
In the ORS 656.245 Medical Services of

Jason B. Redheart, Claimant

Contested Case No: 08-159H

PROPOSED & FINAL ORDER

February 4, 2009

TRAVELERS PROPERTY CASUALTY CO., Petitioner

JASON B. REDHEART, Respondent

Before John P. McCullough, Administrative Law Judge

The above-captioned case involves claimant January 25, 2006 injury claim with Gannett Company and its insurer, Travelers Property Casualty Company. Representing claimant in this case is his attorney, Aaron Clingerman. Representing the employer and Travelers is their attorney, David Johnstone.

On September 2, 2008 Travelers filed a request for hearing with the Workers' Compensation Division (WCD) of the Department of Consumer and Business Services, appealing an August 18, 2008 Administrative Order (MS 08-1073) that determined that Travelers was liable for a fee to claimant's attorney in the amount of \$360.00. Pursuant to ORS 656.704(2)(a) and OAR 436-001-0019, WCD referred this matter to the Workers' Compensation Board, Hearings Division, on September 3, 2008. Thereafter, the Board's Hearings Division scheduled a hearing on January 14, 2009 in Salem, Oregon before the undersigned Administrative Law Judge.

On January 13, 2009 the parties' attorneys contacted the undersigned ALJ and requested that the hearing be conducted by telephone. The request was granted.

On January 14, 2009 a hearing was convened in Salem, Oregon before the undersigned ALJ. Both attorneys participated by telephone. The issue was framed as follows: the propriety of the attorney fee awarded in the August 18, 2008 Administrative Order. Exhibits 1-27, as identified in a September 19, 2008 exhibit list submitted by WCD, were admitted in evidence. Said exhibit list has been marked as the "ALJ's Master Exhibit List". No other documentary evidence was offered at the hearing. No testimony was presented. Recorded closing arguments were presented by parties' attorneys, and the record was closed on January 14, 2009.

FINDINGS OF FACT

Claimant suffered a compensable injury on January 25, 2006 as a result of his employment with Gannett Company. Travelers, Gannett's workers' compensation insurer, has accepted the claim.

Subsequent to his January 25, 2006 injury, claimant required the use of a wheelchair for a period of time. He rented a wheelchair from Apria Healthcare, Inc., a medical equipment company with a branch office in Albany, Oregon and its corporate headquarters in Pasadena, California. Claimant returned the wheelchair to one of Apria's branch offices in November 2006.

On October 15, 2007 Travelers received a bill from Apria for a wheelchair rental for the months of March, April, May, June, July, August, and September 2007. The total bill was \$644.00. On November 9, 2007 Travelers sent Apria a check for \$386.40 in payment of the bill. The amount paid represented a reduction Travelers took pursuant to the reimbursement amounts allowed by the applicable medical fee schedule.

On June 25, 2008 Apria sent claimant a wheelchair rental bill for \$252.00. The billing statement referred to the time period November 10, 2007 through March 10, 2008. In the billing statement, Apria advised claimant that the \$252.00 was not covered by insurance and was claimant's responsibility.

On July 10, 2008 claimant's attorney sent the Workers' Compensation Division (WCD) a letter concerning Apria's June 25, 2008 bill. Claimant's attorney advised that claimant contended that the bill was compensable, and he asked WCD to conduct a review into the matter.

On July 15, 2008 WCD sent a letter to Travelers, Apria, claimant, and claimant's attorney concerning the administrative review that had been requested. In the letter WCD directed Travelers to complete an enclosed "Specification of Disputed Medical Issues" form. Travelers received that form on July 17, 2008. Subsequently, Travelers completed the portion of the form pertaining to the alternative potential bases for the "disputed medical service", and Travelers indicated that none of the alternative bases applied. WCD received Travelers' response on July 21, 2008.

On July 18, 2008 Travelers' claims analyst sent Apria a letter, confirming a conversation the claims analyst had had that day with Apria's representative. The letter confirmed that the \$252.00 bill was not for a wheelchair rental for the period March 2007 to September 2007, for which period Travelers had previously paid Apria; rather, the bill was for a wheelchair rental for the period November 10, 2007 to March 10, 2008. In her letter, Travelers' claims analyst advised that Apria had not billed Travelers for the \$252.00 amount, and Apria was requested to send that bill directly to Travelers.

On July 18, 2008 Travelers' senior claims representative, Kay Gilbert, sent a letter to WCD, and enclosed a copy of Travelers' July 18, 2008 letter to Apria. Gilbert advised WCD that she believed that "this is simply a billing issue, not a payment issue", and that Apria "should be billing directly to our office". Gilbert advised WCD that she believed that "this matter is now resolved".

On July 24, 2008 WCD's medical resolution team member, Becky Friedrichsen, received a call from claimant's wife, and was advised that Apria was charging claimant for a wheelchair rental, but that claimant had returned the wheelchair "long ago". Claimant's wife advised Friedrichsen that claimant had a receipt for the return of the wheelchair. Friedrichsen asked claimant's wife to send her the receipt.

On July 25, 2008 Friedrichsen called claimant's wife and was provided detailed

information about the date and location regarding the return of the wheelchair to Apria. Friedrichsen said she would check with Apria concerning that information. She then called Apria. She was advised that the bill had gone to collections. On July 28, 2008 Friedrichsen received a copy of the wheelchair return receipt from claimant's wife, and Friedrichsen advised claimant's wife that she would deal with Apria.

On July 30, 2008 claimant's wife called Friedrichsen and advised that she had received a collection notice from Apria. On July 31, 2008 Friedrichsen spoke with claimant's attorney's assistant. She advised the assistant that based on documents claimant's wife had provided, it looked like the wheelchair was returned in November 2006.

On August 4, 2008 Friedrichsen spoke with Apria's representative, Jack Scott. Friedrichsen advised Scott about the paperwork that showed that the wheelchair had been returned to Apria in November 2006. Scott expressed his agreement. Scott advised Friedrichsen that Apria was "adjusting all charges off the account". Friedrichsen advised Scott that claimant had been turned over to collections as a result of the error. Scott stated that that was his understanding, as well. Scott advised that he was working with Apria's corporate billing center on the issue. Friedrichsen asked Scott to send her documents showing a zero balance for claimant and showing a retraction of the collections action. Scott told her that when he received such documents, he would fax them to her. Friedrichsen then called Travelers' claims representative and advised her about the matter she had just discussed with Scott, and gave her Scott's phone number.

On August 7, 2008 Apria sent Travelers a check for \$386.46, representing a refund to Travelers of what Travelers had previously paid Apria for the wheelchair rental for the period March 2007 to September 2007.

On August 7, 2008 Apria sent claimant a letter advising him that Apria had resolved the error concerning his account, that Apria had sent a request to have claimant's account removed from collection, and that said matter had been taken care of through Apria's collection agency. In addition, Apria apologized for the error.

On August 12, 2008 Friedrichsen faxed Travelers' claims representative and claimant's attorney documents Friedrichsen had received from Apria on August 12 that showed that claimant's account balance was zero. Friedrichsen also faxed them a copy of the letter from Apria retracting claimant's account from collections.

On August 18, 2008 WCD issued an Administrative Order. The Order recited that the billing issue involving the wheelchair rental had been resolved and that the only remaining issue was an attorney fee. Claimant's attorney was awarded a fee of \$360.00, payable by Travelers.

OPINION AND CONCLUSIONS

In its August 18, 2008 Administrative Order, WCD awarded a fee to claimant's attorney pursuant to ORS 656.385 (Ex. 25, pg. 1). Subsection (1) of ORS 656.385 provides that an insurer shall pay a claimant's attorney a reasonable fee when the attorney is instrumental in

obtaining a settlement of a “dispute” over compensation benefits pursuant to ORS 656.245, 656.247, 656.260 or 656.327. Those statutory sections pertain to medical services benefits concerning a workers’ compensation claim. Travelers contends that WCD erroneously awarded a fee under ORS 656.385(1) because the matter that WCD administratively reviewed concerning the wheelchair rental did not involve a “dispute” between claimant and Travelers; rather, it involved a dispute between claimant and the medical equipment provider, Apria. Claimant contends that Travelers was appropriately assessed an attorney fee under the cited statute.

I find that the record establishes the following factual sequence. Sometime after his January 2006 work injury, claimant rented a wheelchair from Apria. He returned the wheelchair in November 2006. Subsequently, Apria erroneously billed Travelers for a wheelchair rental for the period March 2007 to September 2007. Travelers paid the bill, after reducing the amount per the applicable medical fee schedule. Thereafter, Apria erroneously billed claimant \$ 252.00 for a wheelchair rental for the period November 2007 to March 2008. Later, Apria sent the bill to a collections agency. Claimant, through his attorney, then requested that WCD review the matter. As a result of the persistent, diligent efforts of WCD’s medical reviewer -- involving several phone calls with claimant’s wife and Apria’s representatives -- Apria determined that it had made a billing error concerning the \$252.00 bill it had sent claimant. Apria then corrected the error, resulting in the cancellation of the bill and a retraction of the collections action against claimant. Apria also refunded to Travelers the \$386.40 it had erroneously billed Travelers in 2007 for a different rental period.

Based on the above-summarized sequence of events, I conclude that the entire problem/issue/dispute involving a wheelchair rental was Apria’s billing error -- not a failure by Travelers to pay a compensation benefit that it was obligated to pay. In other words, the “dispute” was between claimant and Apria, not claimant and Travelers. As I read the language in ORS 656.385(1), in order for an insurer to be liable for an attorney fee for a claimant’s attorney’s efforts in resolving/settling a dispute, the dispute must be between the claimant and the insurer -- that is, the dispute must be based on some failure by the insurer to comply with an obligation under ORS Chapter 656 to provide/pay compensation benefits, including medical services. I am not persuaded that ORS 656.385(1) can reasonably be construed to require an insurer to pay a fee to the claimant’s attorney where the resolved/settled dispute was between the claimant and a medical provider -- for example, where, as in this case, the medical provider erroneously bills the claimant for an item.

Based on the evidence in the record and for the foregoing reasons, I conclude that the August 18, 2008 Administrative Order’s award of an attorney fee payable by Travelers was based on an erroneous application of ORS 656.385(1).

ORDER

IT IS THEREFORE ORDERED that the August 18, 2008 Administrative Order issued by the Workers’ Compensation Division is set aside.