

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

MARTHA VARGAS GUILLEN, *Applicant*

vs.

**NSI SERVICES COLLEGE HOSPITAL;
EVEREST NATIONAL INSURANCE COMPANY,
administered by SEDGWICK CLAIMS MANAGEMENT SERVICES,
*Defendants***

**Adjudication Numbers: ADJ10116539, ADJ10116536
Los Angeles 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 A. ZALEWSKI, CHAIR

I CONCUR,

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER

/s/ CRAIG SNELLINGS, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

APRIL 29, 2024

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

**MARTHA VARGAS GUILLEN
RMS MEDICAL GROUP
WORKERS COMP SOLUTIONS**

LN/pm

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

Applicant, Martha Guillen, [...] while employed on April 16, 2015, as a housekeeper, in the State of California, sustained injury arising out of and occurring in the course of employment to her lumbar spine. Lien claimant petitioner RMS Medical Group seeks reconsideration of the 02/07/2024 decision herein that defendant Everest National Insurances Company maintained and exercised medical control within its network and applicant was not free to select RMS as primary treating physician outside the MPN.

II. CONTENTIONS

Petitioner contends that applicant properly elected Guy Gottschalk, M.D. as primary treating physician, that his and RMS Medical's services were reasonably required to treat applicant, that a medical legal evaluation by Dr. Gottschalk was conducted in the capacity of primary treating physician, that the issue of petitioners' non-IBR petition should have been addressed in the decision, that upon receipt of reporting of panel qualified medical examiner David Kim, M.D. (05/16/2016, Defendant's Exhibit W) defendant was obligated under Labor Code Section 4063 to administrate (sic.) benefits to applicant, and that defendant's should bear petitioners' costs for pursuing the lien.

III. FACTS

Applicant was injured on 04/16/2015 and commenced treatment the following day with US Healthworks and continued with this provider and with Kamran Aflatoon, D.O., through 01/06/2016 as employer-provided treatment. During this course of treatment defendant issued notice to applicant of its medical provider network (Defendant's Exhibit A, 09/22/2015). Applicant's then attorney had already acknowledged the MPN, agreeing that applicant's treatment would continue within the network (Defendant's Exhibit B, letter of 09/11/2015).

On 01/15/2016 the firm of Chrislip Hervatin substituted into the case on behalf of applicant in place of her former attorneys (EAMS Doc. ID No.

59185723), though the Chrislip firm did not file a disclosure statement or declaration under Labor Code Section 4906 (g).

On 02/19/2016 the Chrislip firm issued a letter purporting to select Dr. Gottschalk of RMS as primary treating physician (Lien Claimant's Exhibit 2). Dr. Gottschalk and RMS commenced treatment with an initial evaluation on 03/03/2016 (Lien Claimant's Exhibit 11)

IV. DISCUSSION

Designation as Primary Treating Physician

The designation of RMS as PTP was insufficient to wrest defendant's control of treatment within the MPN. The status of Chrislip Hervatin as applicant's attorney was in question without the statutorily required filing to take over applicant's representation. More importantly, no denial of care has been shown though it is alleged based on Lien Claimant's Exhibit 5, letter of 05/31/2016. This letter appears to only be addressed to applicant, and references a request for authorization dated 05/30/2016 without identifying the requesting party. There is no 05/30/2016 RFA in evidence. The letter refers to 8 Cal. Code of Reg. Sec. 9792.9.1 (b) (1) which relates to the UR deferral process. The letter contains an incomplete sentence stating "This treatment is disputed because" with no words following. Whatever the author of this letter might have intended, it does not demonstrate that defendant was denying care within the MPN. Rather, it appears to be the use of an incorrect template and possibly misdirected. The claim itself was never denied, and the treatment within the MPN was last documented by Defendant's Exhibit V, report of Dr. Aflatoon, 01/05/2016, who recommended further treatment.

Absent a denial of care within the MPN, applicant was not free to self-procure out of network treatment at defendant's expense.

Necessity of Treatment

The treatment provided out of the MPN was not reasonably necessary since defendant was providing care as required within the network.

Medical Legal Services

A primary treating physician may perform medical legal services if requested by a party in certain cases. In this case, Dr. Gottschalk and RMS were

never properly elected as the PTP, as discussed above. Thus defendant has no liability for any medical legal services by Dr. Gottschalk or RMS.

Non-IBR Petition

This issue was neither raised at trial nor in any version of the pre-trial conference statement filed herein. Nevertheless, the petition should not be granted in light of the foregoing.

Obligation to Provide Benefits

Labor Code Section 4063 requires an employer to commence compensation if a panel qualified medical examiner or agreed medical examiner makes a medical determination that requires it. No determination binding the parties by either a PQME or an AME can be made as to necessity of treatment, which is entirely governed by the RFA – UR –IMR process.

In this case PQME Dr. Kim found that applicant had AMA impairments, which required defendant to provide permanent disability indemnity, liability for which was resolved by compromise and release approved on 09/25/2017

Section 10109 of Title 8 of the Code of Regulations requires defendant to conduct a good faith investigation of a claim. Here defendant never denied the claim and provided medical care commencing the following day of the accident. Nothing suggests a failure to investigate the claim

Costs

This issue was not raised at trial. However the pre-trial conference statement filed herein did reference a claim for “cost and sanctions for failure to pay or object to a Med-legal expense.”

Based on the finding above that defendant has no liability for what is claimed as a medical legal expense, there is no basis to award costs or impose sanctions on defendant for not making payment.

V. RECOMMENDATION

Based on the foregoing the undersigned WCALJ recommends that the petition for reconsideration be denied.

Date: February 28, 2024

WILLIAM M. CARERO
WORKERS' COMPENSATION
ADMINISTRATIVE LAW JUDGE