

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

**DANIEL SERVIN, *Applicant***

**vs.**

**CERRITOS LEXUS;  
ACE AMERICAN INSURANCE, *Defendants***

**Adjudication Number: ADJ11423609  
Los Angeles District Office**

**OPINION AND ORDER  
DENYING PETITION FOR  
RECONSIDERATION**

Defendant seeks reconsideration of the June 20, 2022 Findings and Order (F&O), wherein the workers' compensation administrative law judge (WCJ) ordered that defendant authorize left shoulder surgery based on a utilization review certification of medical necessity, dated February 2, 2022.

Defendant contends a prior utilization review non-certification statutorily proscribed subsequent utilization review determinations for the same treatment, and that the prior determination was appropriately served on applicant's counsel and the requesting physician.

We have not received an answer from any party. The WCJ prepared a Report and Recommendation on Petition for Reconsideration (Report), recommending that the Petition be denied.

We have considered the Petition for Reconsideration, and the contents of the Report, and we have reviewed the record in this matter. For the reasons discussed below, we will deny the petition.

**FACTS**

Applicant claimed injury to the left shoulder, right shoulder, back, neck, wrist and elbows while employed as an Auto Body Technician by defendant Cerritos Lexus on February 1, 2018. Defendant admits injury to the left shoulder, but disputes injury to all other claimed body parts.

On December 22, 2021, applicant was evaluated by physician Reza Omid, M.D. for his continuing complaints to the left shoulder. (Ex. 3, report of Reza Omid, M.D., dated December 22, 2021, at p. 1.) The report noted a prior left shoulder surgery of December, 2018 with ongoing symptoms, including pain with overhead activities and applicant's reported inability to lift his arm above 90-degrees. (*Ibid.*) X-ray and MRI studies confirmed degenerative joint disease and ongoing pathology. (*Id.* at pp. 2-3.) Dr. Omid recommended a left-side reverse total shoulder arthroplasty be performed in order to "create a stable fulcrum of his shoulder." (*Id.* at p. 5.)

On January 4, 2022, Dr. Omid submitted a Request for Authorization (RFA) seeking authorization for the reverse total arthroplasty surgery and a one-day inpatient hospital stay. (Ex. C, Request for Authorization by Reza Omid, M.D., dated January 4, 2022.)

On January 11, 2022, Utilization Review deemed the RFA "non-certified" and defendant denied the surgery request. (Ex. D, Utilization Review non-certification determination, dated January 11, 2022.) The utilization review determination noted a lack of imaging studies to support the status of the tissue or rotator cuff and "bone stock" and the severity of the arthritis, and that attempts at peer-to-peer discussion had been unsuccessful. (*Id.* at p. 3.)

On January 27, 2022, applicant's evaluating physician Dr. Omid again submitted an RFA for the reverse total arthroplasty surgery and a one-day inpatient hospital stay. (Ex. F, Request for Authorization, dated January 27, 2022.) The RFA attached Dr. Omid's reporting of December 22, 2021 and further included additional radiographic imaging studies. (*Id.* at pp. 2-9.)

On February 2, 2022, utilization review certified the RFA dated January 27, 2022 as medically necessary. (Ex. 1, Utilization Review (Genex, Review No. 5580302), dated February 2, 2022, p. 6.) The reviewing physician Donald Dinwoodie, M.D. noted that applicant's ongoing symptoms and corresponding diagnostic studies supported the certification of the requested reverse total arthroplasty surgery to the left shoulder. (*Ibid.*)

On February 7, 2022, Utilization Review issued a determination disclaiming its prior certification of the January 27, 2022 RFA. (Ex. B, Utilization Review, dated February 7, 2022, p. 6.) The same utilization review physician, Dr. Dinwoodie, again described the x-ray and MRI studies of applicant's left shoulder, but now concluded that the "the imaging findings described above do not support the reverse arthroplasty that is currently requested." (*Ibid.*)

On May 4, 2022, the parties proceeded to trial, and in relevant part, raised the issue of "authorization for left shoulder surgery." (May 4, 2022 Minutes of Hearing and Summary of

Evidence (Minutes), at 2:17.) Applicant testified that in February, 2022, he received both an authorization and a denial of the requested shoulder surgery. (*Id.* at 6:11.)

On June 20, 2022, the WCJ issued the F&O, ordering in relevant part that defendant authorize the left shoulder surgery for applicant in accordance with its utilization review determination of February 2, 2022.

On July 14, 2022, defendant filed its Petition for Reconsideration (Petition), averring the WCJ failed to consider the January 11, 2022 Utilization Review non-certification, and the bar set forth in Labor Code section 4610, subsection (k), which provides that utilization review determinations are valid and binding for a period of one year. (Petition, at p. 2.) Defendant further averred that the January 11, 2022 utilization review determination was timely served on both the requesting physician and applicant's counsel. (*Id.* at 6:18; 9:1.) Finally, defendant submitted that applicant's sole remedy in response to an adverse utilization review determination rested with Independent Medical Review (IMR). (*Id.* at 10:1.)

On July 28, 2022, the WCJ submitted the Report, noting that the January 27, 2022 RFA from Dr. Ovid was marked "Resubmission - Change in Material Facts," and as such, required defendant to submit the request to Utilization Review. (Report, at p. 2.)

## DISCUSSION

Defendant contends that the January 11, 2022 Utilization Review non-certification of the requested left shoulder surgery was valid for 12 months, and that it was error for the WCJ to "disregard" it in favor of defendant's February 2, 2022 utilization review certification. (Petition, at 6:16.)

Labor Code section 4610 provides for the resolution of medical treatment disputes through Utilization Review.<sup>1</sup> Section 4610 requires that "[e]ach employer shall establish a utilization review process in compliance with this section, either directly or through its insurer or an entity with which an employer or insurer contracts for these services," (*id.*, subd. (g)), defining utilization review as "functions that prospectively, retrospectively, or concurrently review and approve, modify, delay, or deny, based in whole or in part on medical necessity to cure and relieve, treatment recommendations by physicians..." (*id.*, subd. (a)). (*State Compensation Insurance Fund v., Workers' Comp. Appeals Bd. (Sandhagen)* (2008) 44 Cal.4th 230 [73 Cal.Comp.Cases 981].)

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<sup>1</sup> All further statutory references are to the Labor Code unless otherwise stated.

However, section 4604 continues to vest with the Workers' Compensation Appeals Board (WCAB) the authority to resolve non-medical disputes arising out of the utilization review process. Section 4604 provides that: “[c]ontroversies between employer and employee arising under this chapter shall be determined by the appeals board, upon the request of either party, *except as otherwise provided by Section 4610.5.*” (Italics added.) (*Dubon v. World Restoration* (2014) (79 Cal. Comp. Cases 1298 [2014 Cal. Wrk. Comp. LEXIS 131] (Appeals Bd. en banc).)

Additionally, section 4610, subsection (k) provides:

A utilization review decision to modify or deny a treatment recommendation shall remain effective for 12 months from the date of the decision without further action by the employer with regard to a further recommendation by the same physician, or another physician within the requesting physician's practice group, for the same treatment unless the further recommendation is supported by a documented change in the facts material to the basis of the utilization review decision.

Consistent with the provisions of Labor Code section 4610(k), Administrative Director Rule 9792.9.1(h) states:

A utilization review decision to modify, delay, or deny a request for authorization of medical treatment shall remain effective for 12 months from the date of the decision without further action by the claims administrator with regard to any further recommendation by the same physician for the same treatment unless the further recommendation is supported by a documented change in the facts material to the basis of the utilization review decision. (Cal. Code Regs., tit. 8, § Rule 9792.9.1.)

Thus, while a timely utilization review determination is generally valid for one year, a physician treatment request indicating documented change in facts material to the basis of the review may require further action by the claims administrator. (Cal. Code Regs., tit. 8, § 9792.9.1(h).)

Here, the January 11, 2018 utilization review determination noted that the only medical records reviewed were that of Reza Omid, M.D., dated December 22, 2021, and the corresponding RFA, dated January 4, 2022. (Ex. D, Utilization Review denial, dated January 11, 2022, p. 3.) The stated rationale for non-certification included the lack of imaging studies, and the unsuccessful attempts at peer-to-peer discussion of the requested treatment. (*Ibid.*) Dr. Omid's January 27, 2022 resubmission of the RFA indicated the request was a “Resubmission - Change in Material Facts,” and included the radiographic imaging studies comparison report authored by Ellen Chang, M.D.

(Ex. F, Request for Authorization, dated January 27, 2022, p. 20.) The February 2, 2022 Utilization Review certification specifically noted the imaging studies in the stated rationale for finding the requested surgery to be medically necessary. (*Id.* at p. 6.) Thus, Dr. Omid submitted the information noted to be missing in the January 11, 2022 utilization review non-certification, resulting in the procedure being certified on February 2, 2022.

Accordingly, we discern no error in defendant's decision to resubmit the January 27, 2022 RFA for reevaluation of the medical dispute. The defendant's voluntary submission of the matter for additional utilization review was warranted given the inclusion of diagnostic imaging studies that were noted to be lacking in the prior utilization review determination. Moreover, such action was consistent with the stated legislative purpose informing utilization review, "to ensure quality, standardized medical care for workers in a prompt and expeditious manner." (*State Compensation Ins. Fund v. Workers' Compensation Appeals Bd. (Sandhagen)* (2008) 44 Cal. 4th 230, 241 [73 Cal. Comp. Cases 981, 989].) The re-submission of the matter to utilization review was also consonant with the defendant's own voluntary utilization review appeal process, which allows for further review of contested medical issues. (Ex. D, Utilization Review denial, dated January 11, 2022, p. 2.)

Defendant contends the January 11, 2022 adverse utilization review determination serves to obviate its voluntary submission of the medical dispute for additional review on February 2, 2022 and again on February 7, 2022. (Petition, at 6:9.) However, upon receipt of the January 27, 2022 RFA, defendant chose not to invoke section 4610(k) and to decline to submit the matter for utilization review based on its January 11, 2022 determination. Instead of taking no action on the RFA pursuant to Cal. Code Regs., tit. 8, section 9792.9.1(h), or declaring a dispute over a non-medical issue arising out of the utilization review process under section 4604, defendant voluntarily submitted the matter as a medical dispute under section 4610 for further utilization review.

The February 2, 2022 utilization review determination issued, and certified the requested left shoulder surgery as medically necessary. "If the utilization review approves the requested treatment, the determination is final and the employer may not challenge it." (Lab. Code § 4610.5, subd. (f)(1); *Ramirez v. Workers' Comp. Appeals Bd.* (2017) 10 Cal.App.5th 205, 213 [215 Cal.Rptr.3d 723]; see also *Simmons v. State of California* (2005) 70 Cal.Comp.Cases 866 [2005 Cal.Wrk.Comp. P.D. LEXIS 149] (Appeals Bd. en banc).) This is because Independent Medical

Review is only available to the injured worker when utilization review modifies, delays, or denies the requested treatment. (Lab. Code § 4610.5, subd. (d).) In cases where the requested treatment is approved for an admitted body part, once the decision has been communicated, the utilization review process is complete, and the medical dispute is resolved. (Lab. Code § 4610.5, subd. (i)(4)(A).) Thus, the February 2, 2022 certification resolved the medical dispute, and further utilization review of the issue, including the February 7, 2022 utilization review, was statutorily impermissible. (*Ibid.*)

In summary, we find that notwithstanding defendant's January 11, 2022 adverse utilization review decision, defendant voluntarily submitted the January 27, 2022 RFA for review, foregoing any objection under section 4610(k). The resulting February 2, 2022 utilization review certification resolved the medical dispute, and precluded further utilization review on the approved treatment. We deny defendant's July 14, 2022 Petition for Reconsideration, accordingly.

For the foregoing reasons,

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

**WORKERS' COMPENSATION APPEALS BOARD**

**/s/ MARGUERITE SWEENEY, COMMISSIONER**

**I CONCUR,**

**/s/ PATRICIA A. GARCIA, DEPUTY COMMISSIONER**

**/s/ ANNE SCHMITZ, DEPUTY COMMISSIONER**



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

**September 12, 2022**

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

**DANIEL SERVIN  
LAW OFFICES OF SUNIL SHAH  
HANNA BROPHY**

**SAR/abs**

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