WORKERS' COMPENSATION APPEALS BOARD
STATE OF CALIFORNIA

SHOHREH KAZRANI, ***Applicant***

vs.

LOS ANGELES UNIFIED SCHOOL DISTRICT, permissibly self-insured, ***Defendants***

Adjudication Numbers: ADJ12439078, ADJ12439079, ADJ12439081
Van Nuys District Office

OPINION AND DECISION
AFTER RECONSIDERATION

We granted reconsideration in order to further study the factual and legal issues in this case. This is our Opinion and Decision After Reconsideration.

We have considered the allegations of applicant's Petition for Reconsideration, defendant's answer 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, and discussed below, we will affirm the WCJ's decision.

The specific issue of whether defendant improperly precluded applicant from choosing a chiropractor as her primary treating physician (PTP) was not actually raised at trial and therefore, we will not consider it on reconsideration. (See *Cottrell v. Workers' Comp. Appeals Bd*. (1998) 63 Cal.Comp.Cases 760, 761 (writ den.) ["It is improper to seek reconsideration on an issue not presented at the trial level."].) The issues were framed as whether defendant's medical provider network (MPN) violated the access standards, with the second issue contingent on an affirmative finding on the first issue.

Furthermore, to the extent applicant disputes the validity of defendant's contract with its MPN physicians, this is an issue more appropriately presented to the Administrative Director (AD), not the Appeals Board. (See Lab Code, § 4616 [outlining the AD's authority to approve MPNs and investigate complaints, as well as take action against MPNs]; see also Cal. Code Regs., tit. 8, § 9767.1 et seq.)

Therefore, we will affirm the WCJ's decision.

For the foregoing reasons,

IT IS ORDERED as the Decision After Reconsideration of the Workers' Compensation Appeals Board that the Findings of Fact issued by the WCJ on October 7, 2020 is **AFFIRMED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE A. ZALEWSKI, CHAIR

I CONCUR,

/s/ DEIDRA E. LOWE, COMMISSIONER

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

MAY 13, 2021

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

LAW OFFICE OF ARMAN KHACHIKYAN
LAW OFFICES OF VANDERFORD & RUIZ
SHOHREH KAZRANI

AI/*pc*

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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REPORT AND RECOMMENDATION ON PETITION FOR REMOVAL/RECONSIDERATION

I. INTRODUCTION

The issue at bar involves Medical Provider Network (MPN) access standards, and the minimum number of physicians of a particular specialty available to act as the primary treating physician (PTP). In an October 7, 2020 Findings of Fact, the undersigned found that so long as the MPN has three physicians of various specialties appropriate to the type of occupation or industry in which the employee is engaged, the access standards set forth in Title 8, Cal. Code Regs. § 9767.5 are satisfied. Applicant is aggrieved by this finding, and seeks removal/reconsideration. The matter is not on calendar.

II. FACTS

The jurisdictional facts are as follows. In ADJ12439079 (MF), Shohreh Kazrani, while employed on July 20, 2018, as a special education assistant, at Los Angeles, California, by the Los Angeles Unified School District, sustained injury arising out of and in the course of employment to her cervical spine, and claims to have sustained injury arising out of and in the course of employment in the form of headaches and to the bilateral upper extremities, stomach, and teeth, with body parts deferred.

In ADJ12439081, applicant while employed on June 3, 2019, as a special education assistant, at Los Angeles, California, by the Los Angeles Unified School District, sustained injury arising out of and in the course of employment to the left knee, and claims to have sustained injury arising out of and in the course of employment to her upper and lower extremities, stomach, and teeth, with body parts deferred.

In ADJ12439078, applicant while employed during the cumulative trauma period October 1, 1987 through June 10, 2019, as a special education assistant, at Los Angeles, California, by the Los Angeles Unified School District, sustained injury arising out of and in the course of employment to the cervical spine and lumbar spine, and claims to have sustained injury arising out of and in the course of employment in the form of headaches, thoracic spine, bilateral upper and lower extremities, stomach, teeth, and ears, with body parts deferred.

This dispute arises out of applicant's desire to appoint a chiropractor as her primary treating physician in these three admitted injury cases. The defendant has a Medical Provider Network which disallows chiropractors from acting as primary treating physicians, but not from treatment roles. Applicant asserts that because the defendant's MPN does not have at least three chiropractors available to act as primary treating physicians, the access standards of Title 8, Cal. Code

Regs. § 9767.5(a) have not been met, and applicant is free to self-procure her medical treatment outside the MPN at the employer's expense. The defendant responds that they have more than three physicians in various specialties, including orthopedics, available to act as primary treating physicians within the minimum access standard.

The cases were heard at trial on September 2, 2020. The issues framed for decision were:

1. Whether the access standards set forth in Title 8, California Code of Regulations Section 9767.5 subdivision (a) require three physicians in each and every specialty to be available as primary treating physician based on the type of occupation or industry in which the employee is engaged.
2. If section 9767.5 requires three physicians of each specialty, whether the defendant's medical provider network violates the applicable access standards due to defendant's prohibition of chiropractors from acting as primary treating physicians.

No witness testimony was adduced, and the matter was submitted on the documentary record.

Findings of Fact issued October 7, 2020. The opinion noted divergent panel decisions on this issue, but cited to the recent panel decision in *Elshami v. C&A Restaurants*, 2019 Cal. Wrk. Comp. P.D. LEXIS 390, quoting *Puente v. Napa Valley Unified School District* (ADJ8911659) (2017 Cal. Wrk. Comp. P.D. LEXIS 100), which held "as long as the MPN has at least three primary treating physicians of a specialty appropriate to treat applicant's injury within the 15 mile/30 minute access standard who are available to undertake the role of primary treating physician, the MPN will have satisfied it obligation to provide medical treatment."

Finding this reasoning to be persuasive, the court found that the access standards of § 9767.5 do not require the availability of three PTPs in each and every specialty that might reasonably be appropriate to treat common injuries. Rather, if there are three physicians available to act as the PTP in specialties appropriate to the injured worker's industry or profession, irrespective of their individual specialties, the access standards are met.

Having determined that the access standards did not require the MPN to have three physicians of each and every possible appropriate specialty available to act as Primary Treating Physicians, the issue of whether the lack of chiropractors to act as PTPs violated access standards was deemed moot.

Applicant is aggrieved by this determination, and by petition dated October 12, 2020 seeks the grant of Removal or Reconsideration.

III.
DISCUSSION

Applicant argues that because chiropractors are appropriate to treat applicant's injuries, and because defendant's MPN has no chiropractors available to act as primary treating physicians, the access standards of § 9767.5 are not met, and applicant may self-procure her medical treatment outside the MPN at employer expense.

California Labor Code § 4616, subd. (a)(1) provides:

> (1) An insurer, employer, or entity that provides physician network services may establish or modify a medical provider network for the provision of medical treatment to injured employees. The network shall include physicians primarily engaged in the treatment of occupational injuries. The administrative director shall encourage the integration of occupational and nonoccupational providers. The number of physicians in the medical provider network shall be sufficient to enable treatment for injuries or conditions to be provided in a timely manner. The provider network shall include an *adequate* number and type of physicians, as described in Section 3209.3, or other providers, as described in Section 3209.5, to treat common injuries experienced by injured employees based on the type of occupation or industry in which the employee is engaged, and the geographic area where the employees are employed. (*Emphasis added.*)

The corresponding rulemaking relevant to the issue at bar is located at Title 8, Cal. Code Regs. § 9767.5:

§ 9767.5. Access Standards

(a) A MPN must have at least three available physicians of each specialty to treat common injuries experienced by injured employees based on the type of occupation or industry in which the employee is engaged and within the access standards set forth in (1) and (2).

> (1) An MPN must have at least three available primary treating physicians and a hospital for emergency health care services, or if separate from such hospital, a provider of all emergency health care services, within 30 minutes or 15 miles of each covered employee's residence or workplace.
>
> (2) An MPN must have providers of occupational health services and specialists who can treat common injuries experienced by the covered

injured employees within 60 minutes or 30 miles of a covered employee's residence or workplace.

The provisions for MPN access are designed to promote prompt access to appropriate medical treatment for injured workers. Labor Code § 4616(a)(1) specifically requires that there be sufficient members of the MPN to allow for treatment to be provided in a timely manner. Section 4616 further provides that there be an "*adequate* number and type of physicians…to treat common injuries experienced by injured employees based on the type of occupation or industry in which the employee is engaged, and the geographic area where the employees are employed." *(Emphasis added*.)

Administrative Director Rule § 9767.5 provides for at least three physicians of each specialty appropriate to the occupation or industry of the injured worker.

When read together, § 4616(a)(1) and AD Rule § 9767.5 emphasize the need for prompt access to medical treatment following an injury, while providing for additional flexibility in the choice of specialists and in the nature and focus of subsequent medical treatment. The MPN access provisions require that sufficient physicians of an appropriate specialty be readily accessible to treat non-emergent injuries, and that appropriate specialists be available within the MPN generally to treat the common types of injuries associated with the occupation or industry of the injured worker.

However, neither the enabling statute nor the AD rule requires that the MPN have available three of *each and every type* of physician that might be otherwise appropriate to treat. This reading of the rule would require that MPNs providing treatment for industries with common back injuries, for example, maintain three readily available physicians, all ready to act as a primary treating physicians in a workers' compensation claim, in a broad array of specialties, from orthopedic surgery to pain management to physiatry, including orthopedists, osteopaths, chiropractors, occupational health specialists, neurosurgeons and family medicine physicians. The net effect of this argument would be to effectively vitiate most MPNs.

The applicant offer no persuasive argument herein for why having three of each of multiple and overlapping specialties is required in either the statute or the regulation, and the undersigned discerns no such requirement in either § 4616 or in AD Rule § 9767.5.

Moreover, such a reading of the regulation invites abuse and litigation, as parties seeking to self-procure their medical treatment would be incentivized to identify a possible appropriate specialty that is lacking within the local access standards for the MPN, and to litigate whether that specialty is appropriate to a specified injury/occupation.

Labor Code Section 4616 requires only that there be an "adequate" number and type of physicians available to treat injuries common to a particular industry or profession, no more. To the extent that the statute represents a legislative compromise between access to prompt delivery of appropriate medical treatment while maintaining the cost containment, quality and consistency goals underpinning the creation of medical provider networks generally, the applicant's reading of the access requirements would defeat the latter in service of the former.

IV.
RECOMMENDATION

It is respectfully recommended that applicant's petition be denied.

Dated: October 15, 2020
SHILOH ANDREW RASMUSSON
Workers' Compensation Administrative Law Judge