

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

**ANGELA BANKS ROBINSON, *Applicant***

**vs.**

**BERKELEY UNIFIED SCHOOL DISTRICT;  
adjusted by INTERCARE SERVICES, INC., *Defendants***

**Adjudication Numbers: ADJ9918605; ADJ8732256  
Oakland District Office**

**OPINION AND DECISION AFTER RECONSIDERATION**

We previously granted reconsideration in order to allow us time to further study the factual and legal issues in this case. We now issue our Opinion and Decision After Reconsideration.

Applicant seeks reconsideration of the Order for Payment of Integrated Pain Care Lien (Order) issued on February 18, 2022, wherein the workers' compensation administrative law judge (WCJ) ordered that defendant pay Lien Claimant Integrated Pain Care (Lien Claimant) the following: (1) \$35,757.40 to satisfy outstanding charges; (2) \$150.00 to reimburse the filing fee; (3) \$5,363.61 as a fifteen percent penalty for the delay in payment of the outstanding charges; and (4) interest in an amount to be adjusted by the parties, with jurisdiction reserved by the WCJ.

Defendant contends that the WCJ erroneously failed to rely upon an August 22, 2016 Independent Medical Review (IMR) determination denying the medical necessity of \$32,000.00 of charges related to Lien Claimant's functional restoration program. Defendant further contends the WCJ erroneously failed to set forth her findings of fact in the Order.

We have received an Answer from Lien Claimant.

The WCJ issued a Report and Recommendation on Petition for Reconsideration (Report) recommending that the Petition be denied.

We have reviewed the Petition for Reconsideration, the Answer, and the contents of the Report. Based upon our review of the record, as our Decision After Reconsideration, we will affirm the Order.

## FACTUAL BACKGROUND

In the Report, the WCJ states:

The underlying case in this matter resolved with a Compromise and Release Agreement on March 10, 2020. The only issue left remaining was the lien of Integrated Pain Care.

Integrated Pain Care had filed a lien asking to be paid the sum of \$56,005.01.

After two trials I awarded Integrated Pain Care \$35,757.40 in satisfaction of its charges, \$5,363.61 as a 15% penalty because of the delays in payment and ordered the parties to adjust interest on the amount owed pursuant to my decision.

...

The first trial in this case occurred on May 27, 2021. The Minutes of Hearing Summary of Evidence was served upon the parties by the court reporter on June 9, 2021. These Minutes of Hearing, Summary of Evidence contained the list of exhibits offered by the parties along with the summary of the testimony offered by the only witness called by lien claimant on behalf of lien claimant. I relied upon the exhibits listed in my Minutes of Hearing to decide that Integrated Pain Care be paid \$32,000.00 for the unpaid portion of an 8 week functional restoration program.

...

I did not issue a Findings of Fact per se in my "Order for payment of Integrated Pain Care Lien". The Findings of Fact however is implicit in my order for payment. The only thing a Finding of Fact would say is that the lien of Integrated Pain Care is allowed in part and rejected in part.

...

On January 2, 2016, the treating physician, Dr. Martinovsky submitted a request for authorization (RFA) to the carrier (Lien Claimant Exhibit 7). This request for authorization requested authorization for 80 hours of functional restoration program on the face of the request but in the body of the request, requested authorization for attendance for 8 weeks of functional restoration program, totaling 160 hours, billed at \$5,000.00 a week.

The carrier submitted the request to utilization review which issued an authorization for modification to the functional restoration program for 2 weeks at a total of 40 hours. This utilization review determination issued on February 29, 2016 (Lien Claimant Exhibit 8).

Counsel for applicant filed a request for Independent Medical Review. On April 20, 2016 (Lien claimant Exhibit 9), Independent Medical Review overturned the Utilization Review determination of February 29, 2016 and found that there was medical necessity for provision of the functional restoration program as requested by Dr. Martinovsky.

Despite the fact that Independent Medical Review authorized the provision of the functional restoration program defendant paid only \$8,000.00 of the \$40,000.00 charge for the program.

Lien claimant submitted a bill for each week of service to the defendant. Defendant responded to lien claimants request for payments as follows below:

For the bill submitted for date of service of 3/21/2016, defendant had issued a denial for payment of the bill claiming the bill was a duplicative charge (See Defense Exhibit EE). Despite this denial for the charge, defendant paid \$4,000.00 of the \$5,000.00.

For the bill submitted for date of service of 3/28/2016, defendant had issued a denial for payment of the bill claiming the bill was a duplicative charge (See Defense Exhibit FF). Despite this denial for the charge, defendant paid \$4,000.00 of the \$5,000.00.

For the bill submitted for date of service of 4/4/2016, defendant had issued a denial for payment of the bill claiming the service was not authorized by utilization review (See Defense Exhibit GG). This utilization review was overturned by Independent Medical Review.

For the bill submitted for date of service of 4/11/2016, defendant had issued a denial for payment of the bill claiming the service was not authorized by utilization review (See Defense Exhibit HH). This utilization review was overturned by Independent Medical Review.

For the bill submitted for date of service of 4/18/2016, defendant had issued a denial for payment of the bill claiming the bill was a duplicative charge (See Defense Exhibit II).

For the bill submitted for date of service of 4/25/2016, defendant had issued a denial for payment of the bill claiming the bill was a duplicative charge (See Defense Exhibit JJ).

For the bill submitted for date of service 5/2/2016, defendant issued denial of the bill stating payment was pending while it awaited additional information (See Defense Exhibit KK).

For the bill submitted for date of service of 5/9/2016, defendant had issued a denial for payment of the bill claiming the service was not authorized by utilization review (See Defense Exhibit LL). This utilization review was overturned by Independent Medical Review.

As for the responses stating that there are duplicative charges, defendant does not support this claim by anything other than a simple statement. From what I can see,

each week a charge was submitted for \$5,000.00 for a functional restoration program. Maybe the adjuster was confused when the adjuster reviewed the bills for payment and assumed that for 8 weeks straight the doctor continuously charged \$5,000.00 for one service, hence issued a denial claiming duplicative charges. But if that was the case then why did the adjuster pay \$4,000.00 on two separate occasions and nothing for the following 6 weeks. And why did the adjuster cut the \$5,000.00 to \$4,000.00.

This will remain a mystery since defendant did not offer the adjuster as a witness nor did defendant offer a bill review expert to explain its billing practices.

At trial, defendant simply argued that it correctly denied payment for the functional restoration program because on August 22, 2016, Independent Medical Review (Defense Exhibit W) denied the request for functional restoration program.

Defense Exhibit W, indicates that there was a request for authorization of a functional restoration program dated May 6, 2016 which was allegedly denied by utilization review on June 17, 2016. There is no May 6, 2016 request for authorization offered as evidence nor is there a June 17, 2016 utilization review denial. But assuming that defense exhibit W correctly cites facts, if there was a May 6, 2016 request for authorization for a functional restoration program, the June 17, 2016 denial by utilization review is untimely therefore the program should have been authorized by defendant.

Of course none of that really matters because already on April 20, 2016 the functional restoration program for 8 weeks was authorized by Independent Medical review. In fact the entire program was completed by May 9, 2016.

Defendant has provided no explanation for its failure to pay for the functional restoration program despite the authorization from Independent Medical Review which found the program to be reasonable and medically necessary.

Defendant has provided no argument as to why the program should not charge \$5,000.00 per week.

Defendant has failed to provide a valid denial for Integrated Pain Care's billings for functional restoration.  
(Report, pp. 1-6.)

## **DISCUSSION**

Defendant contends that the WCJ erroneously failed to rely upon an August 22, 2016 Independent Medical Review (IMR) determination denying the medical necessity of \$32,000.00 of charges related to Lien Claimant's functional restoration program. Specifically, defendant argues that applicant waived her entitlement to receive treatment in the form of the functional

restoration program on the grounds that she did not raise the issue of whether the June 17, 2016, utilization review (UR) decision denying authorization for functional restoration program was untimely, and, instead, sought IMR of the UR determination.

Before we address the merits of defendant's contention, we observe that the WCJ found that all of the charges related to the functional restoration program at issue herein were authorized by the April 20, 2016 IMR, which overturned the February 29, 2016 UR determination and authorized the functional restoration program requested by applicant's physician. (Report, p. 6.) Given that the program was authorized on April 20, 2016 and completed by May 9, 2016, we are unable to discern how the June 17, 2016 UR determination or the August 22, 2016 IMR determination that followed could have retroactively rescinded defendant's obligation to pay for the functional restoration program. (*Id.*)

Moreover, we are unaware of any authority, and defendant cites none, for the proposition that the June 17, 2016 UR determination, though untimely, may be deemed valid and enforceable depending upon which, if any, legal remedy applicant should choose. To the contrary, our reading of the authorities is that (1) the WCAB may exercise jurisdiction over medical treatment requests for which UR determinations are untimely irrespective of whether or not applicant seeks an IMR; and (2) applicant "may request an independent medical review" of UR decisions denying or modifying treatment requests irrespective of whether or not applicant challenges the UR decision as untimely. (*Dubon v. World Restoration, Inc.* (2014) 79 Cal.Comp.Cases 1298 (Appeals Board en banc) (writ den.) (*Dubon*); see also *Dubon v. World Restoration, Inc.* (2014) 79 Cal.Comp.Cases 313; *Bodam v. San Bernardino County/Department of Soc. Servs.* (2014) 79 Cal.Comp.Cases 1519, 1521 (significant panel decision); Labor Code § 4610.5(d).)

Accordingly, we are unable to discern merit to defendant's contention that the WCJ erroneously failed to rely upon an August 22, 2016 IMR determination denying the medical necessity of \$32,000.00 in charges related to Lien Claimant's functional restoration program.

Turning to defendant's contention that the WCJ erroneously failed to set forth her findings of fact in the Order, we note that the contents of the Order are not labeled as findings. Nonetheless, we agree with the WCJ that the Order sets forth the WCJ's findings as to Lien Claimant's entitlement to payments for services rendered, reimbursement of its filing fee, penalty for defendant's delay in payment of the outstanding charges, and interest. (Report, p. 2.) To conclude otherwise would improperly place form over substance. (*County of Kern v. T.C.E.F, Inc.* (2016)

246 Cal.App.4th 301, 321, ["A general principle of statutory construction is that courts do not place form over substance where doing so defeats the objective of a statute, especially a statute designed to protect a public interest. (citations omitted.) It is an 'established principle of the law that the substance and not the mere form of transactions constitutes the proper test for determining their real character. If this were not true it would be comparatively simple to circumvent by sham the provisions of statutes framed for the protection of the public. This the law does not permit.' (citations omitted)."]; *Pulaski v. American Trucking Associations, Inc.* (1999) 75 Cal.App.4th 1315, 1328 [64 Cal.Comp.Cases 1231, 1236] ["Substantial compliance, as the phrase is used in the decisions, means actual compliance in respect to the substance essential to every reasonable objective of the statute . . . Where there is compliance as to all matters of substance technical deviations are not to be given the statute of noncompliance. . . . Substance prevails over form. (citations omitted)."].)

Accordingly, we are unable to discern merit in defendant's contention that the WCJ erroneously failed to set forth her findings of fact in the Order.

Accordingly, we will affirm the Order.

For the foregoing reasons,

**IT IS ORDERED**, as the Decision After Reconsideration of the Workers' Compensation Appeals Board, that the Order for Payment of Integrated Pain Care Lien issued on February 18, 2022 is **AFFIRMED**.

**WORKERS' COMPENSATION APPEALS BOARD**

**/s/ KATHERINE WILLIAMS DODD, COMMISSIONER**

**I CONCUR,**

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

**/s/ CRAIG SNELLINGS, COMMISSIONER**



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

**JANUARY 18, 2023**

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

**ANGELA BANKS ROBINSON  
INTEGRATED PAIN CARE  
LAW OFFICES OF RICHARD GREEN**

**SRO/cs**

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