
In the ORS 656.245 Medical Services Dispute of

Howard D. Smith, Claimant

Contested Case No: 06-059H

FINAL ORDER

February 27, 2008

HOWARD D. SMITH, Petitioner

LIBERTY NORTHWEST INSURANCE CORP., Respondent

Before John Shilts, Workers' Compensation Division Administrator

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.¹ Insurer, through its attorney Meg M. Carman, responded to the exceptions. This matter comes before the director for a final order. On the issue of prescription medications I adopt and affirm the proposed order. On the issues of co-pays and mileage reimbursement I reverse and remand.

I adopt the ALJ's findings of fact.

The underlying dispute is whether insurer is required to pay for various prescription medications. The Medical Review Unit (MRU), in its December 30, 2005 Administrative Order of Dismissal (DMS 05-1200), concluded there was no dispute ripe for review and no further action would be taken because either claimant had already received reimbursement or insurer had not received a request for reimbursement. ALJ Donnelly affirmed.

Claimant raises three issues in his exceptions. I only address claimant's argument that neither MRU nor ALJ Donnelly addressed the issue of whether he is entitled to reimbursement for co-pays and mileage.²

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. The record in this and the other two matters are confusing to say the least. In this case there is not a clear request from claimant for administrative review as there is in case number 06-006H/06-058H, so it is not clear exactly which issues were or were not raised. However, included in the record that was before MRU are requests from claimant to insurer that his co-pays³ and mileage⁴ be reimbursed. MRU's December 30, 2005 order does not address co-pays or mileage and the record does not otherwise

¹ 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 06-006H/06-058H and 06-057H are also being issued on today's date.

² I do not address claimant's argument about the admissibility or relevance of exhibit 2 in this case. ALJ Donnelly noted that it is already in the record as exhibit 31, and did not otherwise comment on its relevance. The issue is addressed in the final orders in case numbers 06-006H/06-058H and 06-057H. Claimant's argument regarding timeliness relates to case number 06-006H/06-058H, and is addressed in the final order in that case.

³ See exhibits 21 and 27.

⁴ See exhibits 25, 27, and 28.

indicate whether MRU considered the issues. Therefore remand to MRU is appropriate to address the issues of co-pays and mileage reimbursement. To the extent the June 4, 2007 Interim Order found that claimant did not raise the issue of co-pays to MRU, I reverse.

IT IS HEREBY ORDERED on the issue of prescription medications, the August 30, 2007 Proposed and Final Order is adopted and affirmed. The June 4, 2007 Interim Order is reversed to the extent it found that claimant did not raise the issue of co-pays to MRU. This matter is remanded to the Resolution Team of the Medical Section⁵ to address the issue of whether claimant is entitled to reimbursement for co-pays and mileage.

⁵ The Medical Review Unit (MRU) is now known as the Resolution Team (RT) of the division's Medical Section.