

In the ORS 656.245 Medical Services of

**Cory M. Dickerson, Claimant**

Contested Case No: 13-028H

**PROPOSED & FINAL ORDER**

September 30, 2013

CORY M. DICKERSON, Petitioner

GEORGIA PACIFIC CORPORATION C/O ESIS, Respondent

Before Monte Marshall, Administrative Law Judge

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Pursuant to notice, a hearing was scheduled for June 21, 2013 before Administrative Law Judge Marshall. Claimant is represented by his attorney, Julene M. Quinn. The employer, Georgia Pacific Corporation, and its claimant's processor, ESIS, are represented by their attorney, John M. Pitcher. Prior to the scheduled hearing the parties agreed to submit this matter on the documentary record. Exhibits 1-23 were received from the Workers' Compensation Division and are admitted into evidence. The record closed on August 16, 2013 following receipt of claimant's written reply argument.

**ISSUE**

Medical Services. Claimant appeals a March 7, 2013 Administrative Order that found the employer was not liable for a certain brand of hearing aid devices.

**FINDINGS OF FACT**

I adopt and incorporate by reference herein, the Findings of Fact set forth in the March 7, 2013 Administrative Order, as summarized below.

In 2004, claimant filed a claim for work-related hearing loss. By letter dated January 27, 2005, the self-insured employer accepted claimant's claim as non-disabling. Thereafter, the claim was reclassified as disabling.

On February 20, 2008, claimant was seen by Stephen James, Hearing Specialist, due to difficulty with his hearing aids. Mr. James recommended 2 Phonak Micro Power IX BTE hearing instruments with a Watch Pilot 2 remote control. The hearing aids recommended were not approved. However, a Wi series i110 RC Champ hearing aids were approved and provided to claimant.

On November 29, 2011, claimant returned to Mr. James for evaluation of hearing difficulties. Mr. James recommended a new set of Phonak Audio S Smart CRT, digital, behind-ear-hearing instruments including an iCom/T.V. receiver (Surf link media). The hearing aids were approved, but not the Surf link media.

Claimant requested Administrative Review of the self-insured employer's decision to not provide the Surf link media. The self-insured employer responded that the requested services were excessive, inappropriate, or ineffectual.

### CONCLUSIONS OF LAW AND OPINION

Claimant contends that the Administrative Order erred in not finding that the self-insured employer was liable for the disputed medical services. Claimant bears the burden of showing that the Administrative Order was not supported by substantial evidence. See *Liberty Northwest v. Kraft*, 205 Or App 59 (2006).

The Administrative Order concluded that the self-insured employer was not liable for the disputed services based on the fact that the services were recommended by Mr. James, a hearing specialist, but not prescribed by an attending physician under ORS 656.005(12)(a)(A). The record contains no evidence to support a finding that Mr. James qualifies as an attending physician, nor does it contain any evidence that an otherwise qualified attending physician has prescribed the disputed services. Consequently, claimant has failed to establish that the Administrative Order is not supported by substantial evidence and therefore the Order must be upheld.

In reaching this conclusion, I acknowledge claimant's assertion that the self-insured employer did not specifically deny the disputed services based on Mr. James' status or the lack of a prescription for the services from an attending physician. However, the self-insured employer did assert that the services were excessive, inappropriate, or ineffectual. In this regard, the lack of required qualifications of a person prescribing disputed medical services could certainly render such services excessive, inappropriate, or ineffectual. Therefore, I do not find claimant's assertion a persuasive reason to set aside the Administrative Order.

### ORDER

IT IS THEREFORE ORDERED that the Administrative Order, dated March 7, 2013, is affirmed.