

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

JIM NEELY, *Applicant*

vs.

COUNTY OF SACRAMENTO, *Permissibly Self-Insured, Defendant*

**Adjudication Number: ADJ225564 (SAC 0367489)
Sacramento District Office**

**OPINION AND ORDER
DENYING PETITION FOR
RECONSIDERATION**

We have considered the allegations of the Petition for Reconsideration and the contents of the report of the workers' compensation administrative law judge (WCJ) with respect thereto. Based on our review of the record, and for the reasons stated in the WCJ's report, which we adopt and incorporate, we will deny reconsideration.

For the foregoing reasons,

IT IS ORDERED that the Petition for Reconsideration is **DENIED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER

I CONCUR,

/s/ ANNE SCHMITZ, DEPUTY COMMISSIONER

/s/ CRAIG SNELLINGS, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

AUGUST 2, 2021

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

**JIM NEELY
THE LAW OFFICES OF NICHOLAS SHEEDY, INC.
HANNA, BROPHY, MACLEAN, MCALEER & JENSEN
CENTER FOR INTERDISCIPLINARY SPINE**

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

REPORT AND RECOMMENDATION
ON PETITION FOR RECONSIDERATION

I.

INTRODUCTION

1. Order issued: 5/10/21
2. Identity of Petitioner: Defendant
3. Verification: The petition is verified
4. Timeliness: The petition is timely
5. Date Petition for Reconsideration filed: 6/2/2021
6. Petitioner alleges: The matter should not be sent to IBR because the CPT Code used by lien claimant is not covered by OMFS

Lien claimant, Center for Interdisciplinary Spine provided a functional restoration program for the applicant during the period of December 18, 2017 through February 25, 2019. There is no dispute on the reasonableness of the services. Defendant objected to lien claimant's billings on April 17, 2018 and February 7, 2019 on the grounds that the charges exceeded the Official Medical Fee Schedule, the charges were unreasonable and that CPT code 97799 is not a valid code. (Exhibit B) The parties were unable to resolve the lien and therefore proceeded to lien trial. Originally, the parties had other preliminary issues to payment of the services, however, on the day of trial, it was agreed that the sole issue was the reasonableness of the charges submitted.

Amber Beasley, the claims examiner, testified at trial that she sent the invoice to bill review, but it was rejected. (This rejection was not submitted into evidence). Defendant argues that the lien claimant did not supply an appropriate CPT code and hence, they were unable to pay for the services rendered. (Exhibit B) Hence, there is a dispute about the correct CPT code to use. These disputes are to be adjudicated through Independent Bill Review.

Other similar panel cases have addressed this issue. For instance, in *Senquiz v. City of Fremont* the issue was if the WCAB could determine specific CPT Codes which parties opined were not subject to the Official Medical Fee Schedule. The trial judge opined it was a triable issue whereas the Appeals Board disagreed.

“In this case, the WCJ characterized the dispute as not subject to the OMFS because the fee schedule does not adopt and incorporate the NCCI edits which were the basis for defendant's objections to the bills. The WCJ is correct that the NCCI edits have not been formally adopted into the OMFS, but that does not preclude IBR's use of the edits in determining the correct amount owed to lien claimant. The NCCI edits are appropriately characterized as a tool utilized by IBR in [*10] applying and interpreting the OMFS to resolve disputes over amounts owed. Using the correct procedure code is in fact the first step in determining the proper [**787] amount to be paid to a provider. Once the correct code is identified, the corresponding authorized payment amount can be identified.

In the present case, the only issue that must be resolved in order to determine the amount lien claimant is owed under the OFMS is whether the relevant bills used the correct procedure codes. If the WCAB had jurisdiction to resolve that question, the WCAB would effectively be determining the amount due under the fee schedule. Pursuant to Section 4603.6(a), if “the only dispute is the amount of payment and the provider has received a second review that did not resolve that dispute,” the provider must request IBR within 30 days or “the bill shall be deemed satisfied.” In this case, the amount of payment depends upon the procedure codes used, but “the only dispute is the amount of payment.” Therefore, we conclude that this dispute is subject to IBR and is not within the jurisdiction of the WCAB.”

Senquiz v. City of Fremont, 2017 Cal. Wrk. Comp. P.D. LEXIS 522, *9-10, 83 Cal. Comp. Cases 782, 786-787. In the case at hand, defendant did not produce a first review, only an objection. (Exhibit B). After the objection was received, lien claimant subsequently sent another bill which was identical to the original. Once again, defendant objected and the process stopped there. As EORs were never procured it was found that the parties did not comply with 4603.3 and 4603.6.

Nonetheless, via trial it became apparent that the sole issue for trial was the reasonableness of the amount billed. Hence, the WCJ ordered the parties to IBR.

RECOMMENDATION

Based upon the foregoing, it is recommended that the Petition for Reconsideration be denied.

DATE: June 28, 2021

Darcy Kosta
WORKERS' COMPENSATION
ADMINISTRATIVE LAW JUDGE