

**WORKERS' COMPENSATION APPEALS BOARD
STATE OF CALIFORNIA**

MINNIE BYRD, *Applicant*

vs.

CITY OF LOS ANGELES, *Permissibly Self-Insured, Defendant*

**Adjudication Numbers: ADJ10857876; ADJ10857882
Van Nuys District Office**

OPINION AND DECISION AFTER RECONSIDERATION

We previously granted defendant's Petition for Reconsideration to further study the factual and legal issues in this case. This is our Opinion and Decision After Reconsideration.

Defendant seeks reconsideration of the Findings of Fact and Order (F&O) issued on November 29, 2022, wherein the workers' compensation administrative law judge (WCJ) found that applicant is entitled to choose her home healthcare services providers and that defendant shall forthwith pay applicant's home healthcare services provider Myra Shaw in an amount to be adjusted by the parties.

The WCJ ordered that defendant's objections to the admission of exhibits 12 and 13 into evidence be overruled.

Defendant contends that the WCJ erroneously found that applicant is entitled to choose her home healthcare services providers.

We received an Answer from applicant.

The WCJ issued a Joint Report and Recommendation on Petition for Reconsideration (Report) recommending that the Petition be denied.

We have considered the allegations of the Petition, the Answer, and the contents of the Report. Based upon our review of the record and as discussed below, we will rescind the F&O and substitute findings that defendant failed to meet its burden of demonstrating a change in circumstances or condition showing that the services of Ms. Shaw are no longer reasonably required to cure or relieve applicant of the effects of her industrial injury; and that defendant shall forthwith pay applicant's home healthcare services provider, Ms. Shaw, in an amount to be adjusted by the parties, with jurisdiction reserved by the WCJ in the event of a dispute; we will

order that defendant's objection to the admission of exhibits 12 and 13 into evidence be overruled; and we will return the matter to the trial level for further proceedings consistent with this decision.

FACTUAL BACKGROUND

On June 14, 2022, the matter proceeded to trial on the following pertinent issues:

1. City of Los Angeles contends that Applicant has refused home healthcare services from the City of Los Angeles vendor.
2. Applicant self-procured home healthcare through a nonapproved vendor.
- ...
8. Applicant's Attorney alleges that Applicant can select home care provider, given the private nature of the services rendered.
(Expedited Minutes of Hearing, June 14, 2022, pp. 2:21-3:6.)

The parties stipulated that (1) while employed as a crossing guard during the period of February 10, 2016 through February 10, 2017, applicant sustained injury arising out of and in the course of employment to the cervical spine, lumbar spine, bilateral legs, bilateral knees, bilateral feet, bilateral lower extremities, and psyche; (2) applicant claims to have sustained injury arising out of and in the course of employment to neuro, stroke, HTN, and diabetes; and (3) home healthcare was approved and authorized by Utilization Review. (*Id.*, p. 2:6-18.)

In his Report, the WCJ states:

Pursuant to Exhibit 1 through 5 applicant's home health care was approved starting with 20 hours a week approved on 09/21/2021 for 2 months to assist with ADLs. These approvals continued every two-months and the 5/12/2022 certification increased the weekly hours to 30.

Ms. Byrd's daughter, Myra Shaw provided care for Ms. Byrd from 10/3/2021 through 10/23/2021; 10/24/2021 through 11/20/2021; 11/21/2021 through 01/01/2022; 01/02/2022 through 02/05/2022; 2/6/2022 through 3/15/2022 and 3/16/2022 through 4/9/2022. (Exhibits 6 -11 respectively.)

Applicant counsel received a check payable to Glauber Berenson for Home Care Services rendered by Myra Shaw for 8/15/2021 through 10/2/2021 in the amount of \$2,940.00. (Exhibit 13.)

Pursuant to the Nurse Case Manager Email dated 5/11/2022:

Hello Chad, per Mr. Landeros' request, as I notified you yesterday, I attended a Zoom meeting on 5/10/22 with IE and Mr. Landeros. At that time IE stated she would like Myra Shaw (8 hours) and Da'Jon Armstrong (12 hours) to provide her home health services. Today, I was called on a conference call where Myra Shaw confirms she will be able to provide 8 hours of service. I understand you stated IE

would not be selecting her providers. However, I am sending you this information for your records. Thank you. (Exhibit 12)

Minutes of Hearing dated May 5, 2022, by WCJ Dean Stringfellow. (Expedited hearing) Judicial notice granted.

"NCM *shall work* directly with applicant to locate an acceptable home care provider. NCM to discuss with daughter as to her ability and availability as well." (Emphasis added)

...

Ms. Byrd credibly testified as follows: She stated that she started receiving home health care provided by the City of Los Angeles in March of 2021, and it was initially provided by her daughter Myra Shaw. Ms. Shaw began giving aid to her mother in 2021. She was receiving home health care for 20 hours a week. She stated that Ms. Shaw was paid in full by the city up until October of 2021 when they stopped paying.

Ms. Shaw would bathe her mother, provide meals, clean up around the house, help her dress, and give her medications. She would bathe her in the bathtub and sometimes in her bed, and she would help her with toileting and help her wipe her butt. When asked if she felt that this was a very private matter, she stated yes. She reiterated they stopped paying her daughter Myra in October of 2021. Another agency named 24-Hour Home Care began to provide services, and there was a split between the 20 hours where her daughter Myra would provide eight hours a week and Jadon Armstrong would provide 12 hours a week. Jadon Armstrong provided - the services with 24-Hour Home Care from approximately 10/2021 to 3/2022 and they developed a friendship relationship. (Minutes of Hearing (further) and Summary of Hearing, August 16, 2022, p. 2)

They met when Ms. Armstrong was sent by 24-Hour Home Care. In March of 2022, a new agency was sent over called Comfort Care. She stated a woman showed up whom she didn't know, and the city never told her that they were switching agencies. She stated she didn't want this stranger in her house. She told the individual from Comfort Care that she didn't want her to come back.

Jadon Armstrong applied to work for Comfort Care so she could continue to work with Ms. Byrd, and she did a background check and had fingerprints done. She would have been happy to have Ms. Armstrong come back and work regardless of which agency she worked for. She stated she wants to select her health care provider because of the personal nature of the services provided. She didn't want strange people coming into her house due to Covid. She stated she was very comfortable receiving care from Ms. Armstrong and her daughter Ms. Shaw due to her privacy concerns. She stated that Jadon Armstrong was able to provide all the services she needed.

She stated she wants to select her health care provider because of the personal nature of the services provided. She didn't want strange people coming into her house due

to Covid. She stated she was very comfortable receiving care from Ms. Armstrong and her daughter Ms. Shaw due to her privacy concerns. She stated that Jadon Armstrong was able to provide all the services she needed.

When asked if she ever rejected the services the city was providing, she stated no, that she wanted the help from her daughter and Ms. Armstrong.

She stated her daughter works for the county's social services department. When asked what qualifications her daughter has, she stated she's C.P.R. certified and certified in first aid, and she knows how to take care of her. (Id. p. 3)

When asked what services Jadon provides, she stated bathing, feeding, grooming, and giving her medications. She stated she is very comfortable with Ms. Armstrong providing her home care services that those services are often shared between Ms. Armstrong and Ms. Shaw and they both do a good job of taking care of her.

When asked if prior to her injury did Ms. Shaw provide an home care services, she responded no. After her injury of February of 2017, Ms. Shaw would help with her home care services with helping her get dressed, bathe, prepare meals, and help her clean her private parts.

She stated she was very comfortable with the services that Ms. Armstrong provides. She stated she was afraid that Ms. Armstrong wouldn't be able to continue to provide those services and she was also afraid that her daughter would not be able to continue providing those services. She stated her daughter no longer worked for her because she was no longer being paid. (Id. p. 4)

When asked if a provider from Comfort Care showed up at her house in 3/2022, she stated yes, and they did tell her why they were there. She stated she didn't let that person into her house because she didn't know who they were.

...

Ms. Armstrong testified that she knew Ms. Byrd when she was working for 24-Hour Home Care starting in October of 2021. She stated she provided incontinence and toilet care, gave her her shots, her medications, helped her transition from bed to chair, provided meals, took care of her ADLs, hygiene, and grooming. She did admit that these services were extremely private in nature. She stated Ms. Byrd was very comfortable with her services. She stated that she started working with Ms. Byrd with 24 Hour Home Care from October of 2021 through March of 2022. She said there was a lapse in the services during January due to some insurance issues.

She was told in March of 2022 that 24 Hour Home Care was no longer going to be used as a provider for the city. That is when her daughter Myra Shaw would start taking over her care Ms. Armstrong stated she applied with Comfort Care so that she could continue to care for Ms. Byrd and that she would split her hours with Ms. Shaw, with Ms. Armstrong taking 12 hours a week and Ms. Shaw taking eight hours a week until they stopped paying Ms. Shaw. 5

When asked if she recalled a conversation in May of 2022 with a nurse case manager, she stated yes. She stated she was told that Ms. Byrd would like to have her choice of who provided her health care needs. The nurse case manager asked Ms. Shaw and Ms. Armstrong if they were available to provide those services, and they expressed their concern about any new agency. She stated that she was a certified nursing assistant. She was trained to give injections and was certified in C.P.R. and becomes recertified every year.

Ms. Byrd was authorized to receive 20 hours a week of home care. She stated she didn't know who authorized the care; however, the insurance paid. When she worked for 24 Hour Home Care, the hours offered to her were only 12 per week. She stated she worked from 9:00 to 1:00 three days a week, and that schedule was already in place when she got the case through 24-Hour Home Care. At that time, she communicated with Ynei from 24 Hour Home Care who told the witness that there was a case available that was very close to where she lived and that the hours were from 9:00 to 1:00 on Tuesdays, Thursdays, and Saturdays. During the time that she worked through 24 Hour Care, she was never told that she needed to work more than the 12 hours. When asked if Ms. Shaw needed any medical training, she stated no. She was able to provide the necessary care to Ms. Byrd. She stated Ms. Byrd never complained about Ms. Shaw's services. (Id. p. 6)

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Ms. Sheila Belmer testified that she currently works for Optum and has done so for nine years. Her current position is working in the ancillary department providing diagnostic testing. For eight years, she worked for the home healthcare department. She knows Ms. Byrd and states that she used to manage her file. When asked if she knew who Jadon Armstrong was, she stated, yes. Ms. Behner began on Ms. Byrd's case in January of 2022. At that time, Ms. Byrd had authorization for 20 hours a week, and was subsequently increased to 30 hours a week in May of 2022. She went on to state that Optum had authorized 20 hours a week of home healthcare, but only 12 hours were actually used. Ms. Behner went on to state that 24 Hour Healthcare stated that Ms. Byrd only wanted three days a week, not four.

Ms. Behner testified that Optum hires providers to provide home healthcare and they process all of the billing and paperwork, including authorization. Ms. Behner was asked who the provider was after 24 Hour healthcare. She testified that they switched to Comfort Care Home Care in approximately March of 2022; however, they didn't start until April. Between that time, no home care services were provided because Ms. Byrd did not want a new agency.³ Ms. Belmer stated that Comfort Care is currently the provider of services. When asked if Ms. Armstrong was the provider with Comfort Care, she stated she believes so, but she's not sure. She believes that home healthcare was authorized by Optum in December of 2021.

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When Ms. Behner was asked if Myra Shaw provided services to Ms. Byrd, she stated, yes. She believes that home care services were provided by Optum, starting in December of 2021, and Optum is a contract provider for the City of Los Angeles. Ms. Behner was asked if she knew how Utilization Review and IMR worked, and

she stated, not really. Ms. Behner was asked how Optum is involved in Utilization Review, and she stated, when utilization review is approved, they will provide the home care provider. Ms. Behner said that, basically, Optum is a third-party billing entity, and they have hundreds of agencies to choose from throughout the country. Ms. Behner was asked if Ms. Byrd could choose what agency she wanted to provide her services, and Ms. Behner stated, no. She went on to say that recipients of services cannot select their providers. She stated, initially, 24 Hour Healthcare provided home care services.

Ms. Behner was asked if Ms. Byrd's daughter, Myra, provided the other eight hours a week, and she stated, yes. She went on to say that when 24 Hour Healthcare no longer was an available vendor, she told Ms. Byrd about the change. When asked if Ms. Byrd had any say in who provided her home care services, she stated, No, they don't have a choice. Ms. Behner stated that, when there's a change in an agency, there will necessarily be a change in provider. She went on to confirm that the client has no choice in the matter. (Id. pgs. 3-4)

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Ms. Keisha Moreland testified that she worked as a worker's compensation analyst for the City of Los Angeles for 13 years. She was assigned to Ms. Byrd's case in 2021, when the file was transferred to her. When asked if she knew what this trial was about, she stated that it had to do with home healthcare provided to Ms. Byrd. She stated that Ms. Byrd was authorized to receive 30 hours of home healthcare a week. In December of 2021, through March of 2022, home healthcare was authorized at 20 hours per week. When asked why home healthcare was provided to Ms. Byrd, Ms. Moreland stated that it was requested by Dr. Pelton.

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Ms. Moreland testified that she knows of Ms. Byrd's daughter, Mira Shaw. She doesn't know if Ms. Shaw has filed a Notice of Representation. Ms. Moreland is also not sure if Ms. Shaw filed a lien for the home healthcare services that she has provided to Ms. Byrd. Ms. Moreland testified that she has authorized payments to Ms. Shaw in the past; however, she doesn't know the last time one of those payments were made. Ms. Moreland stated that there is, in fact, an outstanding balance owed to Ms. Shaw.
(Report, pp. 2-9.)

DISCUSSION

Defendant contends that the WCJ erroneously found that applicant is entitled to choose her home healthcare services providers. Here we observe that Labor Code section 4600¹ provides that an employer must provide "[m]edical, surgical, chiropractic, acupuncture, and hospital treatment, including nursing, medicines, medical and surgical supplies, crutches, and apparatuses, including orthotic and prosthetic devices and services, that is reasonably required to cure or relieve the injured worker from the effects of his or her injury." (§ 4600 (a).) The duty imposed by section

¹ Unless otherwise stated, all further statutory references are to the Labor Code.

4600 “is not . . . the passive one of reimbursement but the active one of offering aid in advance and of making whatever investigation is necessary to determine the extent of his obligation and the needs of the employee.” (*United States Cas. Co. v. Industrial Acc. Com. (Moynahan)* (1954) 122 Cal.App.2d 427, 435 [19 Cal.Comp.Cases 8].)

It is well-settled that home health care is an appropriate benefit under section 4600, and that home health care services need not be provided by a nursing professional to be compensable. (*Henson v. Workers' Comp. Appeals Bd.* (1972) 27 Cal.App.3d 452 (awarding compensation to wife of injured worker who provided home healthcare to injured worker); *Smyers v. Workers' Comp. Appeals Bd.* (1984) 157 Cal.App.3d 36, 42 (housekeeping services reimbursable where they are "necessary and reasonable in order to allow the injured worker to fully comply with the treatment prescribed by [the applicant's] physician"); *Hodgman v. Workers' Comp. Appeals Bd.* (2007) 155 Cal.App.4th 44, 65 (care provided by mother of injured worker found reimbursable).)

Pursuant to these authorities, we evaluate the issue of whether defendant has provided home healthcare to the extent reasonably required to cure or relieve applicant of the effects of her injury.

Here, the record shows that applicant’s daughter, Ms. Shaw, began providing home healthcare services in the form of assistance with applicant’s activities of daily living beginning as early as March 2021 or as late as August 15, 2021, that applicant received Utilization Review authorization to receive twenty hours per week of assistance in her activities of daily living on September 21, 2021, that Ms. Shaw continued to provide home healthcare services to applicant through April 9, 2022, that during the period of October 2021 to March 2022, Ms. Shaw provided eight hours per week while Ms. Armstrong provided twelve, and that defendant paid Ms. Shaw for the home healthcare services rendered from August 15, 2021 through October 2, 2022 and ceased paying for services rendered thereafter. (Report, pp. 2-4, 6; Expedited Minutes of Hearing, June 14, 2022, pp. 2:6-18.)

The record further shows that in March 2022, a representative of home healthcare services provider Comfort Care, whom applicant had not met and was not expecting, came to her home and informed her that defendant had replaced her home healthcare services providers with Comfort Care, who would now provide those services. (Report, p. 4.) Applicant declined to admit the new home healthcare services provider into her home and insisted that she could continue to receive the services of Ms. Shaw and Ms. Armstrong. (Report, pp. 4-5.)

On this record, there is no dispute that defendant initially met its section 4600 duty by approving the provision of home healthcare services commenced by Ms. Shaw and providing the additional services of Ms. Armstrong. After all, defendant continued to utilize Ms. Shaw's services at eight hours per week and supplemented them through Ms. Armstrong's at twelve hours per week. (Report, p. 6.) However, having approved and provided for these services, defendant remains obligated to continue to do so until such time as the services are no longer reasonably required to cure or relieve the effects of the industrial injury based upon substantial medical evidence. (*Lamb v. Workers' Comp. Appeals Bd.* (1974) 11 Cal.3d 274 [39 Cal.Comp.Cases 310]; *LeVesque v. Workmen's Comp. Appeals Bd.* (1970) 1 Cal.3d 627 [35 Cal.Comp.Cases 16].)

However, there is no evidence that defendant made any inquiry or investigation into how, if at all, the termination of applicant's home healthcare providers and replacement with a new provider would affect applicant's treatment. To the contrary, applicant testified credibly that she received no inquiry or notice of defendant's intent to terminate her home healthcare services providers and replace them with a new provider before March 2022, when she was informed of defendant's unilateral decision to do just that.² (Report, pp. 3-5.) While defendant may have considered the revocation of approval for Ms. Shaw's services and the termination of Ms. Armstrong's services and their replacement with Comfort Care to constitute a mere change of vendors, those services constituted not only treatment within the meaning of section 4600 but also care of a personal and sensitive nature requiring applicant's confidence with respect to her own personal dignity as well as the threat of exposure to Covid-19. (Report, pp. 4-5.)

Furthermore, defendant must provide evidence of a change in circumstances or condition showing that the services are no longer reasonably required to cure or relieve from the effects of the industrial injury before it may cease providing an approved course of treatment. (*Patterson v. The Oaks Farm* (2014) 79 Cal. Comp. Cases 910 [Appeals Board Significant Panel Decision] (where the employer approved and provided the services of a nurse case manager, the employer could not unilaterally terminate the nurse case manager's service in the absence of evidence of a

² Without citing to the record, defendant asserts that its representative, Ms. Behner, "testified that she spoke to Applicant about the home healthcare service vendor change." (Petition for Reconsideration, p. 5:6-7.) However, the record does not show that Ms. Behner or any other representative advised applicant of its actual or potential termination of her home healthcare providers before the March 2022 date when, according to applicant's testimony, defendant's new provider appeared at her home. (Report, pp. 3-5.)

change in employee's circumstances or condition showing that services are no longer reasonably required to cure or relieve from effects of industrial injury).)

In this regard, inasmuch as defendant failed to investigate how ceasing to provide Ms. Shaw's and Ms. Armstrong's services would affect applicant's treatment, defendant also failed to present evidence of a change in circumstances or condition suggesting that those services are no longer reasonably required. Therefore, we conclude that defendant's obligation to provide for applicant's home healthcare services through Ms. Shaw and Ms. Armstrong remains in effect, noting that the record suggests that Ms. Armstrong has subsequently been retained to resume her treatment of applicant by her employment with Comfort Care. (Report, pp. 6, 8.) Accordingly, we will substitute findings that defendant failed to meet its burden of demonstrating a change in circumstances or condition showing that the services of Ms. Shaw are no longer reasonably required to cure or relieve applicant of the effects of her industrial injury.

In addition, we note that defendant's representative, Ms. Moreland, testified that there is an outstanding balance owed to Ms. Shaw for her home healthcare services. (Report, p. 9.) Given that defendant owes Ms. Shaw for services rendered to date, and given that we conclude that Ms. Shaw may resume her provision of home healthcare services to applicant in an amount consistent with her availability and that of Ms. Armstrong in light of the May 12, 2022 certification for thirty hours per week, we agree with the WCJ's determination that defendant must pay Ms. Shaw for all her services. (Report, p. 2.) Accordingly, we will substitute a finding that defendant shall forthwith pay applicant's home healthcare services provider Myra Shaw in an amount to be adjusted by the parties.

Finally, we note that the Petition does not challenge the WCJ's order overruling defendant's objection to the admission of exhibits 12 and 13. Therefore, any such challenge is waived. (See *U.S. Auto Stores v. Workers' Comp. Appeals Bd. (Brenner)* (1971) 4 Cal.3d 469 [36 Cal.Comp.Cases 173]; *Los Angeles Unified Sch. Dist. v Workers' Comp. Appeals Bd. (Henry)* (2001) 66 Cal.Comp.Cases 1220 (writ den.); *Hollingsworth v. Workers' Comp. Appeals Bd.* (1996) 61 Cal.Comp.Cases 715 (writ den.) (objection waived if not raised at first hearing at which it is proper to do so).) Accordingly, we will substitute an order that the defendant's objection to the admission of exhibits 12 and 13 is overruled.

Accordingly, we will rescind the F&O and substitute findings that defendant failed to meet its burden of demonstrating a change in circumstances or condition showing that the services

of Ms. Shaw are no longer reasonably required to cure or relieve applicant of the effects of her industrial injury; and that defendant shall forthwith pay applicant's home healthcare services provider, Ms. Shaw, in an amount to be adjusted by the parties, with jurisdiction reserved by the WCJ in the event of a dispute; we will order that defendant's objection to the admission of exhibits 12 and 13 into evidence be overruled; and we will return the matter to the trial level for further proceedings consistent with this decision.

For the foregoing reasons,

IT IS ORDERED, as the Decision After Reconsideration of the Workers' Compensation Appeals Board, that the Findings of Fact and Order issued on November 29, 2022 is **RESCINDED** and the following is **SUBSTITUTED** therefor:

FINDINGS OF FACT

1. Minnie Byrd, born _____, while employed during the period of 2/10/2016 through 2/10/2017, as a Crossing Guard, Occupational Group No. 240, at Los Angeles, California, by the City of Los Angeles, sustained injury arising out of and in the course of employment to cervical spine, lumbar spine, bilateral legs, bilateral knees, bilateral feet, bilateral lower extremities, and psyche. Applicant claims to have sustained injury arising out of and in the course of employment to neuro, stroke, HTN, and diabetes. At the time of injury, the employer was permissibly self-insured. Earnings shall be deferred. Compensation paid shall be deferred. The employer has furnished some medical treatment. No attorney fees have been paid, and no attorney fee arrangements have been made. Home healthcare was approved and authorized by Utilization Review. Penalties and interest are deferred.
2. Defendant failed to meet its burden of demonstrating a change in circumstances or condition showing that the services of Myra Shaw are no longer reasonably required to cure or relieve applicant of the effects of her industrial injury.
3. Defendant shall forthwith pay applicant's home healthcare services provider Myra Shaw in an amount to be adjusted by the parties, with jurisdiction reserved by the WCJ in the event of a dispute.

ORDER

- a. Defendant's objection to the admission of exhibits 12 and 13 into evidence is overruled.

IT IS FURTHER ORDERED that the matter is **RETURNED** to the trial level for further proceedings consistent with this decision.

WORKERS' COMPENSATION APPEALS BOARD

/s/ JOSEPH V. CAPURRO, COMMISSIONER

I CONCUR,

/s/ PATRICIA A. GARCIA, DEPUTY COMMISSIONER

/s/ CRAIG SNELLINGS, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

March 6, 2023

SERVICE MADE ON THE ABOVE DATE ON THE PERSONS LISTED BELOW AT THEIR ADDRESSES SHOWN ON THE CURRENT OFFICIAL ADDRESS RECORD.

**MINNIE BYRD
GLAUBER BERENSON VEGO
OFFICE OF THE CITY ATTORNEY**

SRO/es

I certify that I affixed the official seal of the Workers' Compensation Appeals Board to this original decision on this date. o.o