
In the ORS 656.245 Medical Services of

Edward Bores, Claimant

Contested Case No: 09-180H

PROPOSED & FINAL ORDER

May 3, 2010

SEDGWICK CLAIMS MGMT SERVICES, Petitioner

EDWARD BORES, Respondent

Before Emerson G. Fisher, Administrative Law Judge

Sedgwick Claims Management Services (Sedgwick), claim processing agent for Boise Cascade, LLC, appeals the Director's Administrative Order issued on October 22, 2009, by the Medical Section Resolution Team (RT) of the Workers Compensation Division (WCD), Department of Consumer and Business Services (director or department).

In lieu of proceeding to hearing on February 19, 2010, the parties submitted the matter to the undersigned Administrative Law Judge (ALJ) for resolution based on documentary evidence and written argument. Claimant was represented by attorney George Wall. Sedgwick was represented by attorney Howard Nielson.

The documentary evidence consists of Exhibits 1 through 23 submitted by RT on November 25, 2009.¹

The record closed on April 5, 2010.

ISSUE

Whether Sedgwick is liable for a right-sided hearing aid as requested by Columbia Hearing Center (Columbia).

PERTINENT FACTS AS DETERMINED BY RT

On November 13, 2001, Sedgwick issued a Notice of Acceptance which identified bilateral hearing loss as the accepted condition.

Claimant underwent an aided audiogram performed by Columbia on June 5, 2009.

On July 1, 2009, Sedgwick sent an e-mail to Columbia acknowledging the request for authorization for new hearing aids and requesting the following: (1) reason for replacement aids; (2) the type of aids requested and the cost per aid; and (3) documentation showing the need for

¹ On February 3, 2010, Sedgwick submitted proposed Exhibits A1, 6A, 7A through 7C, 14A, 17A, and 24. Claimant objected to the proposed exhibits and the ground that they were not contained in the record presented to RT. Because my review in this matter is not *de novo*, but rather limited to errors of law and/or substantial evidence in the record, claimant's objection to the proposed exhibits is sustained. OAR 436-001-0225(2); *Liberty Northwest v. Kraft and DCBS*, 205 Or App 59 (2006); *see also Leroy M. Marshall*, 11 CCHR 119 (2006).

the aids. The e-mail advised that once the requested information was received, there would be a prompt response.

In an August 3, 2009 letter, Sedgwick acknowledged a prior telephone conversation with Columbia in which Sedgwick indicated Columbia's request looked fine, but upon further review determined that before the request could be "officially" authorized, Sedgwick needed a medical report indicating why new hearing aids were necessary as the reason given (improved technology) was not sufficient justification for replacement under OAR 436-010-0230(12) and arguably "excessive, inappropriate or ineffectual" under ORS 656.327(1).

Columbia responded on August 18, 2009, by sending Sedgwick an August 14, 2009 prescription form from Dr. Lewis along with an August 14, 2009 audiogram performed in Dr. Lewis' office.

On August 31, 2009, Columbia sent a fax to Sedgwick inquiring into the status of its authorization request.

In a September 9, 2009 letter, Sedgwick advised claimant it was unable to pre-authorize Columbia's request for new hearing aids. In doing so, Sedgwick identified the following reasons (among others) as the basis for its decision: (1) the hearing aids were not prescribed by an attending physician; and (2) the reason given for replacement did not comply with OAR 436-010-0230(12) or ORS 656.327(1).

Columbia requested Administrative Review on September 25, 2009.

In its response to RT, Sedgwick stated it had not denied treatment, but rather had been seeking clarification of services.

OTHER PROCEDURAL FACTS

Relying on OAR 436-009-0080(2), ORS 656.245(1)(c)(D) and (E), and the prescription of Dr. Lewis, an October 22, 2009 Administrative Order concluded that the right hearing aid was compensable pursuant to ORS 656.245(1)(c)(D) and (E). (Ex. 21-3). Further finding Dr. Lewis' prescription "current," and that the price of a single proposed hearing aid was within the limits set forth in OAR 436-009-0080(2)(c), the October 22, 2009 Administrative Order determined that Sedgwick was liable for claimant's right hearing aid.

Sedgwick requested a hearing.

CONCLUSIONS OF LAW AND OPINION

RT's Order of October 22, 2009 may be modified only if it is not supported by substantial evidence in the record or if it reflects an error of law. OAR 436-0001-0225(2). Insofar as review of factual findings is concerned, if a finding by RT is reasonable, keeping in mind the evidence against the finding as well as the evidence supporting it, the finding is

supported substantial evidence. See *Liberty Northwest Insurance Corporation v. Kraft*, 205 Or App 59, 62 (2006); *Armstrong v. Asten-Hill Co.*, 90 Or App 200, 206 (1988).

If issues were raised during RT's review proceeding, but not addressed in MT's order, remand is appropriate. See *Howard D. Smith*, 13 CCHR 15 (2008).

Sedgwick does not dispute that the medical necessity of claimant having a hearing aid for his right ear. Rather, Sedgwick questions the necessity of replacing an existing right aid for the reason of "improved technology." Asserting that it raised that issue during the review proceeding, and reasoning that the issue was not addressed by RT, Sedgwick seeks remand.

The record presented supports Sedgwick's assertion that during the review process, it questioned the necessity of replacing claimant's existing right hearing aid for what appears to be purely technological reasons. Technological advancement may, depending on the circumstances, equate to necessity. Here, however, RT's order did not address that issue. Because of my limited review in this matter, I am unable, in the first instance, to make that determination. Consequently, remand is appropriate.

ORDER

The Administrative Order dated October 22, 2009 is vacated, and the matter remanded to RT for further proceedings.