitted into the record.

ISSUE

Claimant has appealed a July 11, 2007 Administrative Order of Dismissal that declined to take further action regarding a palliative care issue until claimant had requested formal acceptance and the insurer had either accepted or denied the claim. (Ex. 19).

FINDINGS OF FACT

Claimant was compensably injured on July 8, 1999 while working for the employer. On January 30, 2006, the insurer accepted claimant's claim for a cervical concussion, facial laceration, right and left arm and left knee contusions, cervical strain, tinnitus and intranuclear ophthalmoplegia. The parties subsequently entered into a Claim Disposition Agreement (CDA) that settled all issues with the exception of claimant's entitlement to medical services.

Claimant's treating doctor, Dr. Scott, requested palliative care for claimant on March 14, 2006. An August 24, 2006 Administrative Order dismissed a palliative care issue on the ground that administrative review was not timely requested and the director had no jurisdiction over the matter.

On October 4, 2006, claimant requested administrative review regarding palliative care requested by Dr. Scott. A December 20, 2006 Administrative Order issued that agreed with the insurer that palliative care was not correctly requested. Claimant requested a hearing, and a May 2, 2007 Proposed and Final Order issued that affirmed the Administrative Order.

On June 20, 2007, Dr. Scott again requested palliative care for claimant. On June 28, 2007, the insurer responded to an inquiry from the medical reviewer and reported that Dr. Scott noted conditions in the request for palliative care that were not accepted conditions, and that claimant must request acceptance of the conditions prior to making a demand for the payment of

medical services.

On July 11, 2007, the Medical Review Unit (MRU) issued an Administrative Order of Dismissal that provided that, prior to considering the matter, claimant should request formal acceptance of any new or omitted conditions, and the insurer should issue an acceptance of denial.

CONCLUSIONS OF LAW AND OPINION

Pursuant to ORS 656.704, hearings regarding Department orders addressing medical services disputes are conducted by an Administrative Law Judge (ALJ) of the Workers' Compensation Board. In medical and treatment disputes, an ALJ may modify the Department's order only if it is not supported by substantial evidence in the record or if it reflects an error of law. New medical evidence or issues may not be admitted or considered. ORS 656.327(2); OAR 436-001-0225(2).

Here, claimant contends that, in her March 5, 2007 letter, Dr. Scott explained that claimant's conditions were all related to the accepted cerebral concussion. (Ex. 11-1). Claimant further argues that the Department acted prematurely by dismissing the palliative care issue after obtaining only the insurer's position. However, the insurer contends that it was entitled to deny the palliative care on the ground that claimant was receiving chiropractic treatment for areas of his back that were not included in the acceptance. The insurer also argues that the Department is within its discretion to request that the parties proceed with processing of the claim before it addresses this issue.

While the insurer's initial acceptance apparently includes a typographical error (in referring to a "cervical" concussion, as opposed to a "cerebral" concussion), the CDA provides that the accepted conditions include: cerebral concussion, facial laceration, right and left arm contusions, cervical strain, tinnitus, intranuclear ophthalmoplegia, head injury with scalp laceration, cephalgia, and motion disorder (otherwise described as twitchiness or jerky movement). (Ex. 3-2).

In her March 5, 2007 letter, Dr. Scott stated that chiropractic care was recommended to include treatment for the following diagnoses:

- 1) Headache
- 2) Head injury, with CNS compression
- 3) Motion Disorder
- 4) Tinnitus
- 5) Strain cervical
- 6) Internuclear Ophthalmoplegia
- 7) Somatic dysfunction cranium

Dr. Scott further stated that the "diagnoses are all related (sic) the cerebral concussion..". (Ex. 11-1).

Several of the diagnoses provided by Dr. Scott are for conditions that have not been accepted. Consequently, I find that the Department was within its discretion to request that the parties proceed with properly processing the claim, prior to considering the matter. With regard to claimant's contention that his position was not considered, the Department certainly could have contacted claimant's counsel regarding his position prior to issuing its dismissal order. However, insofar as the Department did have and review Dr. Scott's request for palliative care, I conclude that claimant's position was essentially considered.

Because I find that the Department's order is supported by substantial evidence, and because I am unable to find an error of law, I conclude that the Order of Dismissal must be affirmed.

ORDER

IT IS HEREBY ORDERED THAT the July 11, 2007 Administrative Order of Dismissal is affirmed, and the relief requested by claimant must be denied.