WORKERS' COMPENSATION APPEALS BOARD
STATE OF CALIFORNIA

KEN RUTLEDGE, *Applicant*

vs.

COSTCO WHOLESALE PSI;
Administered By
HELMSMAN MANAGEMENT SERVICES, *Defendants*

Adjudication Numbers: ADJ10711761, ADJ10901497
San Jose District Office

OPINION AND DECISION AFTER RECONSIDERATION

We granted reconsideration[1] to further study the factual and legal issues in this case. This is our Opinion and Decision After Reconsideration. Applicant sought reconsideration of the Findings and Order issued by a workers' compensation administrative law judge (WCJ) on April 5, 2021. The WCJ found that she had no jurisdiction to determine the reasonableness and medical necessity of the wheelchair transportation services discontinued by defendant because the services are subject to utilization review (UR) and Independent Medical Review (IMR). Applicant, while employed as a stocker, sustained an industrial injury to his low back, left eye, and psyche on November 14, 2015 (ADJ10711761), and to his neck and left shoulder from November 20, 2015 to November 20, 2016 (ADJ10901497).

Applicant contended that the WCJ should have applied the principles of *Patterson v. The Oaks Farm*, 79 Cal.Comp.Cases 910, 2014 LEXIS 98 (*Patterson*)[2] to this case, arguing that there was no good cause to discontinue the medical transportation services. No Answer was received.

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[1] Commissioner Lowe, who was on the panel that issued a prior decision in this matter, no longer serves on the Appeals Board. Another panelist has been assigned in her place.

[2] WCAB panel decisions are citeable authority, particularly on issues of contemporaneous administrative construction of statutory language [see *Griffith v. WCAB* (1989) 209 Cal.App.3d 1260, 1264, fn. 2, 54 Cal.Comp.Cases 145]. However, WCAB panel decisions are not binding precedent, as are en banc decisions, on all other Appeals Board panels and workers' compensation judges [see *Gee v. Workers' Comp. Appeals Bd*. (2002) 96 Cal.App.4th 1418, 1425 fn. 6, 67 Cal.Comp.Cases 236]. While WCAB panel decisions are not binding, the WCAB will consider these

We received a Joint Report and Recommendation on Petition for Reconsideration (Report) from the WCJ in response to applicant's Petition for Reconsideration, which recommended that the petition be denied.

We have reviewed the record and have considered the allegations of the Petition for Reconsideration and the contents of the WCJ's Report. Based on our review of the record, for the reasons discussed below, we rescind the April 5, 2021 decision and return the matter to the WCJ for further proceedings and a new decision.

FACTS

Applicant, while employed as a stocker, sustained an admitted industrial injury to his low back, left eye, and psyche on November 14, 2015 (ADJ10711761), and, to his neck and left shoulder during the period from November 20, 2015 through November 20, 2016 (ADJ10901497).

The parties agreed to utilize Dr. Stephen Conrad as the agreed medical examiner. Applicant designated Dr. William Brose as his primary treating physician. Dr. Brose prepared a report dated January 25, 3017, recommending that transportation be provided to applicant due to the severity of his injury. Defendant provided transportation services to applicant to attend his medical appointments. On October 2, 2017, applicant underwent surgical fusion of his spine at L4-L5.

The record does not clarify when defendant stopped the medical transportation services. Applicant's attorney avers it happened in June 2020, after a new defense attorney took over the case. The December 9, 2020 Minutes of Hearing indicates transportation was discontinued in October 2020. It appears that defendant asked the treating physician for an RFA, and Dr. Sontag's RFA is dated October 28, 2020.

On November 2, 2020, applicant filed a Declaration of Readiness to Proceed for an expedited hearing, citing *Patterson*, and averring that that defendant had discontinued the medical transportation services without a medical report or UR decision to support it.

On November 5, 2020, for the first time, defendant issued a UR denial responding to an RFA from the treating physician.

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decisions to the extent that it finds their reasoning persuasive [see *Guitron v. Santa Fe Extruders* (2011) 76 Cal.Comp.Cases 228, fn. 7 (Appeals Board En Banc Opinion)].

On December 9, 2020, the matter proceeded to an expedited hearing. The issues for adjudication were the need for future medical treatment in the form of medical transportation to medical appointments, whether the WCAB has jurisdiction over the transportation dispute in light of the November 5, 2020 UR denial, and whether there was good cause to terminate wheelchair transportation services in October 2020.

On April 5, 2021, the WCJ issued a Findings and Order, finding that she had no jurisdiction to determine the need for treatment because it was subject to UR and IMR. She did not address the principles set forth in *Patterson*. Applicant sought reconsideration.

DISCUSSION

Labor Code section 4600(a)[3] provides that an industrially injured worker is entitled, at his/her employer's expense, to medical treatment that is reasonably required to cure or relieve the effects of the industrial injury. (§ 4600(a).) The coverage of section 4600 extends to any medically related services that are reasonably required to cure or relieve the effects of the industrial injury, even if those services are not specifically enumerated in that section. (*Smyers v. Workers' Comp. Appeals Bd.* (1984) 157 Cal.App.3d 36, 41.) Section 4600 has been construed to include the costs of transportation to obtain treatment and medication, even though such transportation costs are not specifically listed in section 4600. "Medical treatment transportation benefits are an element of overall medical treatment benefits under Labor Code section 4600." (*Avalon Bay Foods v. Workers' Comp. Appeals Bd. (Moore)* (1998) 18 Cal.4th 1165, 1173-1175 [63 Cal.Comp.Cases 902, 907-909] (Moore).)

In *Patterson, supra,*79 Cal.Comp.Cases 910, the Appeals Board held that the provision of a nurse case manager is a form of medical treatment under section 4600, that an employer may not unilaterally terminate approved nurse case manager services when there is no evidence of a change in the employee's circumstances or condition showing that the services are no longer reasonably required to cure or relieve the injured worker from the effects of the industrial injury, that the use of an expedited hearing to address the medical treatment issue is authorized by section 5502(b)(1), and that it is not necessary for an injured worker to obtain an RFA to challenge the unilateral termination of the services of a nurse case manager.

[3] All further statutory references are to the California Labor Code, unless indicated otherwise.

The Workers' Compensation Appeal Board has not limited the application of the principles in *Patterson* only to "nurse case managers" but has applied *Patterson* to various other medical treatment modalities, including medical and non-medical transportation services. (*Gunn v. San Diego Dept. of Social Services* (2015) 2015 Cal. Wrk. Comp. P.D. LEXIS 414; *Ramirez v. Kuehne and Nagel* (2014) 2014 Cal. Wrk. Comp. P.D. LEXIS 537; *Rabenau v. San Diego Imperial Counties Development Services Incorporated* (2018) 2018 Cal. Wrk. Comp. P.D. LEXIS 97.)

In this case, there is no good reason to disregard the holdings of *Patterson* because medical transportation is a form of medical treatment that applicant's treating physician has found reasonable and necessary to cure or relieve from the effects of the industrial injury. Applying *Patterson* here, we conclude that defendant was not entitled to unilaterally terminate medical transportation *before* obtaining a medical opinion that those services are no longer reasonably required to cure or relieve from the effects of the industrial injury. Nor was it necessary for applicant to obtain an RFA to challenge defendant's unilateral termination of those services.

Defendant did not meet its burden to show that the services were no longer reasonably required because of a change in applicant's condition or circumstances. Defendant did not seek an opinion from a physician prior to terminating applicant's medical transportation services. Unilaterally terminating medical treatment that was earlier authorized as reasonably required to cure or relieve the injured worker from the effects of the industrial injury is contrary to section 4600(a) unless supported by substantial medical evidence. (*Patterson, supra,* 79 Cal.Comp.Cases 910, 917.)

Once a defendant has authorized medical transportation services as reasonable medical treatment, it is obligated to continue to provide those services until the services are no longer reasonably required pursuant to section 4600(a) to cure or relieve the effects of the industrial injury. As with all medical treatment decisions, that determination must be based upon substantial medical evidence. (*Lamb v. Workers' Comp. Appeals Bd.* (1974) 11 Cal.3d 274 [113 Cal. Rptr. 162, 520 P.2d 978, 39 Cal.Comp.Cases 310]; *LeVesque v. Workmen's Comp. Appeals Bd.* (1970) 1 Cal.3d 627 [83 Cal. Rptr. 208, 463 P.2d 432, 35 Cal.Comp.Cases 16].)

In this matter, the timeline of events is crucial. The evidence presented indicates that defendant discontinued the transportation unilaterally without medical reports showing a change in applicant's condition, and that UR was done after the fact to justify it. A request for an RFA must be based on a change in applicant's condition or circumstances sufficient to show that the

treatment is no longer reasonably required to cure or relieve the effects of the industrial injury. *Patterson* requires a showing of a change in circumstances in order to initiate additional utilization review. We note the January 21, 2021 RFA from Dr. Sontag requesting transportation to all physician's visits in a vehicle that is wheelchair accessible. This RFA is in EAMS, was admitted into evidence, but was not listed as an exhibit. It may be that applicant no longer needs the medical transportation, but the record is not adequate to make that determination.

On this record, we are persuaded that this matter should go back to develop the record and address whether or not the transportation services were improperly discontinued by defendant. If so, defendants remain liable for medical transportation until there is a proper UR process that determines it is no longer necessary. Defendant may not terminate a form of prescribed treatment without medical support and then obtain a subsequent UR denial to ratify the termination. We find that the principles of *Patterson* apply to this case, and defendants are required to continue to authorize medical transportation until there is a change in applicant's circumstances warranting a new utilization review determination.

Accordingly, we rescind the April 5, 2021 decision and return the matter to the WCJ for further proceedings and a new decision.

For the foregoing reasons,

IT IS ORDERED as our Opinion and Decision After Reconsideration, that the Findings and Order issued by the WCJ on April 5, 2021, is **RESCINDED** and the matter **RETURNED** to the trial level for further proceedings consistent with this opinion and for a new final decision from which any aggrieved party may seek reconsideration.

WORKERS' COMPENSATION APPEALS BOARD

/s/ MARGUERITE SWEENEY, COMMISSIONER

I CONCUR,

/s/ KATHERINE A. ZALEWSKI, CHAIR

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

December 14, 2022

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

KEN RUTLEDGE
LAW OFFICE OF BORAH & SHAFFER
MICHAEL SULLIVAN & ASSOCIATES

MG/abs

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