

In the ORS 656.245 Medical Services Dispute of
Nedzad Music, Claimant

Contested Case No: 07-065H

PROPOSED & FINAL ORDER

November 8, 2007

NEDZAD MUSIC, Petitioner

LIBETY NW INSURANCE CORPORATION, Respondent

Before Monte Marshall, Administrative Law Judge

Pursuant to notice, a hearing was scheduled for August 27, 2007 in Portland, Oregon before Administrative Law Judge Somers.¹ Claimant is represented by his attorney, Michael A. Gilbertson. The employer, McMenamans, Inc., and its insurer, Liberty Northwest Insurance Corporation, are represented by their attorney, Raymond T. Smitke. Prior to the scheduled hearing, the parties agreed to submit this matter on the documentary record. Exhibits 1-27 were received and admitted into evidence. The record closed on October 12, 2007 following receipt of claimant's written reply response.

ISSUE

Medical services. Claimant appeals a May 11, 2007 Administrative Order issued by the Medical Review Unit (MRU) of the Workers' Compensation Division that disapproved claimant's request for palliative treatment in the form of a interferential stimulator and back garment.

FINDINGS OF FACT

The standard of review is for substantial evidence or errors of law rather than *de novo*. Thus, independent findings of fact are not rendered. *Liberty Northwest Insurance Corporation v. Kraft*, 205 Or App 59 (2005). Therefore, the "Findings of Fact" set forth in the Administrative Order are adopted and set forth below for ease of reference.

[Claimant] sustained a compensable injury on September 9, 2001. The [insurer] ultimately accepted the claim for cervical/thoracic/lumbar strain, deep vein thrombosis, and herniated discs at C6-7, L4-5 and L5-S1. [Claimant's] condition first became medically stationary on April 9, 2004.

[Claimant] used a TENS unit since January 2004, and purchased supplies for the unit through his claim.

On February 11, 2006, Dr. Koon signed a letter of medical necessity for an interferential stimulator and back garment, indefinite use. Dr. Koon noted that the garment would enable [claimant] to apply electrodes without assistance, would improve his compliance, and listed the anticipated results from the stimulator treatment to be reduced pain, increased mobility, range of motion, activities of daily living, and enhance healing.

¹ This matter was subsequently reassigned to the undersigned Administrative Law Judge

On December 11, 2006, Dr. Koon noted that [claimant] needed a replacement for his TENS unit as the old one broke. Dr. Koon believed it was reasonable to use the TENS unit to help reduce pain and increase function.

On January 11, 2007 the [insurer] requested current employment status and continued eligibility for palliative care, as [claimant] continued to purchase TENS supplies through the claim.

On March 6, 2007, EMSI submitted a request for authorization for the disputed interferential stimulator and back garment along with a copy of Dr. Koon's February 11, 2006 request.

On March 13, 2007 the [insurer] disapproved the request for lack of information from the [claimant] regarding employment status.

On May 2, 2007, [claimant's] attorney submitted a letter to the Director stating that [claimant] is not in the work force.

CONCLUSIONS OF LAW AND OPINION

Claimant contends the interferential stimulator with back garment is a prescription in lieu of pain medication for which he is entitled to receive under the palliative care rules. MRU concluded that claimant was not entitled to such medical services. As noted above, MRU's Administrative Order is reviewed for substantial evidence or errors of law.

"Palliative care" is a medical service offered to reduce the intensity of the symptoms of an otherwise stable medical condition." ORS 656.005(20). However, palliative care is only available when prescribed by the attending physician and is necessary to enable the work to continue current employment or vocational training. ORS 656.245(1)(c)(J).

Here, as found by MRU, claimant is not currently employed and is not in the work force. (Ex. 25). Moreover, there is no evidence in the record that indicates claimant is participating in vocational training. Under these circumstances, the Administrative Order is supported by substantial evidence and contains no errors of law. Accordingly, the Administrative Order must be upheld.

ORDER

IT IS THEREFORE ORDERED that the Administrative Order, dated May 11, 2007, is affirmed.