

KEITH MIERNICKI)	
)	
Claimant-Respondent)	DATE ISSUED:
)	
v.)	
)	
DULUTH, MISSABE & IRON RANGE)	
RAILWAY COMPANY)	
)	
and)	
)	
SIGNAL ADMINISTRATION)	
)	
Employer/Carrier-)	
Petitioners)	DECISION and ORDER

Appeal of the Decision and Order - Awarding Benefits and Decision Denying Employer's Petition for Reconsideration of Daniel L. Leland, Administrative Law Judge, United States Department of Labor.

James A. Sage (Peterson, Sage & Graves, P.A.), Duluth, Minnesota, for claimant.

Larry J. Peterson (Larry J. Peterson & Associates), St. Paul, Minnesota, for employer/carrier.

Before: HALL, Chief Administrative Appeals Judge, DOLDER and McGRANERY, Administrative Appeals Judges.

PER CURIAM:

Employer appeals the Decision and Order - Awarding Benefits and Decision Denying Employer's Petition for Reconsideration (92-LHC-1206) of Administrative Law Judge Daniel L. Leland on a claim filed pursuant to the provisions of the Longshore and Harbor Workers' Compensation Act, as amended, 33 U.S.C. §901 *et seq.* (the Act). We must affirm the findings of fact and conclusions of law of the administrative law judge which are rational, supported by substantial evidence, and in accordance with law. *O'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965); 33 U.S.C. §921(b)(3).

Claimant was awarded compensation, including future medical benefits, for his work-

related hearing loss by Administrative Law Judge Charles W. Campbell in a Decision and Order dated October 29, 1991. Claimant subsequently submitted a quote of \$3,865.80 to employer from Beltone Hearing Centers for binaural in-the-canal hearing aids.¹ Employer responded, asserting that the expense of the hearing aid was unreasonable.

In his decision, Administrative Law Judge Daniel L. Leland (the administrative law judge) determined that the cost for the in-the-canal hearing aids from Beltone is reasonable, and thus ordered employer to pay claimant the complete cost of that system, \$3,865.80. In addition, the administrative law judge considered claimant's counsel's petition for attorney fees requesting \$780, representing 5.2 hours of work at \$150 per hour, and awarded the fee requested in its entirety. Employer's motion for reconsideration was denied.

On appeal, employer challenges the administrative law judge's award of \$3,865.80 to claimant for hearing aids. Claimant responds, urging affirmance.

Employer first argues that the administrative law judge's award of \$3,865.80 for the hearing aids is excessive and unreasonable. Employer maintains that the testimony of certified audiologist John Voss supports a reasonable reimbursable amount of about only \$2,000.

In his decision, the administrative law judge relied on Mr. Voss's testimony that the price of the Beltone in-the-canal hearing aids is within the prevailing community rate for that type of system and the statement of Robert M. Neve² that the Beltone in-the-canal hearing aids are best suited for claimant to conclude that the hearing aids recommended to claimant are both appropriate and reasonable in price. In drawing this conclusion, the administrative law judge rationally credited Mr. Neve's statement, even though the record does not establish whether he is a certified audiologist, since he did examine claimant and administer a hearing test. The administrative law judge also rejected Mr. Voss's testimony

¹Specifically, the record contains an estimate from Beltone Hearing Centers dated November 27, 1995, in the form of a signed contract which explicitly describes the model number and the total cost for the hearing devices. Claimant's Exhibit 6, 7.

²The record reflects that Mr. Neve is President of Beltone J. Marco Hearing Services, Incorporated.

regarding the propriety of in-the-canal hearing aids as equivocal,³ and Dr. Choquette's estimated cost of \$725 for a hearing aid for a different claimant as not probative. The administrative law judge is entitled to evaluate the credibility of all witnesses, and may draw his own inferences and conclusions from the evidence. See, e.g., *Calbeck v. Strachan Shipping Co.*, 306 F.2d 693 (5th Cir. 1962), *cert. denied*, 372 U.S. 954 (1963). In the instant case the credibility determinations made by the administrative law judge in resolving this issue are rational and within his authority as factfinder. See generally *Wheeler v. Interocean Stevedoring, Inc.*, 21 BRBS 33 (1988). We therefore affirm the administrative law judge's determination that claimant is entitled to \$3,865.80 for the expense of the Beltone hearing aids. See *Anderson v. Todd Shipyards Corp.*, 22 BRBS 20 (1989).

Employer next argues that claimant has incorrectly interpreted the administrative law judge's order to require employer to pay claimant directly for the cost of the hearing aids, particularly since claimant had not provided any evidence that the hearing aids in question have as yet been purchased or ordered. Employer specifically maintains that as claimant has not used any hearing aids in the past and has chosen not to purchase the hearing aids in question even though employer has offered to pay for them pursuant to the administrative law judge's decision, claimant is not in need of any hearing aids and thus, is merely attempting to "pocket" the cash.

As employer notes, Section 7(d) of the Act, 33 U.S.C. §907(d), claimant may receive reimbursement for medical expenses which have previously been incurred. In addition, the Board has held that a claimant may recover only those amounts which he himself has already expended for medical treatment or services. See generally *Nooner v. National Steel and Shipbuilding Co.*, 19 BRBS 43 (1986). Consequently, claimant is not entitled to direct payment of the cost of the Beltone hearing aids prior to his obtaining the hearing aids. *Id.* Under the Act, employer is obligated to pay for the hearing aids in question either through direct payment to Beltone upon resubmission of the bill at the time that claimant

³As the administrative law judge noted, Mr. Voss stated, when asked if he recommended the in-the-canal hearing aid for claimant,

the completely in-the-canal hearing aid that is being mentioned here could be very appropriate for him, and it's possible it is the best hearing aid for him, but he probably would also do just as well, probably, with a full-size in-the-ear hearing aid, which is also custom made Hearing Transcript at 29.

receives his hearing aid, or through reimbursement of claimant upon proof that he has paid for the Beltone services. 33 U.S.C. §907(a), (d).

Accordingly, the administrative law judge's Decision and Order - Awarding Benefits and Decision Denying Employer's Petition for Reconsideration are affirmed.

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

NANCY S. DOLDER
Administrative Appeals Judge

REGINA C. McGRANERY
Administrative Appeals Judge