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In the ORS 656.245 Medical Services Dispute of

**Howard D. Smith, Claimant**

Contested Case No: 06-006H, 06-058H

**FINAL ORDER**

February 27, 2008

HOWARD D. SMITH, Petitioner

LIBERTY NORTHWEST INSURANCE CORP., Respondent

Before John Shilts, Workers' Compensation Division Administrator

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Claimant, through his attorney David A. Vinson, timely filed exceptions to Workers' Compensation Board Administrative Law Judge (ALJ) Kate Donnelly's August 30, 2007 Proposed and Final Order.<sup>1</sup> Insurer, through its attorney Meg M. Carman, responded to the exceptions. This matter comes before the director for a final order. I reverse the ALJ's ruling that exhibit 2 is not admissible, but otherwise adopt and affirm.

I adopt the ALJ's findings of fact.

The underlying dispute is whether insurer is required to pay for various bills for medical services. The Medical Review Unit (MRU), in its December 21, 2005 Abate, Withdraw, and Republish Administrative Order of Dismissal (DMS 05-1186), concluded there was no dispute for review because some services had not yet been billed to insurer, and the remainder of the services had been timely paid by insurer once compensability was finally determined by the July 5, 2005 Order on Review. ALJ Donnelly affirmed.

Claimant first argues that exhibit 2 should be admitted as part of the record and disagrees with ALJ Donnelly's determination that exhibit 2 is not relevant. Second, claimant argues that neither MRU nor ALJ Donnelly addressed the issue of whether he is entitled to reimbursement for co-pays and mileage. Lastly, claimant contends that the date the Order on Review became final is not the controlling date to determine if payments are timely, but rather the date of the Notice of Acceptance.

Claimant is correct that he submitted exhibit 2 to MRU on November 29, 2005<sup>2</sup> and it therefore should have been included in the evidentiary record. However, I agree with ALJ Donnelly that the printout is not helpful in identifying which prescriptions were paid and unpaid. Claimant argues that if the printout is compared to exhibit 74, one would find "drug purchases made by the claimant that were found to be related to the accepted claim and were not included in the payment explanation." Exhibit 74 shows payments to the Oregon Medical Lab, Oregon Lung Specialists, and Oregon Imaging Center. The connection between this document and exhibit 2, however, is not as clear as claimant suggests.

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<sup>1</sup> ALJ Donnelly issued three proposed and final orders on the same date in case numbers 06-006H/06-058H, 06-057H, and 06-059H. Claimant requested ALJ Donnelly to abate and reconsider all three orders with one letter dated September 19, 2007. Claimant's letter was treated as exceptions under OAR 436-001-0246. Final orders in case numbers 06-057H and 06-059H are also being issued on today's date.

<sup>2</sup> It is marked as exhibit 31 in case number 06-059H.

Claimant's second argument is that he is entitled to reimbursement of his co-pays and mileage and that neither MRU nor ALJ Donnelly addressed this issue. Upon review of the record in this case, it does not appear the issue of reimbursement of co-pays and mileage was raised in the request for MRU review dated April 22, 2004 or in the request for hearing dated January 5, 2006.<sup>3</sup> MRU and ALJ Donnelly did not err by not addressing the issue in this case.<sup>4</sup>

Lastly, claimant contends the date that the Order on Review became final should not be the controlling date to determine if payments are timely, but rather the date of the Notice of Acceptance. The Order on Review became final August 4, 2005.<sup>5</sup> Under OAR 436-009-0030(4), insurer had 14 days, or until August 18, 2005, to make payment. MRU concluded that for the medical services which had been billed properly insurer paid on or before July 26, 2005. The Notice of Acceptance was not issued until August 10, 2005.<sup>6</sup> Had MRU used this date instead of the date the Order on Review became final, its conclusion would have been the same.

**IT IS HEREBY ORDERED** the August 30, 2007 Proposed and Final Order is adopted and affirmed except the portion ruling that exhibit 2 is not admitted.

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<sup>3</sup> The January 5, 2006 request for hearing raises several issues and cites multiple statutes and rules, but does not specifically raise the issue of reimbursement for co-pays or mileage.

<sup>4</sup> The issue of co-pays is addressed in the final order in case number 06-057H, and co-pays and mileage are addressed in the final order in case number 06-059H.

<sup>5</sup> The Order on Review was issued July 5, 2005 and became final by operation of law when neither party filed for judicial review within 30 days after the date of the order. ORS 656.298.

<sup>6</sup> The Notice of Acceptance dated August 10, 2005 is marked as exhibit 7 in the record for case number 06-057H.