
In the ORS 656.245 Medical Services of

Kevin P. Smith, Claimant

Contested Case No: 09-067H

PROPOSED & FINAL ORDER

October 6, 2009

KEVIN P. SMITH, Petitioner

SAIF CORPORATION, Respondent

Before Kathryn A. Poland, Administrative Law Judge

This matter is before the undersigned Administrative Law Judge (ALJ) pursuant to the Director's referral under ORS 656.704(2)(a). Claimant is represented by attorney James Bailey. The employer, Kusum Katyal, and its workers' compensation carrier, the SAIF Corporation, are represented by attorney James Booth. The parties waived hearing and submitted this matter with written argument based on the record developed before the Department, identified as Exhibits 1 thru 189 in the Department's June 12, 2009 exhibit list. The record closed with the receipt of claimant's written reply argument on September 8, 2009.

ISSUE

Pre-Denial Medical Benefits. Claimant challenges a Department order that declined to direct SAIF to pay pre-denial medical benefits under ORS 656.247.

FINDINGS OF FACT

On September 8, 2008, claimant fell down some stairs while at work for SAIF's insured. SAIF had notice or knowledge of a claim for the September 8, 2008 work incident no later than October 8, 2008. SAIF denied the claim on November 24, 2008.

Prior to SAIF's denial, claimant received medical treatment to determine the extent of any injury sustained in the September 8, 2008 fall. A health benefit plan did not provide benefits to claimant at the time of the work incident or during any period prior to SAIF's denial.

SAIF denied claimant's request for payment of the pre-denial medical services, and claimant requested administrative review by the Director. The Department declined to direct SAIF to pay the claimed interim medical benefits in an administrative order issued on April 13, 2009 (MS 09-0476).

**ULTIMATE FINDINGS OF FACT,
CONCLUSIONS OF LAW AND REASONING**

The order of the director may be modified only if it is not supported by substantial evidence in the record or if it reflects an error of law. ORS 656.247(3)(a). The Department determined that pre-denial medical benefits are not available to claimant under ORS 656.247 because claimant did not have coverage under a health benefit plan. Claimant asserts that the

statute authorizes pre-denial medical benefits for all workers, regardless of coverage under a health insurance plan, and that the Department's contrary interpretation is an error of law. . . .
ORS 656.247 reads in pertinent part:

“(1) Except for medical services provided to workers [under a Managed Care Organization], payment for medical services provided to a subject worker in response to an initial claim for a work-related injury *** from the date of the employer's notice or knowledge of the claim until the date the claim is accepted or denied ***shall be payable in accordance with subsection (4) of this section*** if the expenses are for:

“(a) Diagnostic services required to identify appropriate treatment or to prevent disability;

“(b) Medication required to alleviate pain; or

“(c) Services required to stabilize the worker's claimed condition and to prevent further disability.

* * *

“(4)(a) If the claim in which medical services are provided under subsection (1) of this section is accepted, the insurer *** shall make payment for such medical services subject to the limitations and conditions of this chapter.

“(4)(b) If the claim in which medical services are provided under subsection (1) of this section is denied ***and a health benefit plan provides benefits to the worker***, the health benefit plan shall be the first payer of the expenses for medical services according to the terms, conditions and benefits of the plan. *** [A]fter payment by the health benefit plan, the workers' compensation insurer *** shall pay any balance remaining for such services subject to the limitations and conditions of this chapter.” (Emphasis supplied.)

The Department determined that, under the express language of subsections (1) and (4)(b) of the statute, pre-denial medical benefits in denied claims are only available for workers who have coverage under a health benefit plan. Claimant reasons that subsection (1) of the statute authorizes pre-denial medical benefits for all workers, regardless of health insurance coverage, and that subsection (4)(b) merely identifies the first payer where a worker is covered by a health benefit plan.

Claimant's interpretation is reasonable if one only considers the express language of subsection (4)(b). However, that section must be interpreted in the context of the statute as a whole, including the mandate under subsection (1) that interim medical benefits “shall be payable in accordance with subsection (4) of this section.” Subsection (4) authorizes payment of benefits in two situations: when a claim is accepted; and when a claim is denied “and the worker

has health insurance coverage.” Subsection (4) does not authorize pre-denial medical benefits where, as here, a claim is denied and the worker does not have health insurance coverage.

I have considered claimant’s assertion that it is illogical and nonsensical to construe the statute to limit interim medical benefits to workers who already have private health insurance. That rationale is not a proper basis for statutory construction because the express language of the statute is unambiguous, albeit somewhat confusing. Claimant is not entitled to pre-denial medical services under the express language of ORS 656.247 because he did not have health insurance coverage during the relevant period.

ORDER

The Department’s April 13, 2009 Administrative Order in MS 09-0476 is affirmed.