

Melendez, Edwin

DEPARTMENT

Authority to reimburse travel expenses (WAC 296-20-1103)

Authorization by the Department to undergo medical treatment with a particular provider does not address or require reimbursement of travel expenses related to treatment which is governed by WAC 296-20-1103. ...*In re Edwin Melendez, BIIA Dec., 11 13809 (2012)*

TREATMENT

Reimbursement of travel expenses

Where the worker was authorized to see a provider located further than the nearest point of adequate treatment, the Department can reimburse the worker under WAC 296-20-1103 by paying travel to the nearest point of adequate treatment and deducting the first 15 miles in each direction. ...*In re Edwin Melendez, BIIA Dec., 11 13809 (2012)*

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**BEFORE THE BOARD OF INDUSTRIAL INSURANCE APPEALS
STATE OF WASHINGTON**

1 **IN RE: EDWIN A. MELENDEZ**) **DOCKET NO. 11 13809**
2 **CLAIM NO. AH-26698**) **DECISION AND ORDER**

3 **APPEARANCES:**

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5 Claimant, Edwin A. Melendez, Pro Se
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7 Employer, Department of Labor and Industries,
8 None
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10 Department of Labor and Industries, by
11 The Office of the Attorney General, per
12 Sarah Martin, Assistant

13 The claimant, Edwin A. Melendez, filed an appeal with the Board of Industrial Insurance
14 Appeals on April 20, 2011, from a remittance advice of the Department of Labor and Industries
15 dated March 8, 2011. In this remittance advice, the Department allowed travel reimbursement only
16 to the nearest point of adequate treatment from the claimant's home, and reduced the mileage by
17 30 miles. The Department order is **AFFIRMED**.

DECISION

18 As provided by RCW 51.52.104 and RCW 51.52.106, this matter is before the Board for
19 review and decision. The claimant filed a timely Petition for Review of a Proposed Decision and
20 Order issued on January 13, 2012, in which the industrial appeals judge affirmed the Department
21 order dated March 8, 2011.

22 The Board has reviewed the evidentiary rulings in the record of proceedings and finds that
23 no prejudicial error was committed. The rulings are affirmed.

24 Although we agree with our industrial appeals judge that the Department paid the claimant's
25 travel reimbursement at the correct rate, we grant review to clarify the standard of proof, burden of
26 the parties, and basis of the ruling.

27 On November 4, 2011, the Department filed a Motion for Summary Judgment. On
28 November 28, 2011, Mr. Melendez filed a response to the Motion for Summary Judgment. On
29 December 2, 2011, the Department filed a reply to Mr. Melendez's response. On December 21,
30 2011, our industrial appeals judge heard oral arguments. On January 10, 2012, our industrial
31 appeals judge determined there was no genuine issue of material fact; the appeal could be
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1 resolved by summary judgment; and, the hearing scheduled for February 16, 2012, would be
2 canceled.

3 We have long held that the Board has the authority to resolve appeals by summary
4 judgment. *In re David Potts*, BIIA Dec., 88 3822 (1989). Under CR 56, if there are no material
5 issues of fact in dispute, summary judgment may be granted. The moving party has the burden to
6 show there is no issue of material fact. After the moving party has met its burden, the burden shifts
7 to the non-moving party to set forth facts showing that there is a genuine issue of material fact.
8 After resolving all reasonable inferences against the moving party, if reasonable people can reach
9 only one conclusion, the motion should be granted. *Potts* at 5.

10 The legal issue in this appeal is whether the Department correctly calculated Mr. Melendez's
11 travel reimbursement under WAC 296-20-1103. The relevant parts of the WAC 296-20-1103,
12 effective September 1, 2010, read as follows:

13 The department or self-insurer will reimburse travel expense
14 incurred by workers for the following reasons: . . .

15 (4) Upon *prior authorization* for treatment or vocational retraining
16 when worker must travel more than fifteen miles one-way from the
17 worker's home to the nearest point of adequate treatment or
18 vocational retraining. Travel expense *is not* payable when
19 adequate treatment is available within fifteen miles of injured
20 worker's home, yet the injured worker prefers to report to an
21 attending provider outside the worker's home area.

22 Under subsections (3) and (4) of this section, when travel expense
23 is authorized the first fifteen miles one-way are not payable. The
24 first and last fifteen miles are not payable on an authorized round
25 trip.

26 (Emphasis in original.)

27 The relevant parts of WAC 296-20-1103, prior to September 1, 2010, read as follows:

28 The department or self-insurer will reimburse travel expense
29 incurred by workers for the following reasons: . . . (5) upon prior
30 authorization for treatment when worker must travel more than ten
31 miles one-way from the worker's home to the nearest point of
32 adequate treatment. Travel expense *is not* payable when adequate
treatment is available within ten miles of injured worker's home, yet
the injured worker prefers to report to an attending doctor outside
the worker's home area.

(Emphasis in original.)

1 The material issues of fact in making a determination under WAC 296-20-1103 are whether
2 the injured worker had prior authorization for treatment; whether the nearest point of adequate
3 treatment is more than 15 miles one-way from the injured worker's home; and, the number of miles
4 to the nearest point of adequate treatment from the injured worker's home. In the present case, the
5 undisputed facts are that Mr. Melendez had prior authorization for treatment in Seattle, he had to
6 travel more than 15 miles one-way for adequate treatment, and the nearest point of adequate
7 treatment was 50 miles one-way from his home. See, Department's motion Exhibit B and
8 Claimant's response Exhibit 8. We note that in his briefing and oral argument, Mr. Melendez did
9 not present any evidence to dispute the fact that the nearest point of adequate treatment was 50
10 miles, one-way, from his home.

11 We agree with our hearings judge there is confusion between authorization for treatment
12 and authorization for travel reimbursement to the authorized treatment. The authorization for
13 treatment and authorization for travel reimbursement are covered under separate WACs and
14 RCWs, as these are separate, independent issues. Both parties seem to have slight confusion in
15 this respect.

16 The record is clear that the Department authorized Mr. Melendez to undergo medical
17 treatment with a provider in Seattle. This authorization is appropriate because with a few
18 exceptions, an injured worker is allowed to receive treatment with a provider of their own choosing.
19 See, RCW 51.36.010 and WAC 296-20-065. However, these sections of the statute and
20 regulations do not address travel reimbursement.

21 Once it is determined that the treatment has been authorized, we must look to a different set
22 of regulations to address any issues of travel reimbursement. See, WAC 296-20-1103. The first
23 question to be addressed under this regulation is whether the claimant is seeking treatment more
24 than 15 miles, one-way, from his home. If so, then there must be a determination of the nearest
25 point of adequate treatment.

26 On November 6, 2009, the Department determined the nearest point of adequate treatment
27 to Mr. Melendez's home is in Everett, which is 50 miles one-way from his home. In response to a
28 protest and request for reconsideration to denials of travel reimbursements, the Department
29 informed Mr. Melendez it would pay reimbursement to this nearest point of adequate treatment.
30 The Department would pay only to the nearest point of adequate treatment (Everett) even though
31 he chose to travel further. He chose to travel to his provider in Seattle. Thereafter, the Department
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1 proceeded to pay Mr. Melendez travel reimbursement for 100 miles roundtrip. Prior to
2 September 1, 2010, there was no deduction of the 100 miles because the WAC did not have a
3 provision for deduction of mileage when the travel was beyond a certain point from the injured
4 worker's home.

5 After September 1, 2010, the Department continued to calculate Mr. Melendez's travel
6 reimbursement for 100 miles roundtrip, as it had done per its November 6, 2009 letter. However,
7 due to an amendment of the WAC, the Department deducted 30 miles from the 100 miles.

8 We find the deduction of the 30 miles appropriate, as it is mandatory per the amended
9 WAC 296-20-1103. We do not find that it is reasonable to believe the Department was paying
10 Mr. Melendez travel reimbursement for 100 miles roundtrip based on a contractual agreement as
11 Mr. Melendez contends. The 100 miles roundtrip was consistent with the WAC in effect at the time;
12 therefore, it is not reasonable to believe this was a negotiated amount.

13 Based on the above, we find the only reasonable conclusion to reach is that Mr. Melendez
14 was authorized to see a provider in Seattle, but the nearest point of adequate treatment was 50
15 miles, one-way, from his home. On calculation of this mileage to the nearest point of adequate
16 treatment, it was appropriate to deduct 30 miles from the calculation for reimbursement.

17 **FINDINGS OF FACT**

- 18 1. On October 10, 2011, the parties stipulated to include the Jurisdictional
19 History in the Board record solely for jurisdictional purposes.
- 20 2. The Department authorized Mr. Melendez to undergo treatment with a
21 provider in Seattle.
- 22 3. Mr. Melendez had to travel more than 15 miles one-way to the nearest
23 point of adequate treatment from his home. The distance from
24 Mr. Melendez's home to the nearest point of adequate treatment was 50
25 miles one-way.
- 26 4. On January 13, 2011, Mr. Melendez saw his health care provider in
27 Seattle and submitted a travel voucher for reimbursement. This
28 roundtrip mileage for this visit was 156 miles.
- 29 5. On March 8, 2011, the Department issued a Remittance Advice that
30 paid Mr. Melendez reimbursement for the mileage amount due for his
31 January 13, 2011 visit, based on the number of miles from his home to
32 the nearest point of adequate treatment, minus 30 miles. Mr. Melendez
was reimbursed for 70 miles of travel.
6. The pleadings, affidavits, and exhibits submitted by the parties
demonstrate that there is no genuine issue as to any material fact.

