
In the ORS 656.245 Medical Service Dispute of

Carl Washington, Claimant

Contested Case No: 06-154H

PROPOSED & FINAL ORDER

January 22, 2007

CARL WASHINGTON, Petitioner

OWENS-ILLINOIS INC., Respondent

Before David D. Lipton, Administrative Law Judge

Pursuant to notice, a hearing convened and closed on January 8, 2007 in Portland, Oregon before David D. Lipton, Administrative Law Judge. The parties appeared through their representatives who presented recorded telephonic argument. Claimant is represented in these proceedings by Patrick Mackin. The employer, Owens Illinois, Inc., and its claims management service, Gates McDonald & Co., are represented by William Replogle.

Exhibits 1-25 received from the Workers' Compensation Division were admitted into evidence.

ISSUE

This is Claimant's appeal from the Workers' Compensation Division's Medical Review Unit's September 27, 2006 Order upholding the disapproval of palliative care requested by Claimant's physician.

FINDINGS OF FACT

Claimant was compensably injured on May 20, 2005 when he fell at work. He was seen in the emergency room on May 23, 2005. He followed up the following day with Cascade Occupational Medicine.

By June 10, 2005 Claimant was back to performing full duty. He was declared medically stationary without evidence of permanent impairment.

On July 21, 2005 Gates McDonald accepted the claim for a disabling lumbar strain. A Notice of Closure issued on July 29, 2005. It awarded periods of temporary disability benefits and no permanent disability benefits.

Claimant's started treating at Concentra Medical Centers on June 2, 2006. He was examined by Amy Gardner, M.D. He complained to her of an increase of low back pain over the past three days since lifting groceries out of his car. He described being in pain since his injury in May 2005. He was no longer employed at Owens Illinois, Inc. and was waiting to start a new job with a temporary service. Dr. Gardner referred Claimant for physical therapy and completed a Form 827 for palliative care. Claimant began physical therapy on June 6, 2006. He was scheduled to receive six physical therapy treatments.

In a letter dated July 11, 2006 Gates McDonald declined Dr. Gardner's referral for palliative care treatment. Claimant requested Director's review of the decision.

On September 27, 2006 the Medical Review Unit issued its Order approving Gates McDonald's denial of palliative care treatment. The review analyst found that Claimant was not working at the time that physical therapy was prescribed and therefore was not eligible for palliative care.

OPINION AND ORDER

Claimant protests the Medical Review Unit's Order upholding Gates McDonald's decision to deny the palliative care treatment prescribed by Dr. Gardner on June 2, 2006.

"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 worker's attending physician and "is necessary to enable the worker to continue current employment..." ORS 656.245(1)(c)(J). "Current" means occurring in the present time. According to the record, at the time physical therapy was prescribed, Claimant was not receiving vocational services and was between jobs. Therefore, he did not satisfy the statutory exception for the provision of palliative care treatment. The decision of the MRU is correct and will be affirmed.

ORDER

IT IS HEREBY ORDERED that the September 27, 2006 Administrative Order upholding Gates McDonald & Co.'s decision to disapprove palliative care requested by Dr. Gardner on June 2, 2006 is affirmed.