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In the ORS 656.260 Managed Care Dispute of

**Tyson J. Westby, Claimant**

Contested Case No: 13-016H

**PROPOSED & FINAL ORDER**

September 4, 2013

TYSON J. WESTBY, Petitioner  
SAIF CORPORATION, Respondent

Before Emerson G. Fisher, Administrative Law Judge

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In lieu of proceeding to hearing on May 14, 2013, the parties submitted the matter to the undersigned Administrative Law Judge (ALJ) for resolution based on documentary evidence and written closing arguments. Claimant was represented by attorney Martin Alvey. Fine Line Pacific and its insurer, the SAIF Corporation, were represented by attorney Tom Harrell.

The record closed on August 16, 2013, upon receipt of claimant's rebuttal argument.

The documentary evidence received consists of Exhibits 1 through 17.

**ISSUE AS DETERMINED BY MRT**

Whether SAIF is liable for vehicle maintenance on the worker's modified van, provided on November 16, 2012, and paid for by the worker.

**FINDINGS OF FACT**

The pertinent facts, as determined by MRT are:

- 1) Claimant was compensably injured on April 1, 2010.
- 2) SAIF accepted the following conditions: (1) T-12 burst fracture with spinal cord injury and paralysis secondary to crush injury; (2) T-11 non-displaced fracture; (3) T-10 fracture; (4) left 9-10-11 rib fractures; (5) left L1-2-3 transverse process fractures; (6) forehead laceration; (7) right 8 cm popliteal laceration; (8) non-displaced nasal fracture; (9) pneumonia; (10) right 11-12 rib fractures; (11) left brachial plexopathy; (12) T-12 hematoma; (13) bilateral pulmonary emboli with bilateral lower lung atelectasis; (14) T-10 ASIA Aparaplegia; (15) neurogenic bowel and bladder.
- 3) On January 25, 2011, SAIF authorized the purchase of a wheelchair accessible van as medical equipment.
- 4) On November 6, 2012, the worker had a 30,000 mile warranty servicing performed on the van. The maintenance receipt listed the following services and charges: (1) Brake fluid flush - \$145.00; (2) Fuel injection - \$240.00; and (3) Trans. Service - \$225.00. The receipt also noted that the oil and air filters were changed, hoses and belts inspected, and the tires rotated.

- 5) On November 28, 2012, SAIF declined to reimburse the worker for the maintenance charges on the ground that the cost was not medically necessary and uniquely attributable to the accepted injury.
- 6) The worker requested Administrative Review.

Relying on ORS 656.245 and OAR 436-009-0008, and reasoning that the worker was seeking reimbursement for a routine 30,000 mile vehicle servicing and not for maintenance services directed to any of the van's modifications to accommodate his impairment's, MRT determined that SAIF was not liable for the disputed vehicle servicing.

Claimant requested a hearing.

### CONCLUSIONS OF LAW AND OPINION

MRT's Order of February 6, 2013, 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 the MRT 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).

ORS 656.245 (1)(c)(E) provides that "services necessary to monitor the status, replacement or repair of prosthetic devices, braces, and supports" are compensable medical services. Relying on that, and asserting that the wheelchair accessible van is an extension of the prosthetic device (wheelchair) furnished to claimant as a result of this compensable injury, claimant argues that SAIF is responsible for the van's upkeep.

In *SAIF v. Glubrecht*, 156 Or App 339, 350 (1998), the court held that in appropriate circumstances, home remodeling services are compensable medical services.<sup>1</sup> In doing so, however, the court clarified that its holding did not extend to modifications of components common to all houses (floors and foundations), but rather was limited to modifications uniquely attributable to claimant's condition (widening doorways and installing ramps). *Id.*, at 350 n5.

Here, MRT determined that the services at issue were for routine vehicle maintenance (brake fluid flush, fuel injector service, and transmission service), and not services attributable to the modifications of the vehicle that made it wheelchair-accessible. Substantial evidence supports MRT's factual finding. As a result of that finding, MRT correctly applied the *Glubrecht* rationale to conclude that SAIF was not responsible for the disputed services. Accordingly, the Administrative Order of February 6, 2013, must be affirmed.

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<sup>1</sup> The services at issue in *Glubrecht* were the services necessary to make claimant's home wheelchair-accessible. *Glubrecht*, 156 Or App at 341.

**ORDER**

The Administrative Order dated February 6, 2013, is affirmed.