

In the Matter of the Compensation of
MARIA E. ALMAZAN, Claimant
WCB Case No: 16-00680C, 16-00695C
ORDER APPROVING CLAIM DISPOSITION AGREEMENT
M & L Legal Attorneys, Claimant Attorneys
Reinisch Wilson Weier, Defense Attorneys

Reviewing Panel: Members Lanning and Curey.

On March 21, 2016, the Board received the parties' claim disposition agreement (CDA). On May 17, 2016, in response to a Board "addendum" letter, the Board received the parties' amended CDA. In consideration of the payment of a stated sum, claimant releases certain rights to future workers' compensation benefits, except medical services-related benefits, for her compensable injury. We approve the proposed disposition, as amended.

On March 29, 2016, the parties were notified that the CDA must be amended to clarify that the carrier remained obligated to process future aggravation, new/omitted medical condition, and Own Motion claims (although any temporary or permanent disability benefits potentially arising from such claims would have been released). *See Basin Tire Services, Inc. v. Minyard*, 240 Or App 715 (2011); *Desiree N. Studer*, 66 Van Natta 1173 (2014); *Angella M. McWilliams*, 65 Van Natta 1729 (2013); *Angella M. McWilliams*, 65 Van Natta 1124 (2013). We further noted that the proposed CDA had expressly preserved claimant's rights to medical service-related penalties and attorney fees.

The parties responded with proposed amendments, which are designed to address our previous concerns by clarifying that the CDA shall be interpreted as preserving the carrier's obligation to process future aggravation, new/omitted medical condition and Own Motion claims. However, the amendment further states that claimant releases "all other benefits [she] would have been otherwise legally entitled to pursuant to ORS 656, with the exception of [her] right to medical benefits for the compensable injury pursuant to ORS 656.245 or attorney fees associated with the enforcement of these rights[.]" (Emphasis added).

A CDA cannot resolve a claimant's right to *penalties* or attorney fees derived from a subsequent claim for medical services. *See Liberty Northwest Ins. Corp. v. Watkins*, 347 Or 687, 693 (2010); *Derrick F. Silverman*, 67 Van Natta 1594, n1(2015). The original CDA complied with that requirement. Therefore, we do not interpret the parties' subsequent amendment's failure to mention the

retention of “medical service-related” *penalties* as releasing such a right if derived from subsequent claims for medical services. Instead, based on the original CDA, we interpret the parties’ agreement as only limiting “nonmedical services-related” penalties and attorney fees. Based on that interpretation, we do not consider the CDA, as amended, to be unreasonable as a matter of law.

The CDA as amended and interpreted by this order, is in accordance with the terms and conditions prescribed by the Board. *See* ORS 656.236(1). Accordingly, the parties’ amended CDA (as interpreted above) is approved.

If the parties disagree with our interpretation of the CDA, they may move for reconsideration by filing a motion for reconsideration within 10 days of the date of mailing of this order. OAR 438-009-0035.

IT IS SO ORDERED.

Entered at Salem, Oregon on May 31, 2016