

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

**CHARLENE BYRUM WINFREY, *Applicant***

**vs.**

**L'ABRI MANAGEMENT, INC.;  
LIBERTY MUTUAL INSURANCE GROUP, *Defendants***

**Adjudication Number: ADJ1334367 (VNO 0386138)  
Van Nuys District Office**

**OPINION AND ORDER  
DENYING PETITION FOR  
RECONSIDERATION**

We have considered the allegations of the Petition for Reconsideration and the Supplemental Petition<sup>1</sup> 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.

We have given the WCJ's credibility determinations great weight because the WCJ had the opportunity to observe the demeanor of the witnesses. (*Garza v. Workmen's Comp. Appeals Bd.* (1970) 3 Cal.3d 312, 318-319 [35 Cal.Comp.Cases 500].) Furthermore, we conclude there is no evidence of considerable substantiality that would warrant rejecting the WCJ's credibility determinations. (*Id.*)

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<sup>1</sup> We accept applicant's supplemental petition of December 18, 2023. (Cal. Code Regs., tit. 8, § 10964.)

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/ JOSEPH V. CAPURRO, COMMISSIONER**

**/s/ CRAIG SNELLINGS, COMMISSIONER**



**DATED AND FILED AT SAN FRANCISCO, CALIFORNIA**

**January 16, 2024**

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

**CHARLENE BYRUM WINFREY  
LAW OFFICES OF KIRK & MYERS**

**JMR/ara**

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

**REPORT AND RECOMMENDATION**  
**RE: FINDINGS AND ORDER ON PETITION FOR COMMUTATION**

**I**  
**INTRODUCTION**

Defendants L'Abri Management and Safeco Insurance Company of Illinois have filed a timely, verified petition for reconsideration of the October 30, 2023 Findings and Order on Petition for Commutation herein, which ordered commutation of the remainder of applicant Charlene Byrum Winfrey's permanent disability award herein for the purpose of either attempting to obtain ownership of applicant's mother-in-law's house through the buyout of a reverse mortgage, or otherwise obtaining ownership of another suitable dwelling, given the probability of applicant and her husband becoming homeless after her mother-in-law's impending death, and the ability of applicant and her husband to live on Social Security income without periodic permanent disability payments.

Defendants' petition contends that by the decision and order the Board acted without of in excess of its powers, and that the evidence does not justify the findings of fact. More specifically, the petition contends that it is not in applicant's best interest to commute the remainder of her award to pay the debt of another. The petition references a comment by former workers' compensation judge John Gutierrez in a prior order for commutation in the sum of \$5,000.00 that "[c]ontinuous requests are not favored and are not in the best interest of Applicant except for undue hardship. Further Petitions will be scrutinized." The petition also raises defendants' denied request for reassignment of the undersigned workers' compensation judge.

No formal answer has been filed by applicant, who is representing herself *in propria persona*, but the undersigned believes her position is that she is opposed to defendants' petition.

**II**  
**FACTS**

On October 26, 2023, a trial hearing was conducted by telephone, with testimony from both applicant and her mother-in-law Ruth Ann Winfrey, and the issue of applicant's pending petition for commutation was submitted for a decision. The Opinion on Decision in support of the undersigned's October 30, 2023 Findings and Order on Petition for Commutation describes the salient facts as follows.

The Workers' Compensation Appeals Board's file shows an Award on Stipulated Findings, dated January 14, 2009 according to the record of Case Events in the Electronic Adjudication Management System (EAMS) Adjudication (ADJ) file in case number ADJ1334367, which by all indications in the file found that applicant Charlene Diane Byrum Winfrey sustained an injury of August 20, 1998 arising out of and in the course of employment resulting in permanent, total disability. A scanned copy of the actual award itself does not appear in the contents of FileNet linked to EAMS case number ADJ1334367, but it clearly was issued, and it is equally clear to the undersigned that the award found permanent, total disability from the February 18, 2020 injury.

The Board's file also shows that since applicant's award nearly a quarter century ago, she has requested, and received, four commutations: \$5,000.00, ordered July 14, 2009; \$7,374.00, ordered on December 16, 2009; \$2,500.00, ordered on March 13, 2012; and \$4,000.00, ordered on August 2, 2017.

Applicant filed a petition for commutation dated February 13, 2023, on which an order was issued and set aside, as well as a subsequent petition of commutation dated June 12, 2023, which was timely opposed by defendants. The February 13, 2023 petition requests commutation of all future payments, or in the alternative, \$450,000.00, from applicant's 100% permanent disability award, based on applicant's desire to buy out her mother-in-law's reverse mortgage in order to continue living in the same house where applicant has been living with her husband for the past 23 years. Based on an apparent lack of timely opposition, an order granting the full commutation of applicant's award was issued by the undersigned on April 4, 2023.

On April 19, 2023, counsel of record for defendants L'Abri Property Management and Safeco Insurance Company filed a petition to set aside the April 4, 2023 order of commutation, asserting that applicant's commutation petition was mailed to the claim's examiner at the wrong P.O. Box number, and therefore the petition was not received by the defendants. Based on the apparent lack of timely opposition to the petition to set aside, defendants' petition was granted on May 5, 2023 and the April 4, 2023 order of commutation was set aside.

On May 4, 2023, a status conference was held by telephone before Presiding Judge Sharon Velzy, which went off calendar based on a proposed compromise and release settlement that was never entered. On May 12, the matter was assigned to the undersigned for expedited hearing, at which defense counsel Robert Linden appeared without any appearance by applicant, resulting in the matter going off calendar.

On June 12, 2023, another petition for commutation was filed by applicant, substantially the same as the February 13, 2023 petition, except that the June 12, 2023 petition requests commutation of all future payments, or in the alternative, \$400,000.00, from applicant's 100% permanent disability award. On June 20, 2023, counsel for defendants filed a timely objection to the petition, asserting that paying off another person's debt or mortgage is not good cause for commutation under California Labor Code section 5100.

On September 6, 2023, a status conference was held by telephone before the undersigned, which was continued to an MSC on the issue of applicant's petition for commutation on September 27, 2023, with the note that "[p]arties should be ready to set the issue of commutation for trial if that issue is still not resolved by September 27, 2023." On September 27, 2023 the MSC was held, with the note "[s]et for Trial on sole issue of applicant's Petition for Commutation. Applicant's Award, and judicial notice of the contents of FileNet, may be taken in lieu of stipulations; the Petition for Commutation and opposition thereto may be taken in lieu of issues. Exhibit and witness lists to be exchanged today or ASAP. Defendant verbally seeks disqualification and may file petition." After checking defense attorney Robert Linden's availability, a Trial was ordered as an add-on to Judge Feddersen's calendar on October 26, 2023.

Defense attorney Robert Linden filed an objection dated October 9, 2023, requesting “an automatic reassignment to a new judge.” On October 26, 2023, the parties were referred to Presiding Judge Velzy regarding the request for automatic reassignment, which was denied as untimely. The matter was referred back to the undersigned for trial on the issue of the petition for commutation, which was conducted by telephone with testimony from both applicant and her mother-in-law and submitted for a decision.

All of the foregoing procedural history germane to the pending petitions for commutation can be found in the Board’s file in FileNet under case number ADJ1334367. The testimony offered at the October 26, 2023 trial held on the disputed petition for commutation is summarized in the Minutes of Hearing and Summary of Evidence prepared by the court reporter and signed by the undersigned. Applicant testified that a commutation of her award will avoid inequity. Her Social Security benefits will increase her income next June 25 when she turns 62. So, if her commuted award is used to pay off the reverse mortgage on her mother-in-law’s house, she will have nothing to worry about because her only expenses for housing will be about \$400 to \$500 per month for property tax and home insurance. If she cannot buy out the reverse mortgage on her mother-in-law’s house, then housing will be too expensive for her, because the rent for a one-bedroom apartment in her area is about \$2,649 per month, plus there will be additional costs to store a lot of irreplaceable things that applicant currently keeps in her mother-in-law’s four-bedroom house (Minutes of Hearing and Summary of Evidence of October 26, 2023, p. 2, lines 8-14).

Applicant testified that if the petition for commutation is turned down, she and her disabled husband will be on the street. Applicant is 61 years old and doesn’t know how to be homeless, so she believes this would be a death sentence for her. Where she lives, it snows in the winter and temperatures go up to 117 degrees in the summer. Applicant testified that she was sexually assaulted two times by doctors related to her workers’ compensation case, so she would probably be assaulted on the streets (*Id.*, p. 2, lines 15-18).

Applicant testified that she will be able to live without periodic indemnity payments if her award gets fully commuted and permanent disability payments stop. Her husband also receives income, and additional money is being paid to him, plus he has a wrongful termination case. Applicant herself will be receiving \$637 per month in Social Security benefits. If necessary, they can do another reverse mortgage in the future if the current one is paid off. Applicant believes her current living arrangements will cost only about \$500 per month instead of much more for rent if she can pay of the reverse mortgage and take title to the house where she currently lives. Social Security will provide her with more income after her 62nd birthday. She estimates that she is currently getting about \$2,100 per month from workers compensation and Social Security. Together with her husband, they are getting about \$46,000 per year. She acknowledges that she will receive about \$1,200 less per month if her award is commuted, but she will be okay, because she estimates that she will only need \$300-400 per month for tax and insurance on her mother-in-law’s house (*Id.*, p. 3, lines 2-10).

Applicant testified that her mother-in-law is dying and needs to pay off a reverse mortgage so that she can put her house in applicant’s name before she dies. They live in Apple Valley, and they have nowhere else to go. Applicant’s mother-in-law is her last living relative, so applicant has nowhere else to turn. With storage costs and rent for an apartment, her monthly expenses could be

\$7,000 per month without home ownership, which is only possible through a commutation (*Id.*, p. 3, lines 11-14).

At trial, applicant acknowledged that she filed previous commutation petitions, but these were for help with expenses, like utilities and food, and not to pay for her mother-in-law's house so that they could live there. She admitted that one commutation petition was for housing, because she said that she had to pay rent to her mother-in-law, or else she would be put out on the street. This was because her mother and father-in-law could not afford to take care of both applicant and her disabled husband (*Id.*, p. 3, lines 15-19).

Applicant testified that she has seen her mother-in-law's will, and it gives her the house. However, because of the reverse mortgage on the house, she cannot take title to it if the reverse mortgage is not paid off first. She believes that her mother-in-law will not change her will. She has not reviewed the will with an attorney, but she does not believe her mother-in-law would or could sell the home or do another reverse mortgage if the current mortgage is paid off, because of her mother-in-law's age and terminal illness, for which hospice care was prescribed. Applicant testified that she did review the reverse mortgage with one or more attorneys, but did not name them because they were not retained by her. It is applicant's understanding that under the reverse mortgage, if her mother-in-law dies, she has only 30 days to vacate the house. She believes she had already filed a copy of reverse mortgage documents and served them on the defense attorney several times. Applicant admitted that she does not know whether her name is on the deed to her mother-in-law's house, but someone from HUD told her that her name could only be added to the deed if the reverse mortgage got paid (*Id.*, p. 3, line 19 through p. 4, line 18).

Applicant's mother-in-law, Ruth Ann Winfrey, was also called as a witness, and testified that she and her now deceased husband lived life on the principle that family always comes first. They loved Charlene Byrum-Winfrey like a daughter. Charlene has lived for 23 years in Ms. Ruth Ann Winfrey's house (*Id.*, p. 4, line 22 through p. 5, line 2).

It appears from Ms. Ruth Ann Winfrey's testimony that she has used a great deal of her own credit to support applicant by paying medical and legal expenses (some of which might arguably be related to applicant's awarded work injury, although that issue has not yet been tried). Applicant's mother-in-law was informed and believed that her daughter-in-law's workers' compensation case would provide reimbursement for these expenses, in addition to a lump-sum settlement of at least \$1 million. She recalls that her daughter-in-law's former attorney, Mr. Savin, saying, "don't worry, they [the defendants] will be compelled to reimburse you" (*Id.*, p. 5, numbered line 4). She did her best to save receipts but does not have all of them. Ms. Ruth Ann Winfrey testified that she used the money from a reverse mortgage on her house to pay for her daughter-in-law's expenses, including medical expenses, and dealing with sexual assaults by both a therapist in Los Angeles, and by an orthopedic surgeon, Dr. Sisto. She filed a police report together with applicant about these sexual assaults, but nothing was done. She feels that there was absolutely no justice for her daughter-in-law (*Id.*, p. 5, lines 9-12).

Ms. Ruth Ann Winfrey testified that she has read Labor Code section 5100 and feels that inequity has already been caused to applicant. However, if her house can be bought back from the reverse mortgage company, her daughter-in-law could have the house to live in with her son, and no rent

would be required. It would be in Charlene's best interest to have the money to buy the house back from the reverse mortgage company. Without a place to live, Ms. Ruth Ann Winfrey believes her daughter-in-law would suffer in fear of rape, or death (*Id.*, p. 5, lines 5-8).

Ms. Ruth Ann Winfrey admitted that she read her testimony from a statement, but it was her own statement, written in her own words. Her son, John, who was also present at the trial and occasionally made statements that were not offered as testimony, did not assist her in writing her testimony. She wrote down what she wanted to say by herself (*Id.*, p. 5, lines 14-18).

Ms. Ruth Ann Winfrey testified in response to the defense attorney's questioning that she currently lives in her house. She does not have home health care at this time. She is not currently on hospice care. She was prescribed hospice care when she got out of the hospital about a month or two ago, but she turned it down because she believes she has better care without it (*Id.*, p. 5, lines 19-22).

Ms. Ruth Ann Winfrey believes that HUD now owns the deed to her house, because of the reverse mortgage. If the reverse mortgage was paid off, she could have the name on the deed changed to herself and Charlene. That way, when Ms. Ruth Ann Winfrey passes, the house would go to Charlene. She would add Charlene to the deed if she could. She would not sell her house, even if she could, because then she would have no place to live (*Id.*, p. 5, line 18 through p. 6, line 2).

Ms. Ruth Ann Winfrey estimates that close to \$380,000 would have to be paid to buy out the reverse mortgage. She believes that all of the receipts for expenses were sent to the defense attorney, and to the judge. She had to charge credit cards for everything. Her debts were purged in bankruptcy, but she paid more than \$300,000 for food, gas, medications, and a second mortgage, until she and her late husband were forced to file a bankruptcy petition. The bankruptcy was before her current reverse mortgage. The bankruptcy cleared what she owed on credit cards and on the second mortgage. She did receive a check for \$168,000 from the reverse mortgage, but she used all of this on her daughter-in-law and just trying to live. She did not have the money to buy or fix broken things in her house, or to buy tools. She has receipts for things that she bought for Charlene, including all kinds of medications. She does not necessarily have receipts for everything, such as gas (*Id.*, p. 6, lines 3-12).

Ms. Ruth Ann Winfrey testified that she has a living trust and a will. When asked if she could make changes to them, she responded that her living trust is hers, and it has nothing to do with Charlene. It is a very personal document. It is her own living trust (*Id.*, p. 6, lines 12-14).

Based upon applicant's February 13, 2023 and June 12, 2023 petitions for commutation and attachments, the defendants' objections thereto, and the sworn testimony provided at trial, it was found that it is in the best interest of the applicant to grant the request for commutation of applicant's Award in full, under California Labor Code section 5100, for the purpose of either attempting allowing applicant to obtain ownership of applicant's mother-in-law's house through the buyout of a reverse mortgage, or otherwise obtaining ownership of another suitable dwelling, given the probability of applicant and her husband becoming homeless after her mother-in-law's impending death, and considering the ability of applicant and her husband to live on Social Security income without periodic permanent disability payments on the condition that they do not have to pay rent.

Defendants L'Abri Management and Safeco Insurance Company of Illinois have filed a timely, verified petition for reconsideration of the October 30, 2023 Findings and Order on Petition for Commutation herein. Defendants' petition contends that by the decision and order the Board acted without of in excess of its powers, and that the evidence does not justify the findings of fact. More specifically, the petition contends that it is not in applicant's best interest to commute the remainder of her award to pay the debt of another. The petition references a comment by former Workers' Compensation Judge John Gutierrez in a prior July 14, 2009 order for commutation in the sum of \$5,000.00 that "[c]ontinuous requests are not favored and are not in the best interest of Applicant except for undue hardship. Further Petitions will be scrutinized." The petition also raises defendants' denied request for reassignment of the undersigned workers' compensation judge.

### III DISCUSSION

Labor Code section 5100 reads as follows:

At the time of making its award, or at any time thereafter, the appeals board, on its own motion either upon notice, or upon application of either party with due notice to the other, may commute the compensation payable under this division to a lump sum and order it to be paid forthwith or at some future time if any of the following conditions appear:

- (a) That such commutation is necessary for the protection of the person entitled thereto, or for the best interest of the applicant. In determining what is in the best interest of the applicant, the appeals board shall consider the general financial condition of the applicant, including but not limited to, the applicant's ability to live without periodic indemnity payments and to discharge debts incurred prior to the date of injury.
- (b) That commutation will avoid inequity and will not cause undue expense or hardship to the applicant.
- (c) That the employer has sold or otherwise disposed of the greater part of his assets or is about to do so.
- (d) That the employer is not a resident of this state.

Labor Code section 5100(a) provides for commutation of future compensation if it is necessary for the protection of the applicant, or in the applicant's best interest. Notably absent from any of the language in section 5100 is any mention of what is in the best interest of defendant. The sole consideration prescribed is what is best for the injured worker.

In this case, commutation appears to be necessary for the protection of applicant Charlene Byrum Winfrey. It is also clearly in her best interest, because the opportunity to purchase a place to live is better than the near certainty of being unable to pay rent. Applicant's protection and best interest are each sufficient grounds to support commutation under Labor Code section 5100(a). Applicant



needs to be protected from the loss of the house where she has lived for 23 years and continues to live with all of her possessions. The only way to protect her from such loss of shelter and possessions is to provide her with a lump sum that is sufficient to either pay off the reverse mortgage on the home where she is living, so that her name can be added to the title of the house, or to purchase a more modest dwelling in exchange for the present value of her permanent disability award. While this would not be feasible in either San Francisco or Los Angeles, it does appear possible to accomplish this for under \$300,000.00 in applicant's current location of Apple Valley, California. Mere skepticism about applicant's ability to complete such a transaction should not be sufficient reason to deprive her of the opportunity.

Defendants' petition focuses on the argument that it is not in applicant's best interest to pay the debts of another. While it is true that applicant's primary desire is to pay off her mother-in-law's reverse mortgage in order to stay in the house where she currently lives, and if applicant does so, her mother-in-law could conceivably act against the interests of her only son and his wife by leaving them with no home, no money, and no recourse, there is no evidence to suggest that applicant's mother-in-law will do this. When deciding a factual dispute, the sworn and unrebutted testimony of a credible witness can and should be relied upon to determine what is probable by a preponderance of the evidence. On the one hand, there is the profession of a mother, who is by every account in the final days of her life, that she wants to leave her house to her son's wife so that her son can continue to live there, but she has taken out a reverse mortgage to help pay for her son and daughter-in-law's expenses. On the other hand, the defendants seem to be arguing that such testimony should be disbelieved, based on the assumption that Ms. Ruth Ann Winfrey did not mean what she said in her testimony and will do whatever she can get away with. While some people (and insurance companies) have been known to conduct themselves based solely on self-interest, the undersigned found no reason to disbelieve the credible and sincere testimony of Ms. Ruth Ann Winfrey regarding her intention to transfer ownership of her home to applicant, through title, trust, and/or will. Ms. Ruth Ann Winfrey's testimony was also credible with respect to the fact that the mortgage debt on her house, although not directly applicant's debt, was in significant part incurred for applicant's benefit, which shows that Ms. Ruth Ann Winfrey is willing to act out of concern for her son and daughter-in-law and not solely out of self-interest. While Ms. Ruth Ann Winfrey at one time sought to evict and collect rent from her daughter-in-law, she ultimately allowed her to stay in the house and this also shows willingness to do what is best for applicant. Of course, the parties should seek competent legal counsel if they are somehow able to use the commuted present value of the award to arrange for the home to go to applicant so that she and her husband and caregiver John can live there.

However, given the fact that the commuted present value of applicant's award appears to fall short of the full amount needed to buy out her mother-in-law's reverse mortgage, the findings and order of commutation are not solely premised on allowing applicant to attempt to gain ownership of the property where she lives. Because so much time has passed since the award, and because lifetime indemnity awards on work injuries that occurred before 2003 are not increased each year to keep up with state average weekly wage increases, the present value of applicant's award for her 1998 injury is in fact closer to \$300,000 than \$400,000, according to the calculations of the Disability Evaluation Unit. The decision acknowledges that even if this sum proves insufficient to complete such a proposed transaction, the commutation of all remaining benefits is still necessary for applicant's protection, and in her best interest, because it should be sufficient to allow her to buy

a more modest place to live. Such a purchase would probably not be a four-bedroom house, but perhaps a condominium in Apple Valley with arrangements for storage. In any event, having a large lump sum of money at the time of her mother-in-law's inevitable passing will both better protect applicant from homelessness—protection being the standard prescribed by the legislature—and is also more in her best interest, than having small installments of permanent disability that are insufficient by themselves to pay for rent or even a rent deposit. Considering applicant's apparent ability to live without periodic payments by using her Social Security income and husband's income, which should be enough for food, property tax and utilities if they own a home, and her likely inability to use periodic income to pay for both living expenses and rent payments, using applicant's commuted award to secure a place where she can live simply makes sense, whether or not the place that is secured turns out to be applicant's mother-in-law's house.

Defendant's position appears to be that it would be in applicant's best interest to allow her to be evicted from the house where she currently lives after her mother dies, then try to pay rent using permanent disability installments without any deposit money. This position does not make any sense. Whether eviction will happen in 30 days, six months, or one year after applicant's mother-in-law's death does not alter the conclusion that it is clearly in applicant's *best interest* to try to avoid the eviction, or to make other living arrangements, using a commuted lump sum without periodic payments of permanent disability (but with periodic payments from her Social Security and her husband). Only the most uncharitable and speculative doubts about applicant's situation would support the conjecture that she and her relatives cannot be trusted with funds sufficient to deal with her housing situation and that she is better served by having periodic payments that are by themselves insufficient to address her housing needs unless commuted in some fashion. This alone is sufficient to justify commutation of applicant's entire award under Labor Code section 5100(a).

Because Labor Code section 5100 provides for commutation if "any" of the conditions in subsections (a) through (d) apply, and the evidence clearly supports commutation under subsection (a), it is not necessary to consider subsections (b) through (d). However, it is noted that under subsection (b), the commutation does "avoid inequity" by providing applicant with an opportunity to either prevent the loss of the house where she and her disabled husband have resided for 23 years, or alternatively, to purchase a more modest place to live (more likely the latter, although the petition for reconsideration focuses exclusively on the former). Commutation does not cause undue expense or hardship to applicant, who reasonably expects to be able to cover property taxes, utilities, and food with the increase in her Social Security benefits after securing a place to live without rent. Subsections (c) and (d) of Labor Code section 5100 do not appear to apply to defendants in this case.

To a large extent, the determination whether or not a requested commutation should be granted rests within the sound discretion of the Appeals Board. The Board may not, however, exercise its discretion arbitrarily (Hanna, 2 *CA Law of Employee Injuries & Workers' Comp* § 27.02 (2023), citing *Hulse v. Workers' Comp. Appeals Bd.*, 63 Cal. App. 3d 221 and *Jenkins v. Workers' Comp. Appeals Bd.*, 48 Cal. App. 3d 570). As pointed out in the *Hulse* case, commutation should not be granted merely to combat the effects of inflation; such an argument would conceivably apply to every case and thereby nullify the other conditions of Labor Code section 5100. On the other hand,

in the *Jenkins* case the Court of Appeal found it to be an abuse of discretion not to grant the petition of a terminally ill widow to pay off her mortgage and help cover medical expenses.

Defendants' petition cites one case in support of their position, *Taylor v. Workers' Comp. Appeals Bd.*, 81 Cal. Comp. Cases 848 (2016, writ denied). The facts in that case are easily distinguished from the present case insofar as in *Taylor*, the court found that after commutation of applicant's weekly award to purchase a trailer home, she would not have sufficient income to cover her living expenses or expenses connected with home ownership such as water, repairs, maintenance, gas. Based on unrebutted testimony and reasonable inferences from the circumstances, this case finds exactly the opposite of what was found in *Taylor*. It appears that applicant and her husband will have sufficient Social Security income to pay expenses incidental to home ownership, but not the cost of rent. There appears to be no evidence to support any uncharitable inference to the contrary. Accordingly, the finding and order of commutation herein comport with the requirements of Labor Code section 5100 that the decision to order commutation "consider the general financial condition of the applicant, including but not limited to, the applicant's ability to live without periodic indemnity payments and to discharge debts incurred prior to the date of injury."

The discretion to order commutation under Labor Code section 5100 should not be constrained by the remarks of former Workers' Compensation Judge John Gutierrez in his July 14, 2009 order for partial commutation that "[c]ontinuous requests are not favored and are not in the best interest of Applicant except for undue hardship. Further Petitions will be scrutinized." First, the standards for commutation set forth in Labor Code section 5100 cannot be modified by this order as a matter of law. Second, the comment is dicta as it pertains to yet undefined potential future requests for commutation, not the request that was granted by Judge Gutierrez. Third, even if the comments of Judge Gutierrez in his July 14, 2009 order were binding with respect to future petitions, the present decision is fully consistent with that guidance, because applicant is now facing undue hardship with respect to securing a place to live for the remainder of her life, and a commutation of the full value of her award avoids "[c]ontinuous requests."

With respect to defendants' request for reassignment, although it is within the purview of the presiding judge and not the undersigned to decide defendants' petition for automatic reassignment under California Code of Regulations, Title 8, section 10782(c), it appears that Presiding Judge Velzy denied the petition on the grounds that it was untimely under subsection (b) or (c) of that Rule, since the case had previously been assigned to the undersigned for trial in the form of an expedited hearing on May 12, 2023, and that no objection was made by either party at that time or within five days of written notice. This is noted on the October 26, 2023 judge's minutes of hearing (the one-page court form, not the reporter's minutes of hearing and summary of evidence).

**IV  
RECOMMENDATION**

It is respectfully recommended that the petition for reconsideration be denied.

DATE: 12/8/2023

**Clint Feddersen**  
WORKERS' COMPENSATION  
ADMINISTRATIVE LAW JUDGE