

In the ORS 656.245 Medical Services Dispute of

**Tin T. Tran, Claimant**

Contested Case No: 07-023H

**PROPOSED & FINAL ORDER**

May 23, 2007

TIN T. TRAN, Petitioner

SAFECO INSURANCE CO. OF ILLINOIS, Respondent

Before Nicholas M. Sencer, Administrative Law Judge

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Pursuant to notice, the hearing convened on May 4, 2007 in Portland, Oregon before Administrative Law Judge Nicholas M. Sencer. Claimant was present and unrepresented. Neil Jones represented the employer, Dieter Franck, and its insurer, Safeco. Hinh Dong served as interpreter on behalf of claimant. Exhibits 1 through 29, together with interlineated exhibits 23A, 23B and 25A were admitted into the record. The record closed on May 4, 2007 following recorded closing arguments.

**ISSUES**

Claimant challenged the January 29, 2007 Administrative Orders of Dismissal of the Medical Review Unit (“MRU”). The insurer moved for dismissal based on lack of jurisdiction.

My review of the challenged orders 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.”

**FINDINGS OF FACT**

Claimant sustained a compensable injury on September 29, 1999. The insurer accepted the conditions described as two cm laceration right third finger, tuft fracture right third finger with secondary infection.

On October 28, 2005, claimant requested Administrative Review regarding reimbursement for prescription medications Celebrex and Trazadone and a stellate ganglion block injection. On March 20, 2006, the MRU issued a Defer and Transfer Order, transferring jurisdiction to the Workers’ Compensation Board to address the dispute concerning whether a sufficient causal relationship existed between the disputed medical treatment and claimant’s accepted worker’s compensation claim.

On March 22, 2006, the insurer issued a denial of claimant’s current condition and need for treatment and disability.

The medical treatment dispute and the insurer’s denial were consolidated for a hearing that convened before Administrative Law Judge Somers on July 14, 2006. On October 3, 2006, Judge Somers issued an Opinion and Order that set aside the March 22, 2006 denial, but

concluded that claimant's need for the proposed stellate ganglion block injection and Celebrex and Trazadone prescriptions was not due to the accepted claim.

Claimant requested reconsideration of Judge Somers' Opinion and Order, which resulted in an Order of Abatement dated October 6, 2006. On November 28, 2006 Judge Somers issued an Opinion and Order on Reconsideration in which she affirmed the March 22, 2006 denial and adhered to her prior conclusion that the proposed medical treatment was not due to the accepted claim.

On January 29, 2007, MRU issued an Administrative Order of Dismissal in DMTX 07-60 concerning the stellate ganglion block injection in which it concluded, "Since the November 28, 2006 Opinion and Order on Reconsideration resolved all issues raised or raisable, the Director will take no further action." Also on January 29, 2007, the MRU issued an Administrative Order of Dismissal in DMMS 07-63 concerning the Celebrex and Trazadone prescriptions in which it concluded, "Since the November 28, 2006 Opinion and Order on Reconsideration resolved all issues raised or raisable, the Director will take no further action."

Claimant appealed the January 29, 2007 MRU orders. It was claimant's appeal of these orders that resulted in the current proceeding.

On January 9, 2007, claimant asked Judge Somers to reconsider her Opinion and Order on Reconsideration. Judge Somers issued an Order of Abatement on January 11, 2007 and issued a Second Order on Reconsideration on January 29, 2007. In her Second Order on Reconsideration, Judge Somers adhered to her November 28, 2006 Opinion and Order on Reconsideration.

On February 16, 2007, the MRU issued Amended Administrative Orders of Dismissal in DMTX 07-60 and DMMS 07-63, which concluded, "Since the November 28, 2006 Opinion and Order on Reconsideration resolved all issues raised or raisable, and the January 29, 2007 Second Order on Reconsideration adheres to the November 28, 2006 Opinion and Order on Reconsideration, the Director will take no further action."

Claimant did not file a Request for Hearing challenging the February 16, 2007 amended administrative orders of dismissal. Claimant did, however, appeal Judge Somers' Second Order on Reconsideration, which appeal is currently pending before the Workers' Compensation Board.

## **CONCLUSIONS OF LAW AND OPINION**

### **Motion to Dismiss**

The insurer argues that claimant only appealed the January 29, 2007 Administrative Orders of Dismissal and that those Orders became moot upon issuance of the Amended Administrative Orders of Dismissal on February 16, 2007. Moreover, the insurer argues that claimant's failure to specifically appeal the February 16, 2007 amended orders renders those orders final and deprives the Hearings Division of jurisdiction to consider the issue.

Given the complicated and confusing nature of the multiple amended and reconsidered orders, the fact that the February 16, 2007 amended orders are essentially identical to the timely appealed January 29, 2007 orders, I conclude that claimant's properly-filed appeals of the January 29, 2007 orders were sufficient to prospectively challenge the February 16, 2007 amended orders. Accordingly, the insurer's motion to dismiss is denied.

### **Claimant's Appeal of the Amended Orders**

In its original and amended Administrative Orders of Dismissal, the MRU concluded that Judge Somers' November 28, 2006 Opinion and Order on Reconsideration and January 29, 2007 Second Order on Reconsideration resolved all issues raised or raisable. In other words, since the disputed medical services were not compensable, there was nothing left for the MRU to review. Given that Judge Somers concluded that the disputed medical services were not compensable, the MRU's conclusion was correct. Since there are no factual or legal errors in the MRU's original and amended Orders of Dismissal the orders will be affirmed.

### **ORDER**

IT IS HEREBY ORDERED that the January 29, 2007 Administrative Orders of Dismissal and the February 16, 2007 Amended Administrative Orders of Dismissal are affirmed.