
In the ORS 656.245 Medical Service Dispute of
Howard D. Smith, Claimant
Contested Case No: 06-006H, 06-057H, 06-058H, 06-059H

INTERIM ORDER

June 4, 2007

HOWARD D. SMITH, Petitioner
LIBERTY NW INSURANCE CORP, Respondent
Before Kate Donnelly, Administrative Law Judge

Claimant appealed the Director's Administrative Orders listed above. Pursuant to notice, a hearing convened in Eugene, Oregon on November 15, 2006 before Administrative Law Judge Kate Donnelly. Claimant was present and was represented by his attorney, David A. Vinson. The employer, Little W Logging, Inc, and its insurer, Liberty Northwest Insurance Corporation (Liberty), were represented by Meg M. Carman. The hearing was continued to allow claimant's attorney the opportunity to review the Medical Review Unit (MRU) Exhibits in the above cases, which he had not received.¹

On April 24, 2007, claimant submitted a Motion to Remand to the Workers' Compensation Division's MRU for reconsideration and clarification of the above listed Orders. Liberty's attorney responded to Claimant's Motion to Remand on May 3, 2007. On May 9, 2007, claimant replied to Liberty's response.

ISSUE

Whether the matter should be remanded to MRU because the Administrative Orders lack substantial evidence to support the findings in the Orders.

EVIDENTIARY ISSUES

Exhibits 1 through 74, submitted by the Workers' Compensation Division (WCD) in Contested Case Nos. 06-006H (WCB Case No. 06-00006H) and 06-058H (WCB Case No. 06-00058H), are hereby admitted into evidence.

Exhibits 1-15, submitted by the Workers' Compensation Division (WCD) in Contested Case No. 06-057H (WCB Case No. 06-00057H), are hereby admitted into evidence.

Exhibits 1-38, submitted by the Workers' Compensation Division (WCD) in Contested Case No. 06-059H (WCB Case No. 06-00059H), are hereby admitted into evidence.

Claimant attached Exhibit A to his Motion to Remand, showing the amount allegedly still owed to claimant by Liberty for various unpaid medical bills. Liberty objects to claimant's submission of Exhibit A on the grounds that no new evidence can be submitted into the record.

¹ Claimant's attorney stated that he had received the Exhibit List Indexes but the actual exhibits were not enclosed.

Additionally, Liberty contends that Exhibit A is meaningless without supporting documentation. Claimant replies that Exhibit A was not offered as a new hearing exhibit, but rather, as an Exhibit supporting the Motion to Remand because the MRU Orders did not deal with these reimbursement requests.

I decline to admit Exhibit A for any purpose because I find it does not address the issues addressed in the above Orders in a meaningful way. Moreover, it was not a part of the evidentiary record considered by the MRU in any of the above Orders. *See* OAR 436-001-0225(2).

FINDINGS OF FACT

Claimant sustained a compensable injury on March 25, 1986. At that time, the insurer was not required to issue a Notice of Acceptance. In 2002, the insurer stopped payment of prescriptions and various medical bills. Claimant requested Administrative Review from the MRU on April 26, 2004. Liberty took the position that the unpaid prescriptions and medical treatment was for unrelated conditions. The MRU deferred review until compensability was finally determined.

Once the Board's July 5, 2005 Order on Review became final, the MRU resumed Administrative Review of the medical service dispute filed by claimant on April 26, 2004 (Ex. 60). The MRU listed the medical services in dispute as well as the disputed prescription medications (Ex. 60). The insurer was asked to submit a new record using the required format under OAR 436-010-0008(9). This list of required information did not specify that the insurer had to submit payment summaries for the disputed medical services and prescriptions (Ex. 60-1, -3). Claimant was notified that he could submit any pertinent records and related correspondence (Ex. 60-2).

WCB Case Nos. 06-00006H (DMS 05-1131) and 06-00058H (DMS 05-1186)² involve review of a medical dispute regarding unpaid prescription medications purchased between September 23, 2002 and April 16, 2004; medical services provided by Sacred Heart Hospital/Peace Harbor Hospital, on November 20, 2002; Indulal Rughani, MD, on November 20, 2002; Khuram Ameen, MD, on February 6, 2003; Stephen Quinn, MD, on February 10, 2003; Daniel Paulson, MD, on March 4, 2003; Sally Marie, MD, on March 4, 2003 and Paul Watson, MD, on March 25, 2003 (Exs. 69-1; 71-1). The original request for Administrative review was submitted on April 26, 2004 (Ex. 60).

Christine James, a Liberty Senior Case Manager, responded to MRU on August 5, 2005, that she was unable to determine from the initial Notice of Required Action form and attachments what specific bills were being demanded for payment, therefore, all billings found during the litigation were reviewed and sent for payment on July 26, 2005. Ms. James enclosed a copy of those billing screens. Ms. James further stated that all reimbursement requests from

² DMS 05-1186 entitled "Abate, Withdraw, and Republish Administrative Order of Dismissal," republished DMS 05-1131 in order to reflect that payment of medical services was made prior to the July 5, 2005 Order on Review becoming final (Ex. 71-1). I note that DMS 05-1186 incorrectly referred to the WCB Order on Review as an Opinion and Order.

the worker, found in all volumes of his file, were sent for payment on August 2, 2005. Ms. James stated; "I trust that only those requests in [Liberty's] possession at the time of the original dispute are at issue" (Ex. 61-1). That being the case, she indicated that all requests had been paid to date. Finally, Liberty advised claimant to give his claim information to all providers involved in his care of the accepted conditions in the claim and that they should submit there billings in the format laid out in OAR 436-009-0010 to be payable in the claim (Ex. 61-1). This letter was copied to claimant and multiple medical providers, including the physicians who provided the disputed services (Ex. 61-2).

On September 2, 2005, MRU faxed Liberty a list of the specific bills in question (Ex. 62). These bills did not contain claimant's previous submission of prescription payments and co-pays (Ex. 62-2).

On September 12, 2005, Ms. James sent an Addendum to her initial August 5, 2005 submission (Ex. 64). This addendum showed the status and/or the date of payment of the medical providers' disputed bills.

A memo to the MRU claim file authored by Monica Love, referred to a September 23, 2005 letter from Mr. Long at claimant's attorney's office, submitting information about bills that remain unpaid, including receipts for prescription medications, which were included in the original dispute (Ex. 65-1).

Ms Love noted that there appeared to be bills for additional providers, not in the original dispute and that these "may be a new dispute to review" (Ex. 65-1). She further noted that Mr. Long had called that day to say there had been some changes and additions to the file and would send new information regarding what has been paid and what has not been paid.

Consequently, a new Administrative Review file was opened. This file resulted in a separate Order of Dismissal; *i.e.*, WCB Case No. 06-00057H (DMS 05-1176). This Order involved review of a medical dispute regarding prescription medication expenses paid by claimant for Advair, Tequin and Combivent provided March 20, April 16, April 26, May 17, May 21, June 13, June 27, and August 2, 2002 and Combivent, Proventil, Theophyllin and Advair provided March 20, April 2, April 25, May 16, June 4, July 3, August 13, and September 18, 2003 (Exs. 11; 14-1). This Administrative Review was requested by claimant's attorney on September 23, 2005 (Ex. 14-1).

Additionally, in November 2005, claimant submitted additional prescriptions that were not included in the original request for Administrative Review. The MRU established a third file that resulted in a separate Order of Dismissal; *i.e.*, WCB Case No. 06-00059H (DMS 05-1200). This Order involved review of a medical dispute regarding reimbursement to claimant for multiple prescriptions purchased by claimant from March 20, 2003 through August 16, 2005 (Ex. 37-1). This Administrative Review was requested by claimant's attorney on November 30, 2005 (Ex. 37-1). Many of these prescriptions had not been raised in claimant's original request for Administrative Review by MRU, because they arose after that date. Consequently, a new Contested Case Number was assigned and additional information was requested from Liberty.

CONCLUSIONS OF LAW

Claimant contends that there is not substantial evidence to support the findings in the Orders, and MRU did not follow statutory requirements and administrative rules in these proceedings. Specifically, claimant argues that Liberty did not comply with MRU's July 25, 2005 Notice of Required Action on a Medical Dispute (DMS Order 05-1186; Ex. 60). Claimant contends that Liberty did not submit a complete indexed copy of the medical record related to the medical services in dispute with instructions on how those exhibit records were to be indexed and included a sample exhibit index (DMS Order 05-1186, Ex. 60-2, -3). Instead, claimant contends that Liberty responded with an August 5, 2005 letter to the medical reviewer and MRU divided the exhibits into three packages.

Claimant contends that the medical reviewer appeared to simply accept what the Liberty claims adjuster said, as opposed to actually reviewing records. Thus, claimant argues that the findings in the various orders are not supported by substantial evidence that can be deciphered from the record.

Liberty opposes claimant's Motion to Remand the cases to MRU, arguing that each of the MRU Orders is supported by the record in that case. Liberty contends that each MRU order addresses specific billings that claimant alleged were not paid. Liberty argues that each MRU Order addresses each bill specifically and provides its rationale for its findings that the bill had either been paid or not received by Liberty. Liberty contends that claimant has not provided any documentation to the contrary. Furthermore, Liberty argues that there is not basis for claimant's allegation that MRU did not follow statutory requirements and administrative rules in each of the contested cases.

In conclusion, Liberty argues that each of the MRU Orders is supported by the record developed in each case. Moreover, claimant did not submitted any evidence to establish that the specific billings or reimbursements in each case were not paid by Liberty. Liberty contends that a remand to MRU would not change the outcome in these cases.

Claimant replies that the record shows that claimant has repeatedly submitted additional requests for payment of compensable medical services, prescriptions and co-pays. Claimant contends that Liberty's argument that claimant's list of co-pays were not the subject of any of the MRU Orders, constitutes a reason in itself for remanding the Orders to MRU to address these prescription billings and co-pays.

OAR 436-001-0170(5) provides that: "Where appropriate, the administrative law judge may remand a dispute to the director for further administrative action."

Here, I conclude that remand of the MRU Orders to the Director for further action is not warranted. I reach this conclusion based on the following reasoning.

I will first address claimant's argument that MRU did not address reimbursement for any of claimant's co-pays. Claimant first presented this evidence of alleged unpaid co-pays in Exhibit A, submitted with his Motion to Remand. That Exhibit has not been admitted into the

record, because it was not submitted to the MRU at the time of review. There is no evidence in the record that the MRU relied on, showing that he previously submitted co-pay records to MRU, in addition to the prescription records reviewed in the Orders of Dismissal. Claimant was given the opportunity to submit additional records regarding the disputed medical services. He submitted the unpaid prescription and a schedule with circled items that he alleged remained unpaid. Consequently, I conclude that he had the opportunity to complete the record at the time of the review and provided MRU with those bills and prescriptions that claimant contended remained unpaid. Therefore, I decline to remand for consideration of these alleged unpaid co-pays.

In WCB Case No. 06-00057H (DMS 05-1176), the record contains 15 exhibits which include, among other things, claimant's prescriptions, claimant's letters to Liberty requesting reimbursement, claimant's September 22, 2005 letter submitting a listing of all the medical providers with circled entries representing the outstanding bills that remained un-reimbursed. Liberty responded to MRU's Specification of Disputed Medical Issues with information regarding these specific prescriptions (Exs. 11; 12; 13). Based on Liberty's information, the MRU issued an Order of Dismissal after finding that there was no dispute to review (Ex. 14).

Likewise, in WCB Case No. 06-00059H (DMS 05-1200) the MRU requested additional information from Liberty regarding specific billings regarding bills that claimant submitted on November 29, 2005. Liberty responded by letter dated December 23, 2005 that the newly submitted prescriptions that were not duplicates of prescriptions addressed in Liberty's December 9, 2005 letter, had been sent for payment and would be paid within the allotted 30 days (Ex. 36). The MRU considered this information in issuing its December 30, 2005 Order of Dismissal (Ex. 37).

After reviewing the individual Orders, and the exhibits supporting these Orders, I conclude that there was substantial evidence to support MRU's findings. The individual Orders listed the specific disputed medical services and prescriptions and the medical reviewer concluded, based on information provided by Liberty, that these services and prescriptions had either been paid or had not been received. Consequently, the MRU issued the Orders of Dismissal.

Because I have found that there is substantial evidence to support the Orders of Dismissal, I decline to remand to MRU for further action.

ORDER

IT IS HEREBY ORDERED that claimant's Motion for Remand is denied.