

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

GONZALO ROCHA SANCHEZ, *Applicant*

vs.

**HOLLYWOOD REFINISHING, INC.;
STATE COMPENSATION INSURANCE FUND, *Defendants***

**Adjudication Number: ADJ12466711
Van Nuys 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/ ANNE SCHMITZ, DEPUTY COMMISSIONER

I CONCUR,

/s/ JOSÉ H. RAZO, COMMISSIONER

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

March 24, 2023

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

**GONZALO ROCHA SANCHEZ
TINA ODJAGHIAN LAW GROUP
STATE COMPENSATION INSURANCE FUND**

AS/ara

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

**REPORT AND RECOMMENDATION ON DEFENDANT'S PETITION FOR
RECONSIDERATION**

I

INTRODUCTION

1. *Applicant's Occupation* : *Laborer*
 Date of Injury : *08/05/2019*
 Parts of Body Injured : *head, nose, right shoulder*
2. *Identity of Petitioner* : **Defendant** *filed the Petition.*
 Timeliness : *The Petition is timely filed.*
 Verification : *The Petition is verified.*

3. *Date of Findings of Fact* : *02/06/2023*

4. ***Petitioner's contentions:***

- (a) *The Board acted without or in excess of its powers;*
- (b) *The evidence does not justify the findings of fact;*
- (c) *The findings of fact do not support the order, decision or award.*

II.

FACTS

Gonzalo Rocha Sanchez, born [], while employed on August 5, 2019, as a Laborer, at Los Angeles, California, by Hollywood Refinishing, Incorporated, sustained injury arising out of and in the course of employment to head, nose, and right shoulder.

The matter proceeded forward to an Expedited Trial January 12, 2023, behind applicant attorney's Declaration of Readiness to Proceed filed November 21, 2022, arguing defendants failed to conduct a timely review of the expedited RFA submitted by Dr. Marline Sangnil, dated November 8, 2022. The RFA requests authorization for Outpatient Transitional Living Center Day Treatment Program with Transportation and Spanish Interpreter. Defendants untimely objected to the DOR, countering they issued a UR denial November 11, 2022, transmitted November 12, 2022, and the proper procedure is IMR.

The matter was submitted for decision, and the undersigned issued Findings of Fact and Order and Opinion on Decision dated February 6, 2023 (served to parties February 10, 2023), finding defendants did not conduct a timely Utilization Review of the November 8, 2022 Request for Authorization, and the treatment request in the November 8, 2022 Request for Authorization is reasonable and necessary to cure or relieve the effects of applicant's industrial injury. It is from this Findings and Order for which defendants now seek relief.

III.
DISCUSSION

A.

Prior to Trial, and in the Petition for Reconsideration, defendants assert the proper forum for this dispute is IMR. Defendants point to Exhibit A (eams doc ID 76323532), the Genex letter dated November 9, 2022, calling this letter a "denial of Dr. Sangnil's RFA on an expedited basis," also citing a "second UR denial of Dr. Sangnil's RFA" having issued November 12, 2022. Point in fact, the Genex letter of November 9, 2022 is not a denial of the RFA, but rather a letter to the doctor advising the UR review will not be conducted on an expedited basis, as request. The letter states, in pertinent part(s):

This letter is to notify you that this request for expedited review is not 'reasonably supported by evidence establishing that the injured worker faces an imminent and serious threat to his or health; or that the standard timeframe for utilization review ... would be detrimental to the injured worker's condition' ... Accordingly, consistent with 8 CCR Sec.9792.9.1(c)(4), the review of this request for authorization shall be completed consistent with the timeframes set forth in 8 CCR Sec. 9792.9.1.(c)(3). ... The review is being forwarded to our clinical staff to begin their analysis."

The first actual Utilization Review of Dr. Sangnil's Expedited RFA is that of November 12, 2022, served to parties November 14, 2022. As stated in the Opinion on Decision, page 5, "The fax number found on the Genex November 9, 2022 letter is traceable to State Compensation Insurance Fund. There is no evidence to show this document was faxed or emailed to the attention of Dr. Sangnil within 24-hours of receipt of the doctor's RFA. Aside from the notation in the header as to the decision date being November 11, 2022, the UR Decision is silent as to whether Genex conducted the review on an expedited or non-expedited basis. The Court finds the Genex letter of November 9, 2022 to be an unreasonable and unnecessary delay tactic of a valid expedited RFA."

Defendant concedes there is no evidence Exhibit A, the letter of November 9, 2022 was actually sent to Dr. Sangnil, arguing by virtue of it having been sent, by Genex, to State Fund, it more than likely was sent to the doctor. This is still not prima facie, actual evidence, proving the fact. There remains no evidence the document was sent to Dr. Sangnil.

Defendant argues The Court's conclusion the November 9, 2022 letter is a "delay tactic" of a valid, expedited RFA goes to the substance of the issue. The Court disagrees, as this consideration is relevant to the determination of Dr. Sangnil having properly submitted an expedited RFA (and in turn, Genex properly responding to receipt of the RFA).

By not having conducted the Utilization Review on an Expedited Basis, (instead, the UR was performed November 12, 2022) The Court determines the Utilization Review is untimely.

B.

*Defendants further contend if The Appeals Board agrees the Utilization Review was untimely, the applicant must still present substantial evidence to support the need for treatment, as a WCJ cannot award medical treatment if there is no substantial evidence to support it, citing the panel decisions of *Becerra v. Jack's Bindery Inc.*, 2012 Cal. Wrk. Comp. P.D. LEXIS 451 and *Corona v. Los Aptos Christian Fellowship Childcare*, 2012 Cal. Wrk. Comp.P.D. LEXIS 459. In both cases, The Court, placed the burden on defendants to prove the UR was conducted both timely and properly.*

Both the Becerra and Corona courts found defendants, similar to the case herein, did not meet its burden. In the Becerra case, the judge concluded the UR physician must be served with sufficient, relevant medical evidence. In the case at bar, the undersigned stated, in the Opinion on Decision, that the denial appeared, at least in part, due to the reviewer having been unable to speak with Dr. Sangnil about alternate opinions to the treatment being requested. This is based on the statement in the Utilization Review, Joint Exhibit 7 (eams doc ID 44591885):

"The requested procedures are not warranted. It is appreciated that ongoing vertigo is present. However, the worker has already graduated from a transitional living Center outpatient program. While the claimant is noted to be regressing clinically, it is not clear why a comprehensive program is needed at this time rather than traditional outpatient therapies. This request was previously non-certified on a similar basis. Based on this discussion the prospective request ... is non-certified."

The reviewer was provided 5 Progress Reports, issued from April 8, 2022 through October 31, 2022, and an unsigned letter dated February 2, 2022 (no details are offered relevant to the letter). The only report mentioned, in summary, by the reviewer, is that of October 31, 2022, with specific reference made to the ongoing vertigo. Arguendo, the reviewer was not provided an adequate medical record upon which to make a determination, thereby relying on the phone call to Dr. Sangnil. Being unable to reach the doctor, the reviewer denied the request.

Many of these same reports (sent to the UR reviewer) were offered into evidence at Trial, including Joint 3, the Progress Report of Dr. Marcel Ponton dated July 4, 2022, Joint 4 (eams doc ID 44591880), the Progress Report of Dr. Marline Sangnil dated September 16, 2022 (eams doc ID 44591881), and Joint 5, the Progress Report of Dr. Marline Sangnil, dated October 31, 2022 (eams doc ID 44591882). As per The Corona court, wherein it was found the UR denial was not properly conducted and substantial medical evidence existed to support an award of the treatment requested, the same result is reached here, based on the existing medical record.

The undersigned opinioned as such in The Opinion on Decision, when citing Dr. Sangnil's reporting of October 31, 2022. Gonzalo Rocha Sanchez presented to Dr. Sangnil in follow-up for an industrial TBI, suffering from vertigo 2-3 times per day. The applicant had suffered at least 3 falls in the preceding month. The applicant has headaches, light and noise sensitivity, memory impairment, and is functionally declining. The RFA is in line with the MTUS Guidelines and accordingly, the undersigned Ordered defendants to authorize the treatment. This Order for

authorization follows the precedent set per the panel decisions cited by defendants in the Petition for Reconsideration, Becerra and Corona.

IV.

RECOMMENDATION

It is respectfully requested that the Petition for Reconsideration be denied.

Date: 03/01/2023

/s/ Jiblet Croft

JIBLET CROFT
Workers' Compensation Judge