

In the Medical Fee Dispute of
Evangelina Becerra, Claimant

Contested Case No: 10-074H

PROPOSED & FINAL ORDER

November 24, 2010

EVANGELINA BECERRA, Petitioner

SAIF CORPORATION, Respondent

Before Jill M. Riechers, Administrative Law Judge

Pursuant to a Request for Hearing filed by claimant, a hearing was scheduled for August 5, 2010 before Administrative Law Judge Jill M. Riechers in Portland, Oregon. Pursuant to agreement of the parties and the undersigned ALJ, the matter was submitted in writing, in lieu of hearing. Exhibits 1 through 10, A, AA, AAA, 1A and 6A have been offered, and are hereby admitted. Claimant is represented by Constance L. Wold. The employer, Diamond Fruit Growers, and its insurer, SAIF Corporation, are represented by Craig Miller. The record closed on October 25, 2010, when claimant's reply argument was received.

FINDINGS OF FACT

Claimant has two accepted claims with SAIF Corporation. Her October 20, 2008 injury claim, Claim No. 8114399D, was accepted for neck strain, right shoulder strain and upper thoracic strain. (Ex AA). Claimant's December 23, 2008 injury claim, Claim No. 8130797L, was accepted for a lumbar strain. (Ex AAA).

On October 30, 2009, Nartnucha Unhanand, M.D. submitted a billing to SAIF in the amount of \$306.00. (Ex A). In the upper right corner of the billing document, someone hand wrote, "81307976." It is not clear who wrote that number on the bill.

On December 31, 2009, claimant's counsel wrote to SAIF, referencing Claim No. 8114399D, and the October 20, 2008 date of injury, asking SAIF to pay the \$306.00 bill from Dr. Unhanand. (Ex 1A). An enclosed statement, which appears to be a copy of the statement as provided to claimant, indicates that still outstanding was payment for an MRI of the chest area. (Ex 1A-2). On February 3, 2010, Dr. Unhanand provided final notice to claimant that the billing of \$306.00 must be paid, or claimant would risk having the account turned over to a collection agency. (Ex 2).

On March 12, 2010, claimant's counsel wrote to the Workers' Compensation Division ("WCD"), enclosing a Request for Administrative Review of Medical Issues. (Ex 3). Ms. Wold advised that SAIF had paid for the MRI of the lumbar spine on the December 23, 2008 date of injury, but had not paid for the MRI of the chest/thoracic spine, in the amount of \$306.00. (Ex 3-1). Claimant's Request for Administrative Review indicated that the issue was refusal to pay medical bills, in connection with the October 20, 2008 claim. (Ex 3-3).

The bill was subsequently sent to collections, and on March 23, 2010, Ms. Wold advised WCD of that fact. (Ex 4).

On March 30, 2010, Susan Hudson, R.N., a medical reviewer for WCD's Medical Section Resolution Team, spoke with a SAIF representative. The SAIF representative indicated that Dr. Unhanand had billed for both services under the same claim, and that claimant had two claims. SAIF responded that it would pay the bill and that payment would go out that day. (Ex 5).

On behalf of the Director, Ms. Hudson issued Administrative Order MF 10-0306 on March 30, 2010. (Ex 6). Ms. Hudson found that Dr. Unhanand's office had billed both the lumbar and the thoracic MRI under the same claim number. The thoracic MRI had been disallowed, as not related to the accepted claim. SAIF had responded that the bill would be paid and that the payment would issue on March 30th. (Ex 6-1).

The only remaining issue was an attorney fee for claimant's counsel. (Ex 6-1, -2). The Director determined that, although claimant prevailed, the issue arose under ORS 656.248. ORS 656.385, governing attorney fees in cases regarding certain medical service matters, only provided for an award of assessed attorney fees in disputes over compensation benefits pursuant to ORS 656.245 and certain other statutes, but not ORS 656.248. Consequently, the Director ruled that claimant's counsel was not entitled to an attorney fee pursuant to ORS 656.385 and OAR 436-001-0410. (Ex 6-2).

On April 1, 2010, claimant's counsel wrote to the Director's representative, asking for reconsideration of the March 30, 2010 Administrative Order. (Ex 7). Counsel asserted that because SAIF's nonpayment of the thoracic MRI was because SAIF took the position that the medical treatment was not related to the accepted claim, she was entitled to an attorney fee under ORS 656.385.

On April 6, 2010, the Director denied claimant's request for reconsideration. (Ex 8). Claimant's counsel requested a hearing, seeking an award of attorney fees pursuant to ORS 656.385. (Ex 9).

CONCLUSIONS OF LAW AND OPINION

Claimant asserts that her counsel is entitled to an assessed attorney fee pursuant to ORS 656.385, for her services in obtaining payment of Dr. Unhanand's thoracic spine MRI billing charge. Employer/SAIF asserts that counsel is not entitled to an attorney fee under ORS 656.385.

ORS 656.385(1) provides that cases involving disputes over compensation benefits pursuant to ORS 656.245, 656.247, 656.260, 656.327 or 656.340, where the claimant finally prevails after a proceeding commenced or where the attorney was instrumental in obtaining a settlement of the dispute prior to a decision by the Director or an ALJ, the Director or ALJ shall require the insurer to pay a reasonable attorney fee to the claimant's attorney. Claimant contends that her request for Director review arose pursuant to ORS 656.245, not 656.248.

ORS 656.245(1) provides that for every compensable injury, the insurer shall cause to be provided medical services for conditions caused in material part by the injury. The statute describes compensable medical services in subsections (1)(b) and (c).

ORS 656.248(12) provides:

(12) When a dispute exists between an injured worker, insurer or self-insured employer and a medical service provider regarding either the amount of the fee or nonpayment of bills for compensable medical services, notwithstanding any other provision of this chapter, the injured worker, insurer, self-insured employer or medical service provider may request administrative review by the director. The decision of the director is subject to review under ORS 656.704.

What appears to have happened in this case is that someone at SAIF noted only the lumbar strain claim number on Dr. Unhanand's bill, and did not process the bill under the thoracic strain claim. This would explain why SAIF did not pay the bill, and is consistent with SAIF's explanation as well as the Director's finding that the thoracic MRI was disallowed as not related to the accepted claim.

It is true that the thoracic MRI was not related to the accepted lumbar strain claim, however, it was related to the accepted thoracic strain claim. There is no evidence that SAIF has ever contended that the service was not compensable under the thoracic strain claim. Consequently, the dispute appears to fall squarely under ORS 656.248(12), which provides that disputes between an injured worker and insurer regarding nonpayment of bills for compensable medical services are subject to the Director's administrative review.

Here, the Director was not required to make a determination of whether there was a sufficient causal relationship between the thoracic MRI service and either of the accepted claims; it was simply a matter of clarifying which claim the service should have been billed to and paid under. If, as claimant contends, the dispute arose under ORS 656.245(1), it would not have been subject to the Director's jurisdiction, pursuant to ORS 656.704(3)(b)(C). The insurer, however, did not take the position that the billing was not sufficiently causally related to the accepted thoracic strain claim.

Accordingly, I conclude that the dispute in this matter fell under ORS 656.248(12). ORS 656.385(1) does not provide any authority to award an assessed attorney fee, in this situation. Claimant's argument that the insurer had an obligation to process the billing properly is well-taken, but ORS 656.385(1) does not include disputes arising under ORS 656.248 as a dispute that would qualify for an assessed attorney fee.

Consequently, the March 30, 2010 Order must be affirmed.

ORDER

The March 30, 2010 Administrative Order, MF 10-0306, is affirmed.