WORKERS' COMPENSATION APPEALS BOARD
STATE OF CALIFORNIA

ROBERTA AGUILAR, ***Applicant***

vs.

ALHAMBRA HOSPITAL;
THE INSURANCE COMPANY OF THE STATE OF PENNSYLVANIA, ***Defendants***

Adjudication Number: ADJ12729922
Pomona District Office

OPINION AND ORDER DENYING PETITION FOR RECONSIDERATION

Defendant seeks reconsideration of the Findings and Order and Opinion on Decision (F&O) issued by the workers' compensation administrative law judge (WCJ) on July 2, 2021. By the F&O, the WCJ found that applicant's treatment should not be transferred into defendant's medical provider network (MPN) and ordered that applicant may continue treating outside the MPN at defendant's expense.

Defendant contends that applicant became obligated to treat in the MPN when the claim was accepted and notice of the MPN was sent to her.

We did not receive an answer from applicant. The WCJ issued a Report and Recommendation on Petition for Reconsideration (Report) recommending that we deny reconsideration.

We have considered the allegations of defendant's Petition for Reconsideration and the contents of the WCJ's Report with respect thereto. Based on our review of the record and for the reasons discussed below, we will deny reconsideration.

FACTUAL BACKGROUND

Applicant claims injury to her bilateral wrists, elbows, psyche, sleep, weight gain, hypertension and sexual dysfunction through December 15, 2017 while employed as a collection specialist by Alhambra Hospital.

Applicant filed an Application for Adjudication of Claim on November 12, 2019. On

November 21, 2019, defendant sent applicant a letter acknowledging her claim and advising that it was "currently under review." (Defendant's Exhibit A, Letter with MPN notices, November 21, 2019, p. 1.) Notices regarding defendant's MPN were enclosed with the letter. (*Id.* at pp. 4, 23-33.)

On November 22, 2019, defendant sent applicant a Notice of Denial of Claim for Workers' Compensation Benefits stating that her claim is being denied "because of the lack of factual medical evidence to support an alleged injury occurred while in the course and scope of employment." (Joint Exhibit No. 1, Denial letter, November 22, 2019, p. 1.) Dr. Khalid Ahmed began providing treatment to applicant as her primary treating physician (PTP) in January 2020. (Applicant's Exhibits Nos. 1-8, Reports by Dr. Khalid Ahmed.) The parties do not appear to dispute that Dr. Ahmed is not a member of defendant's MPN.

James Fait, M.D. evaluated applicant as the orthopedic panel qualified medical evaluator (QME) on June 24, 2020. (Joint Exhibit No. 3, QME report by Dr. Fait, June 24, 2020.) Dr. Fait opined that applicant sustained a cumulative trauma injury to both elbows, wrists and hands. (*Id.* at pp. 8-9.)

On August 27, 2020, the claims adjuster sent a letter to applicant advising that her claim was being accepted for the bilateral wrists and elbows only. (Joint Exhibit No. 2, Acceptance letter, August 27, 2020, p. 1.) The letter also stated in pertinent part:

> You are entitled to all medical treatment necessary to cure or relieve the effects of your injury or illness. However, all medical treatment must be approved by Sedgwick on behalf of your employer prior to your first treatment. After 1/1/05 your employer may select to participate in a medical provider network (MPN). If you need to change your physician you will need to select one within the network. If your employer does not participate in a MPN at the time of your injury, medical treatment is controlled for the first 30 days by your employer. If you are still in need of treatment after 30 days, you have the right to select your own physician, but you must notify us of the physician's name and address. If for any reason you wish to change physicians, please contact us so this may be discussed and arrangements made. Please know Sedgwick requires preauthorization of all non-emergency medical treatment. For injuries occurring on or after 1/1/04, there is a cap of 24 visits of chiropractic, physical therapy and occupational therapy, with some exceptions.
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> (*Id.*)

The letter does not indicate any enclosures with it and was copied only on defendant's attorney

and applicant's attorney.

On May 25, 2021, defendant's attorney sent a letter to applicant's attorney stating in relevant part:

> As the applicant's claim has been accepted the applicant should be treating within my client's Medical Provider Network.
>
> I am in receipt of a medical report from Dr. Khalid B. Ahmed dated April 28, 2021. Defendant hereby respectfully object to Dr. Ahmed's medical reporting as Dr. Ahmed is not a provider within our Medical Provider Network.
>
> Thus, Defendant demand that the applicant be transferred into our Medical Provider Network as the applicant's claim has been accepted. Our Medical Provider Network can be accessed at the following:
>
> http://sedgwickproviders.com
>
> Select: California
> Select: Sedgwick Extended MPN
>
> (Defendant's Exhibit B, Letter, May 25, 2021, pp. 1-2.)

Only the claims adjuster was copied on this letter. (*Id.* at p. 2.) Defendant's attorney sent a second letter to applicant's attorney on June 8, 2021 reiterating the request that applicant transfer treatment to within the MPN, which was also only copied on the claims adjuster. (Defendant's Exhibit C, Letter, June 8, 2021.)

The matter proceeded to trial on June 24, 2021 on the issue of treatment in the MPN including whether applicant is entitled to treat outside the MPN at defendant's expense. (Minutes of Hearing and Summary of Evidence, June 24, 2021, p. 2.)

The WCJ issued the resulting F&O as outlined above.

DISCUSSION

Labor Code[1] section 4600(a) provides that:

> Medical, surgical, chiropractic, acupuncture, and hospital treatment, including nursing, medicines, medical and surgical supplies, crutches, and apparatuses, including orthotic and prosthetic devices and services, that is reasonably required to cure or relieve the injured worker from the effects of the worker's injury shall be provided by the employer. In the case of the employer's neglect

[1] All further statutory references are to the Labor Code unless otherwise stated.

> 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.
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> (Lab. Code, § 4600(a).)

If an employer has established an MPN, injured workers are generally limited to treating with a physician from within the employer's MPN. (Lab. Code, §§ 4600(c), 4616 et seq.)

Administrative Director (AD) Rule 9767.9 provides for the transfer of ongoing care into an MPN as follows in relevant part:

> **(a) If the injured covered employee's injury or illness does not meet the conditions set forth in (e)(1) through (e)(4), the injured covered employee may be transferred into the MPN for medical treatment, unless otherwise authorized by the employer or insurer.**
> …
> (e) The employer or insurer shall authorize the completion of treatment for injured covered employees who are being treated outside of the MPN for an occupational injury or illness that occurred prior to the coverage of the MPN and whose treating physician is not a provider within the MPN, including injured covered employees who pre-designated a physician and do not fall within the Labor Code section 4600(d), for the following conditions:
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> > (1) An acute condition. For purposes of this subdivision, an acute condition is a medical condition that involves a sudden onset of symptoms due to an illness, injury, or other medical problem that requires prompt medical attention and that has a duration of less than 90 days. Completion of treatment shall be provided for the duration of the acute condition.
> >
> > (2) A serious chronic condition. For purposes of this subdivision, a serious chronic condition is a medical condition due to a disease, illness, catastrophic injury, or other medical problem or medical disorder that is serious in nature and that persists without full cure or worsens over 90 days and requires ongoing treatment to maintain remission or prevent deterioration. Completion of treatment shall be authorized for a period of time necessary, up to one year: (A) to complete a course of treatment approved by the employer or insurer; and (B) to arrange for transfer to another provider within the MPN, as determined by the insurer, employer, or entity that provides physician network services. The one year period for completion of treatment starts from the date of the injured covered employee's receipt of the notification, as required by subdivision (f), of the determination that the employee has a serious chronic condition.
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> > (3) A terminal illness. For purposes of this subdivision, a terminal illness is an incurable or irreversible condition that has a high probability of

causing death within one year or less. Completion of treatment shall be provided for the duration of a terminal illness.

(4) Performance of a surgery or other procedure that is authorized by the insurer or employer as part of a documented course of treatment and has been recommended and documented by the provider to occur within 180 days from the MPN coverage effective date.

(f) If the employer or insurer decides to transfer the covered employee's medical care to the medical provider network, the employer, insurer, or entity that provides physician network services shall notify the covered employee of the determination regarding the completion of treatment and the decision to transfer medical care into the medical provider network. The notification shall be sent to the covered employee's address and a copy of the letter shall be sent to the covered employee's primary treating physician. The notification shall be written in English and Spanish and use layperson's terms to the maximum extent possible.

(g) If the injured covered employee disputes the medical determination under this section, the injured covered employee shall request a report from the covered employee's primary treating physician that addresses whether the covered employee falls within any of the conditions set forth in subdivisions (e)(1-4). The treating physician shall provide the report to the covered employee within twenty calendar days of the request. If the treating physician fails to issue the report, then the determination made by the employer or insurer referred to in (f) shall apply.

(h) If the employer or insurer or injured covered employee objects to the medical determination by the treating physician, the dispute regarding the medical determination made by the treating physician concerning the transfer of care shall be resolved pursuant to Labor Code section 4062.

(i) If the treating physician agrees with the employer's or insurer's determination that the injured covered employee's medical condition does not meet the conditions set forth in subdivisions (e)(1) through (e)(4), the transfer of care shall go forward during the dispute resolution process.

(j) If the treating physician does not agree with the employer's or insurer's determination that the injured covered employee's medical condition does not meet the conditions set forth in subdivisions (e)(1) through (e)(4), the transfer of care shall not go forward until the dispute is resolved.

(Cal. Code Regs., tit. 8, § 9767.9(a), (e)-(j), emphasis added.)

AD Rule 9767.12 provides for notification of the MPN as follows:

> (a) When an injury is reported or an employer has knowledge of an injury that is subject to an MPN or **when an employee with an existing injury is required to transfer treatment to an MPN, a complete written MPN employee notification with the information specified in paragraph (2) of this subdivision, shall be provided to the covered employee by the employer or the insurer for the employer.** This MPN notification shall be provided to employees in English and also in Spanish if the employee primarily speaks Spanish.
>
> (1) A complete MPN notification with the information specified in paragraph (2) of this subdivision may be sent electronically in lieu of by mail, if the covered employee has regular electronic access to email at work to receive this notice at the time of injury or when the employee is being transferred into the MPN. If the employee cannot receive this notice electronically at work, then the employer shall ensure this information is provided to the employee in writing at the time of injury or when the employee is being transferred into the MPN.
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> (Cal. Code Regs., tit. 8, § 9767.12(a)(1), emphasis added.)

AD Rule 9767.12(a)(2) outlines the information required to be provided in a complete MPN notification. (Cal. Code Regs., tit. 8, § 9767.12(a)(2).)

In *Knight v. United Parcel Service* (2006) 71 Cal.Comp.Cases 1423 (Appeals Board en banc), the Appeals Board held that "an employer or insurer's failure to provide required notice to an employee of rights under the MPN that results in a neglect or refusal to provide reasonable medical treatment renders the employer or insurer liable for the reasonable medical treatment self-procured by the employee." (*Id.* at p. 1434.) The *Knight* decision further held that since the burden of proof rests upon the party with the affirmative of the issue, the employer holds the burden of proof to show that the injured worker was provided with notice of their rights under an MPN. (*Id.* at p. 1435; see also Lab. Code, § 5705 [the burden of proof rests upon the party with the affirmative of the issue].)

Shortly after *Knight*, the Appeals Board issued another en banc decision holding that "a defendant may satisfy its obligation under Labor Code section 4600 to provide reasonable medical treatment by transferring an injured worker into an MPN in conformity with applicable statutes and regulations regardless of the date of injury or the date of an award of future medical treatment." (*Babbitt v. Ow Jing* (2007) 72 Cal.Comp.Cases 70, 71 (Appeals Board en banc).)

In this matter, defendant initially denied applicant's claim. Applicant had no obligation to treat within the MPN while defendant would not provide treatment per its denial. (See Lab. Code, § 5402(c) [the employer shall provide all treatment for up to $10,000 until the date that liability

for the claim is rejected].) However, once applicant's claim was found to be compensable for certain body parts, defendant was obligated to provide treatment to applicant per section 4600. As outlined in *Babbitt* and per the AD's Rules, defendant was permitted to transfer applicant's treatment into the MPN after the claim was found to be compensable.

Yet, defendant must transfer applicant's care into the MPN in conformity with the applicable statutes and regulations. (*Babbitt*, *supra*, 72 Cal.Comp.Cases at p. 71.) This necessitates providing applicant with the requisite MPN notice. (See Cal. Code Regs., tit. 8, § 9767.12(a) and (a)(2); see also Lab. Code, § 4616.3(b) [the employer is required to provide notice of the MPN to an employee, but a failure to do so only permits treatment outside the MPN if it results in a denial of care].) Additionally, defendant must comply with the process outlined in AD Rule 9767.9(f) for transferring care. The transfer of care provisions in Rule 9767.9(f) require defendant to make a determination regarding whether applicant's condition satisfies—or fails to satisfy—one of the four conditions set forth in subsections (e)(1)-(4). This section requires that defendant determine whether applicant has a condition which would allow her to complete treatment with her PTP. Furthermore, the regulation requires that defendant notify applicant of its determination regarding completion of care. This notification must also be sent to applicant's PTP, be in English and Spanish, and use layperson's terms to the maximum extent possible.

The evidence reflects that defendant has not engaged in the required process to transfer applicant's care into the MPN. Defendant provided applicant with notices regarding its MPN with its initial November 21, 2019 acknowledgement of her claim. Defendant subsequently advised applicant of its acceptance of her claim in its August 27, 2020 letter. This letter refers to the process to obtain treatment within an MPN *if an employer has one*, but does not specify if applicant's employer has an MPN. There were no enclosures with this letter and no information regarding defendant's MPN in the letter. Defendant's attorney's two letters in 2021 requested applicant transfer treatment into the MPN and provided the link to select an MPN physician, but these letters are not compliant with the required process to transfer care into the MPN as outlined in the AD's Rules.

Defendant has not met its burden of showing that applicant's treatment must be transferred into the MPN. Therefore, we agree with the WCJ's conclusion that applicant is not required to treat in the MPN and is entitled to treat outside the MPN at defendant's expense. Defendant may in the future attempt to transfer applicant's treatment into the MPN in accordance with the required

process.

In conclusion, we will deny reconsideration.

For the foregoing reasons,

IT IS ORDERED that defendant's Petition for Reconsideration of the Findings and Order and Opinion on Decision issued by the WCJ on July 2, 2021 is **DENIED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ DEIDRA E. LOWE, COMMISSIONER

I CONCUR,

/s/ KATHERINE A. ZALEWSKI, CHAIR

/s/ AMBER INGELS, DEPUTY COMMISSIONER

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

SEPTEMBER 17, 2021

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

LAW OFFICES OF BRADFORD & BARTHEL, LLP
LAW OFFICES OF JOHN HERNANDEZ
ROBERTA AGUILAR

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