

In the ORS 656.245 Medical Services of

Carlos Diaz, Claimant

Contested Case No: 06-031H

PROPOSED & FINAL ORDER

September 23, 2008

CARLOS DIAZ, Petitioner

LIBERTY NW, Respondent

Before David D. Lipton, Administrative Law Judge

In lieu of proceeding to hearing on February 14, 2008, the parties agreed to submit this matter for a decision based upon the admitted exhibits and their written arguments. Claimant is represented by Martin Alvey. The employer, Sears Roebuck and Co., and its insurer, Liberty NW Insurance Corp., are represented by Meg Carman. The record closed on September 15, 2008.

The following exhibits were admitted: 1 through 40 identified on the July 22, 2005 exhibit list received from the Workers' Compensation Division and 1 through 10 identified in the Workers' Compensation Division's March 31, 2006 exhibit list.

ISSUE

Claimant disagrees with the January 20, 2006 Order which found that Claimant is not entitled to reimbursement for chiropractic treatment prescribed by Dr. Puziss. Liberty NW has filed a cross-request for hearing. It disagrees with the January 20, 2006 Order awarding Claimant's counsel an attorney's fee.

FINDINGS OF FACT

Claimant was compensably injured on August 21, 2000. Liberty NW accepted a non-disabling mild bilateral carpal tunnel syndrome and low back strain. The claim classification was changed to disabling on February 22, 2002.

An Updated Notice of Acceptance at Closing issued on October 22, 2002. It identified the accepted conditions as mild bilateral carpal tunnel syndrome, low back strain and L5-S1 disc herniation. A Notice of Closure issued on October 25, 2002. It awarded Claimant temporary disability benefits and permanent disability benefits for injury to Claimant's low back. The Notice of Closure was appealed. A March 7, 2003 Order on Reconsideration reduced the award of permanent disability benefits for Claimant's low back and awarded disability benefits for Claimant's left and right forearms.

In June 2004 the parties entered into a Disputed Claim Settlement (DCS) and a Claims Disposition Agreement. The DCS resolved a denial of Claimant's right knee collateral ligament strain and torn medial meniscus claim and a back-up denial of Claimant's bilateral carpal tunnel syndrome. The Claims Disposition Agreement addressed the claim for a low back strain and L5-

S1 disc herniation. All future benefits except for medical services arising from Claimant's low back conditions were resolved by the Claims Disposition Agreement.

Claimant came under the care of Paul Puziss, M.D. On August 10, 2004 Dr. Puziss wrote to Liberty NW. He advised that Claimant was developing low back pain while sitting at work all day. He advised Liberty NW that he was referring Claimant to Robert Sherman, D.C. for palliative care. This chiropractic care would be provided one time a week for six weeks to address the diagnosis of L5-S1 facet syndrome and L5-S1 herniated nucleus pulposus.

Dr. Sherman's chart notes for the period August 16, 2004 to January 26, 2005 demonstrated that Claimant experienced good days and bad days. On September 24, 2004 Dr. Sherman wrote to Dr. Puziss advising him that Claimant suffered from a lumbar disc syndrome which was subject to acute exacerbations. The following day Dr. Puziss prescribed continued chiropractic manipulations to be provided two to three times per week for six weeks to address the lumbar disc syndrome diagnosis.

Claimant was examined at Liberty NW's request by W. C. Kaesche, M.D. and M. Earl Duncan, D.C. on September 30, 2004.

On October 25, 2004 Liberty NW informed Dr. Puziss that his palliative care request would not be granted. On November 1, 2004 Dr. Puziss prescribed continued palliative care to be provided one to three times per week for six weeks.

On December 10, 2004 Liberty NW stated that it would not pay for Claimant's chiropractic care from September 14, 2004 through November 3, 2004 as it had not been authorized. It paid for Claimant's chiropractic care on December 3, 10, and 15. Liberty NW declined to pay for palliative care that had not been authorized and was provided on January 5, 6, and 14, 2005.

On December 14, 2004 Claimant returned to Dr. Puziss. Dr. Puziss noted that Claimant was receiving chiropractic care from Chiropractor Sherman. He felt that Claimant's care was reasonable and was assisting Claimant to stay at work. He prescribed continued chiropractic care one time per week for two months to treat Claimant's right sciatica. On January 5, 2005 Dr. Puziss prescribed chiropractic care three times per week for one week for Claimant's right sciatica.

An Administrative Order issued on June 8, 2005. The Medical Review Unit addressed whether Liberty NW was responsible for Claimant's office visits and treatment provided by Robert Sherman, D. C. from August 16, 2004 through December 29, 2004. The parties accept the Medical Review Unit's recitation of facts. The Medical Review Unit concluded, and so ordered, that the services provided by Chiropractor Sherman from August 16, through September 22, from October 1 to December 13 and December 15 were not reimbursable for the reason that there was no palliative care request and/or such a request had not been timely mailed to Liberty NW. Although Liberty NW had paid for some of the chiropractic care requested, an attorney fee was not awarded relying on the Claims Disposition Agreement.

Claimant requested a hearing. The matter proceeded to a hearing before the Workers' Compensation Board's Hearings Division. Additional materials were submitted and the matter was remanded to the Medical Review Unit.

On remand, the Medical Review Unit considered Chiropractor Sherman's September 13, 2005 opinion that the various diagnoses referenced by Dr. Puziss in his prescriptions for chiropractic care should be accepted if they were not already. Dr. Puziss concurred with Dr. Sherman's analysis.

On January 20, 2006 the Medical Review Unit's Administrative Order on Remand issued. It affirmed the earlier Order concerning the non-payment for Dr. Sherman's services. However, it approved an attorney fee in connection with Liberty NW's payment for services provided on December 22 and 29, 2004. The Medical Review Unit held that the prescription for chiropractic care and/or treatment plans were deficient in meeting the requirements of the administrative rules concerning palliative care.

The parties' appeal followed.

OPINION AND CONCLUSION

Four "palliative care requests" have been issued by Dr. Puziss. The Medical Review Unit has declined to require Liberty NW to pay for the treatment provided by Chiropractor Sherman that it has not paid.

Palliative care requests are governed by OAR 436-010-0290(1). It requires that the attending physician prescribing the palliative care identify the objective findings and identify by ICD code the diagnosis of the medical condition to be addressed. The palliative care request must also outline a treatment plan identifying the provider, the modality of treatment and the frequency and duration of treatment. The palliative care request must also identify how the treatment relates to the compensable condition and how the treatment will enable the injured worker to continue working or the effect on Claimant if care is not provided. I concur with the Medical Review Unit that the palliative care requests do not comply with the requirement that each of these factors be identified. (Because Liberty does not dispute the relationship between the treatment and the accepted condition, I do not address the criteria that the palliative care request must identify how the treatment is related to the compensable condition.)

The first "palliative care request" was on August 10, 2004 and is laid out in both Dr. Puziss's letter and palliative request care form. It is further addressed in Chiropractor Sherman's September 24 letter. However, none of those documents address the presence of objective findings nor how the treatment will enable Claimant to continue working or the effect if care is not provided. These deficiencies are also present in the September 25, 2004, November 1, 2004 and December 14, 2004 "palliative care requests". Additionally, each of the "palliative care requests" identifies a different diagnosis. The August 10, 2004 "request" identifies the condition as L5-S1 facet syndrome. The September 25, 2004 and November 1, 2004 forms identify the condition as lumbar disc syndrome. The December 14, 2004 form identifies the condition as sciatica. Even if I conclude that Liberty's lack of objection to the relationship between the

treatment and Claimant's accepted low back condition cures this defect, the "palliative care requests" are still deficient in at least two of the required criteria. Nor are the deficiencies cured by the subsequent submission of Chiropractor Sherman's chart notes.

I therefore affirm the Medical Review Unit's conclusion that Liberty NW is not required to pay for the chiropractic services provided by Dr. Sherman from August 16, 2004 through December 15, 2004.

With respect to the Medical Review Unit's award of an attorney fee, this is a proceeding before the Director. The Director has held in similar circumstances that an attorney fee is appropriate and therefore the Administrative Order on Remand will be affirmed in that regard.

ORDER

IT IS HEREBY ORDERED that the January 20, 2006 Administrative Order on Remand is affirmed.