

In the Medical Fee Dispute of
Regina L. Trent, Claimant

Contested Case No: H04-033

FINAL ORDER

June 11, 2004

Liberty Northwest Insurance, Petitioner
Regina L. Trent, Respondent

Before Ella D. Johnson, Administrative Law Judge

On February 2, 2004, the Medical Review Unit (MRU) of the Department of Consumer and Business Services (the department or director), Workers' Compensation Division (WCD) issued an Administrative Order which determined that insurer Liberty Northwest Insurance (Liberty) was liable for payment of all costs associated the appropriate surgical services provided to Regina L. Trent (claimant) by Jeffrey Bert, MD (Orthopedic Surgery) on August 7, 2003. MRU also awarded claimant's counsel and attorney fee in the amount of \$1,234.00. On February 18, Liberty appealed MRU's decision, contesting that the surgery was reasonable and arguing that the surgery bills were not compensable because Dr. Bert failed to follow the procedures outlined in WCD's rules. WCD referred the case to the Office of Administrative Hearings for hearing on April 5, 2004.

The case was assigned to Administrative Law Judge Ella D. Johnson and set for hearing on June 3, 2004. By letter dated May 27, 2004, Liberty's counsel requested that the hearing be postponed due to her scheduled vacation. She also noted that Liberty was no longer contesting that the surgery was reasonable and necessary and withdrew its request for hearing in that regard. However, Liberty's counsel requested that the matter be referred to WCD's Sanctions and Investigations Unit based on WCD's 1998 decision in *Douglas E. Roach* (H97-226) to determine whether sanctions against Dr. Bert were appropriate.

On June 3, 2004, ALJ Johnson conducted a telephone conference to hear argument on Liberty's motion to refer this matter to WCD's Sanctions and Investigations Unit. Attorney at Law Judy L. Johnson represented Liberty. Attorney at Law Thomas M. Carey represented claimant. Assistant Attorney General Carol Parks represented WCD. The parties agreed that, in light of Liberty's withdrawal of its request for hearing, this case should be dismissed along with a referral to WCD's Sanctions and Investigations Unit for further action. Liberty was concerned that the issue of Dr. Bert's violations be preserved. Claimant's also requested assessment of an attorney fee for services rendered on appeal. Accordingly, inasmuch as Liberty has withdrawn its challenge to the appropriateness of the August 7, 2003 surgery, this matter shall be dismissed. Further, the matter concerning Dr. Brett's violation of the administrative rules shall be referred to WCD's Sanctions and Investigations Unit for administrative review.

ATTORNEY FEE

Claimant has prevailed by Liberty's withdrawal of it request for hearing. Consequently, claimant's counsel is entitled to an assessed attorney fee. ORS 656.385(1). Claimant's counsel notes that the value of services at issue in this case includes a hospital bill of \$30,012.96 (Ex.

129) and a surgeon's fee of 9,921.45. Based on the claimant's attorney's statement of services and the application of the attorney fee matrix at OAR 436-001-0265(1)(b), I find that an attorney fee of \$800.00 is warranted. Accordingly, claimant's counsel shall receive an assessed attorney fee in the amount of \$800.00, in addition to the assessed fee of \$1,234.00 awarded by MRU for services rendered in the underlying administrative review.

ORDER

IT IS HEREBY ORDERED that:

- (1) Liberty's request for hearing challenging MRU's February 2, 2004 Administrative Order is dismissed.
- (2) Liberty shall pay claimant's counsel an assessed attorney fee of \$800.00 for services rendered on appeal of MRU's Order, in addition to the assessed attorney fee awarded by MRU of \$1,234.00 for services rendered during the underlying administrative review.
- (3) The matter concerning Dr. Bret's violation of the administrative rules shall be referred to WCD's Sanctions and Investigations Unit for further appropriate action.

DATED this 11th day of June 2004.