

1 **WORKERS' COMPENSATION APPEALS BOARD**

2 **STATE OF CALIFORNIA**

3
4 **JENNIFER PATTERSON,**

5 *Applicant,*

6 **vs.**

7 **THE OAKS FARM; CALIFORNIA**
8 **INSURANCE GUARANTEE ASSOCIATION**
9 **for CALIFORNIA COMPENSATION**
10 **INSURANCE COMPANY, in liquidation,**

11 *Defendants.*

Case No. ADJ3905924 (ANA 0339374)
(Oxnard District Office)

OPINION AND DECISION
AFTER RECONSIDERATION
(Significant Panel Decision)

12 We previously granted defendant's petition for reconsideration of the March 6, 2014 Findings
13 And Order of the workers' compensation administrative law judge (WCJ) as served on March 10, 2014.
14 In that decision, the WCJ found that applicant requires the services of a nurse case manager, that the
15 issue was appropriate for determination at an expedited hearing, and that applicant is not required to
16 secure a Request For Authorization (RFA) from her primary treating physician to be sent to utilization
17 review and then Independent Medical Review in order to obtain the nurse case manager services already
18 found necessary by the Agreed Medical Evaluator (AME). Based upon those findings, the WCJ ordered
19 defendant "to reinstate services of a nurse case manager," that were authorized by defendant before it
20 unilaterally terminated them in December 2013.

21 Defendant contends that the WCJ's decision is not supported by substantial medical evidence,
22 that applicant did not meet her burden of proving a need for nurse case manager services, and that
23 applicant was required to submit an RFA in order to support a request for nurse case manager services.

24 An Answer was received from applicant. The WCJ provided a Report and Recommendation on
25 Petition for Reconsideration (Report) recommending that reconsideration be denied.

26 We affirm the March 6, 2014 decision of the WCJ, and hold as follows:

27 1. The provision of a nurse case manager is a form of medical treatment under Labor Code
section 4600;

1 [M.D.]’s November 10, 2011 report despite numerous emails and phone contact...”² Defendant’s
2 attorney filed an objection to applicant’s request for expedited hearing. The objection was *not* made on
3 the grounds that the provision of nurse case manager services was no longer reasonably required to cure
4 or relieve applicant from the effects of her industrial injury. Instead, defendant asserted as follows with
5 respect to the use of the nurse case manager:

6 “Defendant was the party that originally recommended the use of a nurse
7 case manager to help assist with this matter. *A case manager has been*
8 *utilized in the recent past, however, disputes frequently arise between*
9 *applicant and various assistants, including nurse case manager(s). At this*
10 *time it is my understanding that a nurse case manager is currently involved*
11 *with this matter although things frequently change so far as nurse case*
12 *managers participation is concerned, again, primarily to the fact that*
13 *applicant is difficult to deal with.” (Emphasis added.)*

14 In July 2012, applicant’s counsel again filed a DOR on various treatment issues, declaring in
15 pertinent part as follows: “Defendants have failed to provide a nurse case manager.”

16 The Minutes from a conference on December 11, 2012, reflect that most of the issues in dispute at
17 that time were “resolved by agreement,” and that defendant agreed to reconsider the use of the services
18 of a nurse case manager.

19 Another DOR concerning various treatment issues was subsequently filed by applicant in
20 December 2012. Applicant’s attorney noted in his declaration in that document that, “Defendants have
21 yet to assign a nurse case [manager] to assist with this very complicated case.”

22 In December 2013, applicant again filed a DOR, which described the issue of concern, in full, as
23 follows: “Defendants unilaterally terminated services of agreed Nurse Case Manager recommended by
24 the AME. Various treatment referrals have been halted. Phone calls and emials [*sic*] have not resulted in
25 resolution.” According to the Minutes from January 8, 2014, the parties agreed at that time that the case
26 could go off calendar, but that applicant could file again for an expedited hearing.

27 / / /

² Quotations converted from upper case where appropriate. Applicant also asserted in the DOR that defendant failed to provide “transportation” as part of her medical treatment. We express no opinion herein on that issue.

1 It appears that a DOR was filed the next day by applicant, identifying the same issue concerning
2 the nurse case manager in the same way as expressed in the DOR filed in December 2013, as quoted
3 above. An expedited hearing was thereafter conducted by the WCJ on January 28, 2014.

4 The issues addressed at the January 28, 2014 expedited hearing are identified in the Minutes of
5 Hearing as follows:

- 6 "1. Whether there was good cause to discontinue the services of a nurse
7 case manager by defendant.
- 8 2. Whether there is good cause to order reinstatement of nurse case
9 management services as requested by applicant.
- 10 3. Whether reinstatement of a nurse case manager requires a request for
11 authorization for treatment.
- 12 4. Whether nurse case management services qualify as treatment for
13 purposes of an expedited hearing under Labor Code Section 4600."

14 According to the January 28, 2014 Minutes of Hearing, defendant stipulated that it had assigned a
15 nurse case manager, but thereafter "discontinued" the services. In addition to the parties' stipulations,
16 the WCJ received into evidence five reports by Dr. Noble and the transcript of his July 16, 2012
17 deposition as Board Exhibits AA through FF.³ Following the hearing the WCJ issued his March 6, 2014
18 decision as described above.

19 In the Report the WCJ explains his decision and responds to defendant's contentions as follows:

20 "The undersigned found that since the initiation of NCM [nurse case
21 manager] services there was no evidence of improvement in applicant's
22 condition warranting discontinuation or warranting denial of reinstatement.
23 The undersigned further found that no RFA was required for a form of
24 treatment already in progress and then denied without any demonstration of
25 a change in circumstances. Last, the undersigned found that NCM services
26 are part of [medical] treatment for purposes of determination at expedited
27 hearing...

28 "[Defendant's] characterization of the AME opinion as insubstantial is
29 based on the single exchange on the subject at deposition. However Dr.
30 Noble's initial evaluation recounted the incident when applicant was
31 thrown from a horse, lost consciousness, awoke to the sight of the horse's
32 hoof next to her face as the horse lay on top of her. He described the

³Applicant notes in her Answer that Dr. Noble's November 10, 2011 report was received as Exhibit FF, but the exhibit is incorrectly described in the Minutes of Hearing as an April 5, 2012 report. In addition, applicant advises that the transcript of Dr. Noble's July 16, 2012 deposition that was received at hearing as Exhibit CC is also mislabeled in the Minutes of Hearing as an October 17, 2012 report.

1 resultant labyrinthitis/vestibular dysfunction, post traumatic head
2 syndrome, cervical and lumbar injuries and occipital neuralgia. He took a
3 history of spinal fusion surgery, gastric bypass caused by weight gain as a
4 result of medications, and psychological symptoms along with difficulties
5 with activities of daily living with twelve daily medications. He issued six
6 diagnostic impressions including cognitive disorder due to medication and
7 possibly due to brain injury. He noted that applicant cannot drive a vehicle
8 and requires home health aide since she cannot use a stove or sharp
9 utensils. Turning to NCM services, the doctor stated on initial evaluation
10 of 11/10/2011:

11 **[']Is it reasonable to have a Nurse Case Manager assist**
12 **with coordinating medical needs?:**

13 It would be reasonable currently to have a Nurse Case
14 Manager assist with coordinating Ms. Patterson's medical
15 needs due to the effects of Polypharmacy on her cognitive
16 and psyche functioning. It is noted that she has missed
17 telephonic appointments with Dr. Bergenstal and also she
18 has difficulty when traveling to her appointments in
19 California. However, Ms. Patterson's need for a Nurse Case
20 Manager may change and should be reassessed after she has
21 completed the recommended inpatient detox and pain
22 management programs.['] (WCAB Exhibit FF, p. 18.)

23 "Petitioner did not produce evidence of completion of inpatient detox and
24 pain management programs or of other improvement warranting the
25 discharge of the nurse case manager. In fact, on 06/03/2013 Dr. Noble
26 documented that those protocols were not completed:

27 [']In response to Ms. Graham's question as regards whether
treatment rendered by Dr. Bergenstal between 09/30/10 to
03/03/11 was 'reasonable and necessary,' it was and it
should be certified for payment. As noted, I had determined
that Ms. Patterson continued to be in need of psychological
intervention at the time of my initial evaluation. That Dr.
Bergenstal's Progress Reports may not be as thorough as
Dr. Glassman desires, the fact is that he was rendering
treatment that was medically indicated. I continue to look
forward to reevaluating Ms. Patterson when she has had the
opportunity to complete the inpatient and outpatient
detoxification programs that I previously recommended and
reiterated during my deposition testimony.['] (WCAB
Exhibit DD, p. 3.)

"The burden of proof for the need for the NCM services is adequately met
by the AME, whose opinion on the issue is much more extensive than
petitioner describes it. Moreover, there is nothing in evidence contrary to
that opinion.

"Turning to the propriety of ruling on NCM services at expedited hearing,
the delivery of 'treatment' is as necessary to the process of curing or
relieving from the effects of the industrial injury as is the medical service
that is required. Transportation/mileage issues are determined at expedited

1 hearing though no doctor drives the patient to the point of care. A nurse
2 case manager, as a medical professional, is actually providing 'treatment.'
3 Even if not so regarded, the need for an NCM for the purpose of carrying
4 out medical care is part of the delivery of 'treatment' as a workers'
5 compensation benefit.

6 "Last, there is no reasonable requirement for a Request For Authorization
7 form for treatment that is in progress. Had the NCM services been stopped
8 for a legitimate reason based on a medical opinion, and if a new need for
9 the NCM developed, an RFA might be appropriate. Such is not the case
10 here. The nurse case manager was necessary when provided and remained
11 necessary throughout the course of treatment to the present time.

12 "Applicant was not required to secure an RFA from a PTP to be sent to UR
13 [utilization review] and then IMR in order to obtain the NCM services
14 already found necessary by the AME." (Emphasis in original.)

15 DISCUSSION

16 **1. The Provision Of A Nurse Case Manager Is A Form Of Medical Treatment Under Labor 17 Code Section 4600.**

18 Defendant recognized the need for a nurse case manager as reasonable medical treatment when it
19 authorized the provision of those services, as acknowledged in the declaration filed in opposition to
20 applicant's April 2012 DOR. The use of those services in this case is consistent with the definition of
21 "Case Management" adopted by the nurse case manager accrediting organization American Case
22 Management Association, as follows:

23 "Case Management in Hospital/Health Care Systems is a collaborative
24 practice model including patients, nurses, social workers, physicians, other
25 practitioners, caregivers and the community. The Case Management
26 process encompasses communication and facilitates care along a
27 continuum through effective resource coordination. The goals of Case
28 Management include the achievement of optimal health, access to care and
29 appropriate utilization of resources, balanced with the patient's right to self
30 determination."⁴

31 A nurse case manager has a singular role in a workers' compensation case. "He or she must
32 interact and coordinate with the injured employee, the employee's physician(s), the claims adjuster(s),
33

34 ⁴ Judicial notice is taken of this definition pursuant to Evidence Code section 452(h) as set forth on the following ACMA web
35 site as of June 23, 2014: <http://www.acmaweb.org/section.aspx?sID=4>

1 the attorney(s), and/or others, who are all parties to the employee’s need for medical care.” (*Lamin v.*
2 *City of Los Angeles* (2004) 69 Cal.Comp.Cases 102 (Appeals Board panel decision) (*Lamin*).)

3 We agree with the WCJ that the provision of nurse case manager services is a form of medical
4 treatment described in Labor Code section 4600(a)⁵, which provides as follows:

5 “Medical, surgical, chiropractic, acupuncture, and hospital treatment,
6 including nursing, medicines, medical and surgical supplies, crutches, and
7 apparatuses, including orthotic and prosthetic devices and services, that is
8 reasonably required to cure or relieve the injured worker from the effects
9 of his or her injury shall be provided by the employer. In the case of his or
her neglect or refusal reasonably to do so, the employer is liable for the
reasonable expense incurred by or on behalf of the employee in providing
treatment.” (Emphasis added.)

10 The coverage of section 4600 extends to any medically related services that are reasonably
11 required to cure or relieve the effects of the industrial injury, even if those services are not specifically
12 enumerated in that section. (*Smyers v. Workers’ Comp. Appeals Bd.* (1984) 157 Cal.App.3d 36, 41 [49
13 Cal.Comp.Cases 454].) The description of required medical treatment in section 4600 expressly includes
14 “nursing” services, which encompasses the services of a nurse case manager, as well as practical nursing
15 services performed by unlicensed persons. (*Lamin, supra*; *Castorena v. Liberty Mutual Insurance Co.*
16 (2004) 32 Cal. Workers’ Comp. Rptr. 74 (Appeals Board panel decision); *Henson v. Workmen’s Comp.*
17 *Appeals Bd.* (1972) 27 Cal.App.3d 452, 458 [37 Cal.Comp.Cases 564]; *Pacific Electric Ry. Co. v.*
18 *Industrial Acc. Com. (Patterson)* (1950) 96 Cal.App.2d 651 [15 Cal.Comp.Cases 88]; *Cal. Casualty*
19 *Indemnity Exchange v. Industrial Acc. Com. (Elliston)* (1948) 84 Cal.App.2d 417 [13 Cal.Comp.Cases
20 50]; *Martinez v. Workers’ Comp. Appeals Bd.* (1999) 64 Cal.Comp.Cases 1176 (writ den.).)

21 In this case, defendant acknowledged that the services of a nurse case manager are reasonably
22 required to cure or relieve applicant from the effects of her injury as described in section 4600 when it
23 authorized the provision of those services.

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27 ⁵ Further statutory references are to the Labor Code.

1 **2. An Employer May Not Unilaterally Cease To Provide Approved Nurse Case Manager**
2 **Services When There Is No Evidence Of A Change In The Employee’s Circumstances Or**
3 **Condition Showing That The Services Are No Longer Reasonably Required To Cure Or Relieve**
4 **The Injured Worker From The Effects Of The Industrial Injury.**

5 Defendant admits that it authorized the nurse case manager services as part of applicant’s medical
6 treatment, but now contends that the provision of such services is not supported by substantial medical
7 evidence. However, defendant did not initially claim that it stopped providing nurse case manager
8 services because they are no longer reasonably required to cure or relieve applicant from the effects of
9 her industrial injury. Instead, defendant’s attorney wrote in the objection to applicant’s April 2012 DOR
10 that, *“things frequently change so far as nurse case managers participation is concerned, again,*
11 *primarily to the fact that applicant is difficult to deal with.”* (Emphasis added.)

12 Unilaterally terminating medical treatment that was earlier authorized as reasonably required to
13 cure or relieve the injured worker from the effects of the industrial injury is contrary to section 4600(a)
14 unless supported by substantial medical evidence. Characterizing a patient as “difficult to deal with” is
15 not a substitute for such medical evidence. A patient may be “difficult” to deal with, particularly because
16 of the effects of an injury, but that is not relevant to the question of whether the medical treatment at
17 issue is reasonably required to cure or relieve the effects of the industrial injury. Allowing a defendant to
18 unilaterally cease reasonable medical treatment based only upon its subjective perception that the injured
19 worker is a “difficult” person is inconsistent with the use of objective, evidence based standards to
20 evaluate whether medical treatment is reasonably required to cure or relieve the effects of the industrial
21 injury, as now provided in the workers’ compensation statutes. (See Lab. Code, §§ 4600(b), 5307.27.)

22 Defendant also misconstrues applicant’s burden in arguing that she was obligated to prove a need
23 for nurse case manager services at the January 28, 2014 expedited hearing. To the contrary, the first
24 issue identified in the Minutes of Hearing was “Whether there was good cause to discontinue the services
25 of a nurse case manager by defendant.” This was properly identified as the first issue that needed to be
26 addressed because when defendant initially provided nurse case manager services it effectively
27 acknowledged that the services were reasonably required to cure or relieve the effects of the industrial
injury in this case. Thus, the second issue listed in the Minutes of Hearing was not reached, and

1 applicant had no obligation to prove that nurse case manager services should continue. Instead, it was
2 defendant's obligation to prove that nurse case manager services are no longer reasonably required. As
3 discussed below, defendant was required to meet that burden through the presentation of substantial
4 medical evidence. However, defendant did not do that at the January 28, 2014 expedited hearing.

5 **3. Use Of An Expedited Hearing To Address The Medical Treatment Issue In This Case Is**
6 **Expressly Authorized By Labor Code Section 5502(b)(1).**

7 Section 5502(b)(1) provides as follows:

8 "The administrative director shall establish a priority calendar for issues
9 requiring an expedited hearing and decision. A hearing shall be held and a
10 determination as to the rights of the parties shall be made and filed within
11 30 days after the declaration of readiness to proceed is filed if the issues in
12 dispute are any of the following...

13 (1) *The employee's entitlement to medical treatment pursuant to Section*
14 *4600, except for treatment issues determined pursuant to Sections 4610 and*
15 *4610.5."* (Emphasis added.)⁶

16 As discussed above, the provision of nurse case manager services may be part of an employer's
17 medical treatment obligation under section 4600. Thus, it was proper for the WCJ to address defendant's
18 unilateral termination of nurse case manager services at the January 28, 2014 expedited hearing.

19 **4. It Is Not Necessary For An Injured Worker To Obtain A Request For Authorization To**
20 **Challenge The Unilateral Termination Of The Services Of A Nurse Case Manager.**

21 Defendant acknowledged the reasonableness and necessity of nurse case manager service when it
22 first authorized them, and applicant does not have the burden of proving their ongoing reasonableness
23 and necessity. Rather, it is defendant's burden to show that the continued provision of the services is no
24 longer reasonably required because of a change in applicant's condition or circumstances. Defendant
25 cannot shift its burden onto applicant by requiring a new Request for Authorization and starting the
26 process over again.

27 Moreover, all the evidence received by the WCJ at the January 28, 2014 expedited hearing
supports the continued provision of nurse case manager services.

⁶ Sections 4610 and 4610.5 do not apply to this dispute.

1 The portion of WCJ's Report quoted above includes an excerpt from the November 10, 2011
2 report (Exhibit FF) of Dr. Noble, who described the provision of nurse case manager services as
3 reasonable, "due to the effects of Polypharmacy on [applicant's] cognitive and psyche functioning." Dr.
4 Noble further wrote that the need for nurse case manager services "may change" and should be
5 "reassessed after she has completed the recommended inpatient detox and pain management programs."
6 However, there is no evidence in the record that applicant ever completed the programs recommended by
7 Dr. Noble, and there is no evidence of any medical reassessment by defendant of the need for nurse case
8 manager services as described by Dr. Noble. As recently as his July 16, 2012 deposition (Exhibit CC),
9 Dr. Noble was asked if he agreed that the parties "should try to get a nurse case manager?" He answered
10 "Yes." (29:3-4.)

11 By contrast, defendant presented no evidence showing that there has been a change in applicant's
12 condition or circumstances that contravenes its earlier determination to authorize nurse case manager
13 services. Nor did defendant present any medical opinion or evidence showing that the continued use of a
14 nurse case manager is not reasonable medical treatment in this case.

15 Applicant has no obligation to continually show that the use of a nurse case manager is
16 reasonable medical treatment. Instead, once defendant authorized nurse case manager services as
17 reasonable medical treatment, it became obligated to continue to provide those services until they are no
18 longer reasonably required under section 4600 to cure or relieve the effects of the industrial injury. Like
19 all medical treatment decisions, that determination must be based upon substantial medical evidence.
20 (*Lamb v. Workers' Comp. Appeals Bd.* (1974) 11 Cal.3d 274 [39 Cal.Comp.Cases 310]; *LeVesque v.*
21 *Workmens' Comp. Appeals Bd.* (1970) 1 Cal.3d 627 [35 Cal.Comp.Cases 16].)

22 Defendant failed to meet its burden of showing by substantial evidence that applicant's condition
23 and circumstances changed in a way that made the further provision of nurse case manager services no
24 longer reasonable medical treatment in this case.

25 Accordingly, we affirm the WCJ's March 6, 2014 Findings And Order as the Decision After
26 Reconsideration of the Workers' Compensation Appeals Board.

27 / / /

1 For the foregoing reasons,

2 **IT IS ORDERED**, as the Decision After Reconsideration of the Workers' Compensation
3 Appeals Board, that the March 6, 2014 Findings And Order of the workers' compensation administrative
4 law judge is **AFFIRMED**.

5 **WORKERS' COMPENSATION APPEALS BOARD**

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7 /s/ Katherine A. Zalewski

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9 **I CONCUR,**

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11
12 /s/ Marguerite Sweeney

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14 /s/ Frank M. Brass

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

18 7/24/2014

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

21 **JENNIFER PATTERSON**
22 **JOSEPH GRAHAM, ESQ.**
23 **GUILFORD, SARVAS & CARBONARA**

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27 **JFS:jmp:abs**