WORKERS' COMPENSATION APPEALS BOARD

STATE OF CALIFORNIA

CRISANTO FRANCISCO, ***Applicant***

vs.

OCEAN BREEZE INTERNATIONAL; STAR INSURANCE, administered by MEADOWBROOK INSURANCE GROUP, ***Defendants***

Adjudication Numbers: ADJ8456534, ADJ8456532
Los Angeles District Office

OPINION AND ORDER DENYING PETITION FOR RECONSIDERATION

We have considered the allegations of the Petition for Reconsideration, the contents of the Report and the Opinion on Decision 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 and Opinion on Decision, which are both adopted and incorporated herein, we will deny reconsideration.

For the foregoing reasons,

IT IS ORDERED that the Petition for Reconsideration is **DENIED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ CRAIG SNELLINGS, COMMISSIONER

I CONCUR,

/s/ MARGUERITE SWEENEY, COMMISSIONER

/s/ KATHERINE A. ZALEWSKI, CHAIR

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

MAY 6, 2022

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

CRISANTO FRANCISCO
LAW OFFICES OF BRADFORD & BARTHEL, LLP
JOYCE ALTMAN INTERPRETERS
INNOVATIVE MEDICAL MANAGEMENT

PAG/ara

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

JOINT REPORT AND RECOMMENDATION ON PETITION FOR RECONSIDERATION

I
INTRODUCTION

Francisco Crisanto Estrada, a 39-year-old farm laborer for Ocean Breeze International, filed Applications for Adjudication alleging that on 7/26/12 and during the period commencing 11/21/07 through 6/30/12, he sustained injury arising out of and occurring in the course of employment to his back and neck plus other body parts. The claims were accepted by the employer as to the neck and back injuries only.

Defendant has filed a timely, verified, Petition for Reconsideration of the Joint Findings and Orders dated 2/10/22 alleging that:

a) That the evidence does not justify the findings of fact;
b) That the findings of fact do not support the order, decision, or award;
c) That the trial judge, by virtue of the award and decision, acted in excess of his powers.

Petitioner contends that the Court erred by not requiring Lien Claimant to prove that Requests for Authorization were made relative to office visits and reports.

II
FACTS

Applicant began treatment with Lien Claimant Specialty Care Clinic as his primary treating physician on 1/23/14 (LC Exhibit 14). During the course of treatment, Applicant was evaluated specifically for his accepted neck and back issues by the Lien Claimant Specialty Care Clinic on 1/23/14, 1/30/14, 3/24/14, 4/24/14, 4/28/14, 5/23/14, 6/5/14, 6/23/14, 7/17/14, 7/21/14, 8/14/14, 8/18/14, 9/15/14, 10/16/14, 10/20/14, 11/13/14, 12/16/14, 1/5/15, 2/19/15, 3/2/15, 3/19/15, and 3/30/15 (LC exhibit 14, 15, 16, 17, 18, 19, 22, and 53). Applicant was seen on other occasions specifically for non-accepted conditions[1]. At all of the aforementioned evaluations, Applicant was provided interpreting services by Lien Claimant Joyce Altman Interpreters (LC 13). During the course of treatment with Specialty Care Clinic, courses of physical therapy and acupuncture were provided to Applicant without authorization or Utilization Review.

The two liens were submitted for decision on 12/14/21. The Court issued a decision on 2/10/22 wherein all of Lien Claimant's charges for physical therapy and acupuncture were disallowed because there was no proof that their corresponding Requests for Authorization had been served. Additionally, all charges pertaining to evaluation and treatment of body parts or conditions other than the accepted cervical and lumbar spine were disallowed as well. The Court only allowed the charges for medical evaluations and corresponding reports and interpreting services relating only to the cervical and lumbar spine. Defendant and Lien Claimant Specialty Care Clinic were ordered

[1] The medical reports from Specialty Care Clinic reveal that visits for the accepted body parts were conducted separately than the visits for the denied body parts.

to develop the record as to the reasonable value of Lien Claimant's allowed services. Defendant was ordered to pay Lien Claimant Joyce Altman Interpreters the sum equal to $1,980.00 in accordance with Title VIII CCR section 9795.3(b)(2).

III
DISCUSSION

WHETHER THE PRIMARY TREATING PHYSICIAN IS REQUIRED TO SUBMIT A REQUEST FOR AUTHORIZATION FOR EVALUATIONS AND REPORTS

Title VIII CCR section 9792.6(q) defines a request for authorization as a "written confirmation of of an oral request for a specific course of proposed medical treatment pursuant to Labor Code section 4610(h) or a written request for a specific course of proposed medical treatment." Typical examples of a specific course of medical treatment include but are not limited to things like physical therapy, acupuncture, diagnostic testing, chiropractic therapy, and surgical procedures. The mechanism for a physician to determine and request the need for such courses of medical treatment is the physical exam and associated report (and RFA form). Without the exam and report, there is no request for a course of medical treatment.

In this case, the Court disallowed all of the charges related to any proposed course of medical treatment, but allowed the charges for the examinations, reports, and corresponding interpreting services pertaining to the ongoing treatment of the accepted spinal injuries in this case. The allowed charges did not pertain to any specific course of medical treatment. There is no requirement for the evaluating physician to request authorization to examine his or her own patient. Such a requirement would place an undue burden on injured workers as well as the Utilization Review system.

RECOMMENDATION

For the foregoing reasons, the undersigned WCALJ recommends that the Petition for Reconsideration be **DENIED**.

DATE: 3/17/22

Jeffrey Morgan
WORKERS' COMPENSATION
ADMINISTRATIVE LAW JUDGE

JOINT OPINION ON DECISION

MEDICAL PROVIDER NETWORK

Defendant did not meet its burden to prove the existence of a valid Medical Provider Network. No documentation was provided in that regard and Defendant did not request that the Court take judicial notice of the DWC Medical Provider Network listing website.

BODY PARTS

Based on the stipulation of the parties, it is found that Applicant sustained injury to his neck and low back while working for the employer on 8/5/10 and during the period commencing 11/21/07 through 6/30/12. Based on the medical reports of Dr. Sanders dated 6/18/14 and 2/15/16, Applicant only sustained injuries to his neck and low back.

REQUESTS FOR AUTHORIZATION

A number of Requests For Authorization (RFA) for various courses of medical treatment were submitted into evidence. However, in order for any of these requests to have a legal effect such that the Defendant would be triggered to either authorize the treatment or place the treatment request through Utilization Review, the RFA must actually be served on Defendant. Service may be done through the mail, email, or Fax. Whatever method is used, the burden is on Lien Claimant to prove such service was made. If Lien Claimant fails to meet said burden, Defendant has no liability for the course of treatment requested.

Here, Lien Claimant provided no proof that any of the RFAs were served on Defendant in any manner. As such, Defendant has no liability for any services provided by Lien Claimant outside of any properly documented exams and reports dealing with medical treatment for the neck and low back.

This determination renders the issue of the 24 visit cap as moot.

SPECIALTY CARE CLINIC: NECESSITY OF SERVICES

The only medical treatment services provided by Lien Claimant which were reasonably required to cure or relieve from the effects of the industrial injury are those exams and reports which pertained to treatment of the cervical and lumbar spine. Applicant was seen for different orthopedic problems on different dates by this provider, and the reports specify the problem being evaluated. Thus, Lien Claimant is entitled to reimbursement for the exams and reports, pertaining to the cervical and lumbar spine, which are documented in evidence. The following dates of service (Exam and report only) are hereby allowed: 1/23/14, 1/30/14, 3/24/14, 4/24/14, 4/28/14, 5/23/14, 6/5/14, 6/23/14, 7/17/14, 7/21/14, 8/14/14, 8/18/14, 9/15/14, 10/16/14, 10/20/14, 11/13/14, 12/16/14, 1/5/15, 2/19/15, 3/2/15, 3/19/15, and 3/30/15.

SPECIALTY CARE CLINIC: VALUE

Defendant offered a bill review of Lien Claimant's charges, but said review is incomplete since it does not included Lien Claimant's first date of service which took place on 1/23/14. Since Lien Claimant didn't offer a bill review, there is no substantial evidence regarding this issue. As a result, the parties are ordered to develop the record through utilization of an independent bill reviewer.

This matter will be set for a conference for purposes of an agreement or judicial appointment.

SPECIALTY CARE CLINIC: PENALTY AND INTEREST

Lien Claimant did not submit its actual bills into evidence. However, Defendant's bill review establishes that it had received Lien Claimant's bills as of 3/23/17. Lien Claimant's itemization reflects that some payments have been made. As such, the issue of penalty and interest is deferred pending final determination of the value of Lien Claimant's charges.

JOYCE ALTMAN INTERPETERS: VERIFICATION OF SERVICES PROVIDED

Based on the affidavits of interpreting, it is found that Lien Claimant actually provided interpreting services on all of the dates claimed for reimbursement.

JOYCE ALTMAN INTERPETERS: QUALIFICATION OF INTERPRETERS

Based on the affidavits of interpreting, it is found that Lien Claimant utilized certified interpreters, and thus said interpreters are deemed qualified.

NECESSITY OF UNDERLYING SERVICES

This issue was addressed above in relation to the lien of Specialty Care Clinic. Since the necessity of the interpreting services are derivative of the services provided by Specialty Care Clinic, it is found that Lien Claimant is entitled to be reimbursed for interpreting services provided on 1/23/14, 1/30/14, 3/24/14, 4/24/14, 4/28/14, 5/23/14, 6/5/14, 6/23/14, 7/17/14, 7/21/14, 8/14/14, 8/18/14, 9/15/14, 10/16/14, 10/20/14, 11/13/14, 12/16/14, 1/5/15, 2/19/15, 3/2/15, 3/19/15, and 3/30/15.

JOYCE ALTMAN INTERPETERS: VALUE

Lien Claimant has not presented substantial evidence to support a market rate. The lists provided include only payments made in full. As a result, Lien Claimant is awarded payment in accordance with Title VIII CCR section 9795.3(b)(2) for a total of $1,980.00, less credit to Defendant for amounts previously paid on account thereof.

JOYCE ALTMAN INTERPETERS: PENALTY AND INTEREST

The Labor Code does not provide for penalty and interest for interpreters at medical treatment appointments.

ADVERSE INFERENCE

At the outset, it is noted that there is no addendum attached to the discovery order. Therefore, technically there is no proof that Defendant was ordered to serve anything. That being said, every medical report which could support Lien Claimant's charges was admitted into evidence. Thus, there is no document to which an adverse inference could attach.

DATE: 2/10/22

Jeffrey Morgan
WORKERS' COMPENSATION
ADMINISTRATIVE LAW JUDGE