In the Attorney Fee Dispute of

LYLE H. BRENSDAL, Claimant

Contested Case No: H05-140

PROPOSED AND FINAL ORDER

January 6, 2006

LYLE H. BRENSDAL, Petitioner

SEABRIGHT INS. CO., Respondent

Before Lawrence S. Smith, Administrative Law Judge, Administrative Hearings

HISTORY OF THE CASE

Lyle H. Brensdal (Claimant) appeals the Administrative Order issued on September 6, 2005 by the Medical Review Unit (MRU) of the Workers' Compensation Division (WCD), Department of Consumer and Business Services because it awarded no attorney fee. On September 30, 2005, WCD referred Claimant's appeal to the Office of Administrative Hearings (OAH).

On December 29, 2005, Administrative Law Judge Lawrence S. Smith of the OAH conducted a telephone hearing. Attorney James Dodge represented Claimant, who also appeared. Attorney Courtney Kreutz represented respondent Seabright Ins. Co. (Insurer). No witnesses testified, and the record closed on the date of hearing.

ISSUE

Whether Claimant is entitled to an attorney fee pursuant to ORS 656.385 for services provided by his attorney in this case.

EVIDENTIARY RULINGS

WCD Exhibits 1 through 13 were admitted into the record without objection.

FINDINGS OF FACT

(1) On March 30, 1996, Claimant suffered a compensable back injury. On January 6, 2005, he underwent back surgery at Good Samaritan Hospital in relation to that injury. (Ex. 1.)

(2) Good Samaritan billed Insurer for the cost of the surgery. Insurer received the initial bill on April 7, 2005. Insurer did not dispute the compensability of the bill, but due to processing delays, Insurer did not pay the bill until August 9, 2005. (Exs. 4 and 6.)

(3) On April 29, 2005, Claimant's attorney requested an investigation by MRU into why the bill had not been paid. (Ex. 3.) In response, MRU contacted Insurer on July 27, 2005. (Ex. 4.) Insurer paid the bill within two weeks. (Ex. 6.)

CONCLUSION OF LAW

Claimant is not entitled to an attorney fee.

OPINION

The director exercises jurisdiction over an attorney fee issue arising under ORS 656.385. Review is *de novo.* OAR 436-001-0225(4). The burden of proving a fact or position rests with the proponent. ORS 183.450(2). As petitioner, claimant bears the burden of proving that an attorney fee should be awarded.

The authority to award an attorney fee is in ORS 656.385(1), which provides in relevant part:

> In all cases involving a dispute over compensation benefits pursuant to ORS 656.245, 656.260, 656.327 or 656.340, where a claimant finally prevails after a proceeding has commenced before the Director of the Department of Consumer and Business Services, the director shall require the insurer or self-insured employer to pay a reasonable attorney fee to the claimant's attorney. In such cases, where an attorney is instrumental in obtaining a settlement of the dispute prior to a decision by the director, the director shall require the insurer or self-insured employer to pay a reasonable attorney fee to the claimant or claimant's attorney. * * *

An attorney fee may only be awarded in "cases involving a dispute over compensation benefits pursuant to ORS 656.245, 656.260, 656.327 or 656.340." This case involves payment of a hospital bill for Claimant's surgery. Insurer never disputed compensability, but did not pay the bill immediately due to processing delays. Therefore, this case involved an issue pursuant to ORS 656.248, which provides for the payment of compensable medical services. *See* ORS 656.248(12), which provides in relevant part:

> 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 shall request administrative review by the director. * * *

ORS 656.248 is not one of the four statutes listed in ORS 656.385(1). Those sections deal with vocational assistance (ORS 656.340), managed care organizations (ORS 656.260), excessive, inappropriate, and ineffective medical services (ORS 656.327), and disapproval of medical services (ORS 656.245). ORS 656.245[1] governs compensability of medical services

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[1] ORS 656.245(1)(a) provides:

> For every compensable injury, the insurer or the self-insured employer shall cause to be provided medical services for conditions caused in material part by the injury for such period as the nature of the injury or the process of the recovery requires, subject to the limitations in ORS 656.225, including such medical services as may be required after a

while ORS 656.248 pertains to medical fee disputes. Here, the record establishes that there was no dispute about compensability, but a dispute regarding the delay in payment of a medical fee. Therefore, the case arises under ORS 656.248. ORS 656.385(1) does not allow an attorney fee in disputes under ORS 656.248. See *Darryl Harris*, 10 CCHR 285 (2005).

ATTORNEY FEE

Claimant has not prevailed in a contested case hearing and is not entitled to an attorney fee for services before OAH. ORS 656.385(1).

ORDER

IT IS HEREBY ORDERED that:

The Administrative Order dated September 6, 2005, is affirmed.

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determination of permanent disability. In addition, for consequential and combined conditions described in ORS 656.005 (7), the insurer or the self-insured employer shall cause to be provided only those medical services directed to medical conditions caused in major part by the injury.