

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

DARRIN CHAVEZ

vs.

BONANZA CONCRETE; INSURANCE COMPANY OF THE WEST, *Defendants*
Adjudication Number: ADJ11726227
Van Nuys District Office

**OPINION AND ORDER GRANTING PETITION
FOR RECONSIDERATION AND DECISION
AFTER RECONSIDERATION**

Defendant seeks reconsideration of the Findings of Fact and Order (F&O) issued on June 27, 2023, wherein the workers' compensation administrative law judge (WCJ) found, in pertinent part, that (1) while employed by defendant as a Ready-Mix concrete driver on May 25, 2018, applicant sustained injury arising out of and in the course of employment to the head and brain, and that the issues as to claimed body parts are deferred; (2) applicant's condition is found to be 'catastrophic'; (3) Labor Code Section 4610(i)(3)¹ is applicable to this case because applicant faced an imminent and serious threat due to his medical condition; (4) none of defendant's Utilization Reviews (UR) were conducted within seventy-two hours; (5) Independent Medical Review (IMR) does not apply to an untimely UR or a *Patterson* fact pattern; (6) pursuant to *Patterson*, if an employer authorizes medical services, the applicant does not have the burden of proving the ongoing reasonableness and necessity of the services; (7) defendant failed to meet the burden of showing that the continued provision of services is no longer reasonably required due to a change of applicant's circumstances or condition; (8) the medical reports of Drs. Huang and Franc, and Dr. Huang's testimony, constitute substantial medical evidence; and (9) all other issues are moot.

The WCJ ordered that defendant provide the following services to applicant until a change of applicant's circumstances or condition warrants their discontinuation: one hour per week of RN services; twelve hours per day, seven days per week of attendant care services; and two hours per day, seven days per week of LVN services.

¹ Unless otherwise stated, all further statutory references are to the Labor Code.

Defendant contends that the WCJ erroneously found that defendant failed to meet its burden of proving that continued provision of RN, attendant care, and LVN services were no longer reasonably required due to a change in the applicant's condition or circumstances. Defendant further contends that the WCJ erroneously found that applicant's condition is 'catastrophic' and section 4610(i)(3) applies to require that UR be conducted within seventy-two hours of receipt of RFAs on the grounds that these issues were not raised for trial. Defendant also contends that the WCJ erroneously failed to postpone trial to await review of recent surveillance videos of applicant.

We have received an Answer from applicant.

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 and as discussed below, we will grant reconsideration and, as our Decision After Reconsideration, we will rescind the F&O and substitute findings that (1) defendant failed to meet its burden of establishing the occurrence of a change of circumstances or condition warranting review and determination of the issue of whether the provision of one hour per week of RN services; twelve hours per day, seven days per week of attendant care services; and two hours per day, seven days per week of LVN services are no longer medically necessary; and (2) all other issues are deferred.

FACTUAL BACKGROUND

On March 9, 2021, the matter proceeded to trial of various issues, including:

1. Applicant alleges that defendant may not unilaterally cease to provide home health aide/caregiver services, LVN services and RN services for a catastrophically injured applicant where there is no documented change in the applicant's circumstances or condition showing that the care is no longer reasonably required to cure and relieve the applicant from the effects of the industrial injury pursuant to *Patterson*.
2. Applicant alleges home health aide/caregiver services, LVN services and RN services are reasonable and necessary form of treatment to cure and relieve the applicant of the effects of his injury pursuant to *Patterson*.
3. Applicant alleges that in light of the totality of the circumstances that defendants were on notice of as pertaining to this catastrophic claim and the ongoing nature of the treatment, defendant's Utilization Review should have

been conducted within 72 hours because the applicant faced an imminent and serious threat due to his medical condition and was, therefore, untimely conducted and communicated.

...

1. Defendant raises whether the WCAB has jurisdiction to determine whether medical treatment is reasonable or necessary.
2. Defendant raises whether the opinions of treating physician Allen Huang, M.D. and PQME Dr. Franc are admissible on the issues of medical necessity, Labor Code Section 4062(b), or otherwise stated as whether the weight of the evidence and whether the evidence[is substantial medical evidence will be determined by the WCJ but has no bearing on admissibility.
3. Defendant raises whether the opinions of a nurse case manager are admissible on the] issue of medical necessity pursuant to Labor Code Section 4062(b).
4. Defendant raises whether the WCAB has jurisdiction to review the timely Utilization Review decision dated December 11, 2020.

...

(Minutes of Hearing and Summary of Evidence, March 9, 2021, pp. 2:13-4:5.)

The parties stipulated that Dr. Huang is applicant's primary treating physician and the WCJ admitted the May 21, 2020 Genex Utilization Review Decision, the July 3, 2020 Genex Utilization Review Decision, the August 29, 2020 Genex Utilization Review Decision, the October 21, 2020 Genex Utilization Review Decision, and the December 11, 2020 Genex Utilization Review Decision into evidence. (*Id.*, pp. 2:3, 6:2-5.)

The May 21, 2020 Genex Utilization Review Decision states:

2. Recommend prospective request for 1 home health care assistant {24 hours daily for 30 days) between 5/13/2020 and 11/10/2020 be certified.
 3. Recommend prospective request for 1 LVN for medical management (1 hour daily for 14 days) between 5/13/2020 and 11/10/2020 be certified.
 4. Recommend prospective request for 1 RN for medical management (1 hour once a week for 2 weeks) between 5/13/2020 and 11/10/2020 be certified.
- (Ex. A, Genex Utilization Review Decision, May 21, 2020, p. 1.)

The July 3, 2020 Genex Utilization Review Decision states:

1. Recommend prospective request for 1 consultation with a neurologist between 6/18/2020 and 8/30/2020 be certified.
2. Recommend prospective request for 180 day licensed vocational nurse services (2 hours/day for 3 months) daily to check pill counts between 6/18/2020 and 8/30/2020 be certified.

3. Recommend prospective request for 180 day registered nurse services (1 hour/week for 3 months) 1 hour weekly fill pillbox, to ensure taking medications, remain safe further injury between 6/18/2020 and 8/30/2020 be certified.

4. Recommend prospective request for 180 day home health aide services (24 hours/day for 3 months) due to cognitive dysfunction related to TBI between 6/18/2020 and 8/30/2020 be certified.

(Ex. B, Genex Utilization Review Decision, July 3, 2020, p. 1.)

The August 29, 2020 Genex Utilization Review Decision states:

1. Recommend prospective request for 90 day home health aide services (16 hours/day for 3 months) between 7/22/2020 and 10/25/2020 be certified.

(Ex. C, Genex Utilization Review Decision, August 29, 2020, p. 2.)

The October 21, 2020 Genex Utilization Review Decision states:

1. Recommend prospective request for 1 Registered Nurse to fill pill box (1 hour/week for 3 months) between 9/8/2020 and 12/19/2020 be certified.

2. Recommend prospective request for 1 LVN services to check on pill counts in his pillbox (2 hours per day, 7 days a week for 3 months) between 9/8/2020 and 12/19/2020 be certified.

3. Recommend prospective request for 1 caregiver service (outside caregiver 16 hours during daytime and fiancée 8 hours at nighttime) for 24 hours per day, 7 days a week, for 3 months has been modified to a certification of 1 caregiver service (outside caregiver 16 hours during daytime 7 days a week, for 3 months between 9/8/2020 and 12/19/2020.

(Ex. D, Genex Utilization Review Decision, October 21, 2020, p.1.)

The December 11, 2020 Genex Utilization Review Decision states:

1. Recommend prospective request for 1 registered Nurse to fill pill box (1 hour per week for 3 months) between 11/24/2020 and 2/5/2021 be non certified.

2. Recommend prospective request for 1 licensed vocational nurse services to check on pill counts in his pillbox (2 hours per day, 7 days a week for 3 months) between 11/24/2020 and 2/5/2021 be non certified.

3. Recommend prospective request for 1 caregiver service (outside caregiver 16 hours during daytime and fiancée 8 hours at night time) for 24 hours per day, 7 days a week for 3 months between 11/24/2020 and 2/5/2021 be non certified.

...

Although the claimant has traumatic brain injury (TBI) and continues to have cognitive dysfunction, home health is short term, and the RN in the home is to teach the claimant's family with the claimant present on how to fill medication box, administer the medications, and provide education on each medication. Home health's function is to provide the necessary care and education to allow the claimant to stay at home and with the help of family, be as functional as possible. Review 5362266 dated 10/21/20 certified 1 licensed vocational nurse (LVN) services to check on pill counts in his pillbox (2 hours per day, 7 days a week for 3

months) between 09/08/20 and 12/19/20. It is unclear as to why LVN services 2 hours per day for pill count is necessary as the claimant is noted to be taking a total of 9 medications. Review 5362266 dated 10/21/20 certified 3 months for an RN to fill the pillbox. This should be sufficient time to provide the necessary education to set the claimant for success. If the claimant is unable to comprehend how to take medications, it is the nurse's responsibility to educate the family on how to fill the pillbox and perform pill count. Further, home health is for individuals who are homebound with not only cognitive deficits but physical deficits, considering the claimant homebound and/or after a short term hospital stay. The provider fails to document the claimant is homebound and if so, why he is homebound. Homebound status has not been clearly identified by the requesting provider. Furthermore, the most recent RN's oasis documenting medical necessity has not been submitted for review. Given the above, the request for 1 licensed vocational nurse services to check on pill counts in his pillbox (2 hours per day, 7 days a week for 3 months) is non-certified.

The medical records reveal the claimant slipped and struck his head on the cement on the above date of injury requiring staples. He subsequently underwent brain surgery on 08/25/18 and 09/30/18. The records indicate he was in a coma for 20 days with postoperative left-sided paralysis and seizures. . . . He reports difficulty recalling accomplished tasks, names, dates, conversations, and retaining information. However, he is able to remember 2 of 3 objects after 5 minutes and the White House address. An additional report dated 09/01/20 from Dr. Allen Huang noted the claimant is doing well with caregiver hours reduced. There are no episodes of getting lost or wandering. The provider notes intermittent agitation, full affect, linear thought process, stable gait, and clear speech. Although the claimant has TBI and continues to have cognitive dysfunction, the records do not clearly document the claimant is homebound. Further, the objective examination does not show deficits that would preclude the claimant from leaving the home or providing self-care. . . . Furthermore, personal care services and domestic care services should not be covered when there are no skilled (licensed nurse or therapist) home health services required. Additionally, the most recent RN's oasis documenting medical necessity has not been submitted for review. Given the above, the request for 1 caregiver service (outside caregiver 16 hours during daytime and fiancée 8 hours at night time) for 24 hours per day, 7 days a week for 3 months is non-certified. (Ex. E, Genex Utilization Review Decision, December 11, 2020, pp. 2-5.)

On April 13, 2021, the matter proceeded to continued trial and the WCJ ordered the matter submitted for decision on April 23, 2021. (Minute of Hearing and Summary of Evidence, April 13, 2021, p. 1.)

On June 4, 2021, the WCJ vacated the order deeming the matter submitted for decision. (Order Vacating Submission and Notice of Hearing, June 4, 2021.)

On April 11, 2023, the matter proceeded to trial of the following issues:

1. Need for further medical treatment.
2. Whether Defendants may cease Applicant's attendant care services and RN services, which have been continuous and ongoing, absent a material change in Applicant's circumstances, which warrant the cessation of this care per *Patterson v. The Oaks Farm and Progeny*.
3. Defense issues:
 - a. Whether the WCAB has jurisdiction to determine whether medical treatment is reasonable or necessary.
 - b. Whether Applicant's sole recourse in response to the Utilization Review decision, dated November 23, 2022, was to file an Application for Independent Medical Review (Labor Code Section 4062(b), 4610).
 - c. Whether the WCAB has jurisdiction to review the timely Utilization Review Decision, dated November 23, 2022.
 - d. Whether Applicant timely filed an Application for Independent Medical Review in response to the Utilization Review Decision, dated January 24, 2023.
 - e. Whether the WCAB has jurisdiction to review the timely Utilization Review Decision, dated January 24, 2023.
 - f. Whether Applicant's sole recourse in response to the Utilization Review Decision, dated January 24, 2023, was to file an Application for Independent Medical Review (Labor Code Section 4062(b) and 4610.5).
 - g. Whether Applicant timely filed Application for Independent Medical Review in response to the Utilization Review Decision of January 24, 2023.
 - h. Whether Defendant can terminate home healthcare services if they are deemed no longer reasonably necessary to cure or relieve from the effects of the injury by a timely Utilization Review Decision per the panel decision of *Gonzalez, Robin v. First Presbyterian Church of Santa Barbara, ADJ6939280*.
 - i. Whether the opinions of treating physician Allen Huang, M.D., and PQME Dr. Franc, M.D. are admissible on the issues of medical necessity pursuant to Labor Code Section 4062(b).
 - j. Whether the opinions of a nurse case manager are admissible on the issue of medical necessity pursuant to Labor Code Section 4026(b). (Minutes of Hearing (Further), April 11, 2023, pp. 2:13-3:14.)

The WCJ admitted the October 13, 2022 Genex Utilization Review Decision, the November 23, 2022 Genex Utilization Review Decision, and the January 24, 2023 Genex Utilization Review Decision into evidence. (*Id.*, p. 4:13-24.)

The October 13, 2022 Genex Utilization Review Decision states:

1. Recommend prospective request for 2 months of RN services to fill pillbox (1 hour per week) be non certified.

2. Recommend prospective request for 2 months of continued attendant care services (12 hours per day x 7days/week) be non certified.

...

In a review of the progress report dated 9/6/2022 by Dr. Huang, M.D., the claimant reportedly feels about the same as last time.

...

In review #5757378, completed on 9/29/2022, the request for ongoing RN visits one hour per week was recommended based on the ongoing requirement for assistance filling the pill box due to his reported cognitive deficits. As noted above, this claimant does has a history of seizures, but has been stable on the current dose of Keppra. The documents available show that they have a history of missing a dose of Keppra, which caused a seizure; however, there have not been any missed medication dosages reported or any seizures since the claimant has had help filling his pill box.

. . . [F]illing the claimant's pill box in accordance with the treating physician's orders does not require a medical professional. As the claimant currently lives with two adults who are more than capable of assisting in the filling of his pill box, the ongoing RN visits for this purpose are not medically necessary. Based on the information available and the discussion above, the request for 2 months of RN services to fill pillbox (1 hour per week) is non-certified.

...

A review of the recent clinical documentation shows the claimant has not had any seizures recently as he is able to appropriately take his medications when he has assistance filling his pill box. The records also fail to show any recent episodes of balance issues, disorientation, or any clear objectifiable evidence of ongoing cognitive deficits that would warrant ongoing supervision to the level that is being requested. Considering the appropriate management of the seizure risk, the ongoing assistance with filling his pill box that is available through his immediate family, and the absence of any clear demonstration of ongoing cognitive deficits that would warrant the 12+ hours of combined supervision (combination of assistant+ family members) and the guidelines below, the continuation of the attendant care services is no longer medically necessary. Based on the information available and the discussion above, the 2 months of continued attendant care services (12 hours per day x 7 days/week) is non-certified.

(Ex. CC, Genex Utilization Review Decision, October 13, 2022, pp. 1-3.)

The November 23, 2022 Genex Utilization Review Decision states:

1. Recommend prospective request for 3 months of registered nurse care services (1 hour x/week x 3 months) between 10/27/2022 and 3/18/2023 be non certified.
2. Recommend prospective request for 3 months of continued attendant care services (12 hours per day x 7days/week) between 10/27/2022 and 3/18/2023 be non certified.

...

Recently, the use of home health care was recommended against in review #5775144 based on the failure of the records to show any recent episodes of balance issues, disorientation, or any clear objectifiable evidence of ongoing cognitive deficits that would warrant ongoing supervision to the level that was being requested. A review of the documents submitted continues to fail to show clear objectifiable evidence of ongoing cognitive deficits that would warrant level of care requested. Based on the discussion above, the request for 12+ hours of combined supervision (combination of assistant+ family members), and the guidelines below, the continuation of the attendant care services is no longer medically necessary. Based on the submitted documentation, the request for 3 months of continued attendant care services (12 hours per day x 7days/week) is non-certified. (Ex. 24, Genex Utilization Review Decision, November 23, 2022, pp. 2, 4.)

The January 24, 2023 Genex Utilization Review Decision states:

1. Recommend prospective request for 3 months of continued RN services (1 hour/week) between 12/16/2022 and 5/18/2023 be non certified.
2. Recommend prospective request for 3 months of continued attendant care services (12 hours per day x 7days/week) between 12/16/2022 and 5/18/2023 be non certified.
3. Recommend prospective request for 3 months of continue licensed vocational nurse (2 hours per day x 7 days/ week) between 12/16/2022 and 5/18/2023 be non certified.

...

In the past, they have had the assistance of a registered nurse to fill their pillbox, however, in the previous reviews (#5775144 and #5813389), it was felt that the claimant's family is more than capable to fill the pill box accurately, which will allow the claimant to continue taking the proper dose of medication. In a review of the current clinical documentation, there has been no incidence of medication use that would lead us to believe that the current pill box-filling strategies are inadequate. As the claimant has been utilizing the pre-filled pillbox successfully in managing their Keppra dose without RN assistance and there has been no incidence or other indication to resume RN visits, additional visits for the sole purpose of filling pill boxes are not necessary. Based on the discussion above, the prospective request for 3 months of continued RN services (1 hour/week) is non-certified.

As noted above, this claimant has a history of traumatic brain injury associated with seizure activity. They have utilized assistance from their family members and also from a home health assistant in the past. Most recently, the ongoing use of home health care was recommended against (reviews #5775144 and #5813389) based on the failure of the records to show any recent episodes of balance issues, disorientation, or any clear objectifiable evidence of ongoing cognitive deficits that would warrant ongoing supervision at the level that was being requested. While the claimant's current reports of safety concerns and of difficulty getting exercise are acknowledged, there continues to be a failure of clear objectifiable evidence of ongoing cognitive deficits that would warrant the level of care requested. Based on the submitted documentation, the prospective request for 3 months of continued attendant care services (12 hours per day x 7 days/week) is non-certified.

...

Additionally, the documents do not show the need for medical treatment on a home basis that would justify vocational nursing services for 2 hours per day. Considering the absence of any clear indications that medical treatment on a home basis would require two hours of vocational nursing on a daily basis and the guidelines cited below, a recommendation in favor of the vocational nursing requested cannot be given. Based on the discussion above, the prospective request for 3 months of continue licensed vocational nurse (2 hours per day x 7 days/ week) is non-certified.

(Ex. BB, Genex Utilization Review Decision, January 24, 2023, pp. 2, 4.)

At trial, the WCJ deferred the issue of whether surveillance video evidence would be admitted in evidence and the record does not reflect any objection by defendant asserting that the trial should be postponed pending review of surveillance video evidence. (Minutes of Hearing (Further), April 11, 2023, p. 6:5-6.)

In the Opinion on Decision, the WCJ states:

Drs. Huang, and Franc are treating physicians, Esther Salazar is the nurse case manager who coordinates applicant's care. Dr. Huang issued the RFAs in question and in the best position to opine on the issue of medical necessity. Dr. Huang is also in the best position to opine on the issue of applicant's capacity to testify . . .

(Opinion on Decision, pp. 4-5.)

In the Report, the WCJ states:

The threshold issue is whether Defendants may cease Applicant's attendant care services and RN services, which have been continuous and ongoing, absent a material change in Applicant's circumstances, which warrant the cessation of this care pursuant to *Patterson v. The Oaks Farm and Progeny*.

...

Pursuant to the medical Report of Allen Huang, M.D. dated 1/5/2021 (Applicant's Exhibit 2.): Dr. Huang notes reports an of increased stresses due to recent denial of his RN, LVN and HHA services which was requested. His diagnoses are:

1. *Traumatic brain injury with no loss of consciousness*
2. *Migraines secondary to TBI*
3. *Left hemiplegia*
4. *Seizure disorder*
5. *Expressive aphasia*
6. *Cognitive deficits with memory and attention Impairment*
7. *Intracranial hemorrhage*
8. *Subdural hematoma secondary to fall*
9. *Status post craniotomy and evacuation of subdural hematoma on August 30, 2018*
10. *Status post redo of right frontal craniotomy for evacuation of intracranial hemorrhage and partial frontal lobectomy*
11. *Blurry vision with double vision*
12. *Insomnia*
13. *Depression*
14. *Pseudobulbar affect*
15. *Erectile dysfunction*
16. *Ulcerative colitis (p. 1.)*

Pursuant to the medical Report of PQME Daniel Franc, M.D., Ph.D. dated 1/27/20. (Applicant's Exhibit 4.)

DISCUSSION:

QME Franc lists the following impairments.

Neurologic disability resulting from the subdural hematoma and treatment complications was previously determined to have 100% industrial causation.

Seizure disorder

He was previously given a disability rating for the diagnosis of epilepsy. I would not adjust his impairment rating based on the provided medical documentation. (Id. p. 140.)

Cognitive impairment

Mr. Chavez has been diagnosed with mood disorder and cognitive impairment.

Dr. Ponton, QME neuropsychologist, determined a CDR of 2 based on a Class 3 impairment for cognitive impairment (Table 13-6) corresponding to a 40%. He determined 100% industrial causation. I agree with this determination of whole person impairment related to cognitive impairment and Dr. Ponton's determination of causation.

Notably, Dr. Ponton opines that Mr. Chavez would be unable to function in an open labor market based on his cognitive impairment and other symptoms resulting from his brain injury. I would agree with his determination.

Mood impairment

Mr. Chavez has been diagnosed with depression and is undergoing treatment with citalopram and has received psychological therapy. Dr. Ponton, QME neuropsychologist, determined a GAF of 50 (WPI 30%) for mood disorder. He determined 100% industrial causation. I agree with this determination of whole person impairment related to mood impairment and Dr. Ponton's determination of causation.

Sexual impairment

Mr. Chavez has been diagnosed with erectile dysfunction and impaired libido. Dr. Ponton, QME neuropsychologist, determined a WPI of 5% for sexual dysfunction based on Table 13-21 of the AMA Guides Fifth edition. He determined 100% industrial causation. I agree with this determination of whole person impairment related to sexual impairment and Dr. Ponton's determination of causation.

Dizziness

Mr. Chavez has noted significant dizziness with ambulation. This condition has been documented by his treating physicians including Dr. Prasad and has persisted despite physical therapy. (Id. p. 142.)

Visual impairment

Mr. Chavez has been diagnosed with visual field loss and double vision. I would recommend evaluation by an orthopedics QME to determine vision-related permanent impairment.

Sleep impairment

Mr. Chavez has been diagnosed with chronic insomnia and obstructive sleep apnea. He has been treated with CPAP, and a polysomnogram

performed in June 2020 demonstrated moderate obstructive sleep apnea. (Id. p. 144.)

Pursuant to the testimony of PTP Allen Huang, M.D., he is the primary treating physician for Mr. Chavez. When asked when his last evaluation with Mr. Chavez was, he stated he didn't recall, but they usually have evaluations every six weeks. When asked if he recalled the last time he testified at trial, which was March 9, 2021, he stated yes. When asked if since that trial and his testimony if Mr. Chavez had any change in diagnosis, he stated no. When asked if he was aware that home health care had been terminated, he stated yes. When asked if there was any change in Mr. Chavez's condition that would warrant termination of home health care, he stated no. (Further Minutes of Hearing – Summary of Evidence, dated May 2, 2023, p. 1.)

He further testified that he believes that Mr. Chavez would be put in danger by termination of home health care. He believes that he would be put at risk of harm if he does not have home health care. Dr. Huang also testified that he does not believe that Mr. Chavez is competent to testify today or in the near future, and it could be stressful and dangerous for him to do so and he would not recommend him testifying today.

He believes that Mr. Chavez is at high risk for having a fall or a seizure. He did review the sub rosa of Mr. Chavez, and he stated it had no impact on his opinion. He stated the video showed Mr. Chavez at home and at a store with a caregiver and he believed what he viewed was consistent with his prior opinion and diagnosis of Mr. Chavez.

In regard to the withdrawal of medical management, otherwise known as an LVN or RN coming to the house for medical management, he does not believe that Mr. Chavez is capable of taking care of his own medications and that grievous harm could come to him without the medical management he was receiving. (Id. pp. 1-2.)

When asked about the "Impression" part of the medical report, and whether it lists the various diagnoses, he stated that is correct. When asked if they ever change, he said they can be edited if they are no longer valid. When asked if it is a copy and paste, he stated updates are provided when valid. When asked if within the last two and a half years there were any updates to his impressions, he stated he would have to have those reports in front of him to answer.

When asked about the diagnosis in the October 2022 report of left hemiplegia, he stated yes, that is correct. When asked if he reviewed any reports for today's testimony, he stated no, the last time he reviewed the report was when he actually examined the patient. When asked if objective

complaints would ever be changed, he said they would be changed as reflected in the patient's examination. When asked if the notation of hemiplegia was still necessary if it was more or less resolved in the past, he stated it probably would be described as mild and therefore necessary to keep it as part of his history. (Id. p. 3.)

When asked regarding his March 2021 testimony regarding left hemiplegia, and the defense attorney's referencing his testimony as "not a big deal," he stated it currently is mild; however, he does not have the report in front of him from 2021 3 that states that the hemiplegia is mild, but that is what he recalls.

When asked about the "Plan" section of the medical reporting and whether it is updated, he said, "We update it as necessary every time we see the patient." When asked about if he recalled when Mr. Chavez moved from his apartment to a house, he stated he didn't recall the date. When asked if July 2021 sounds correct, he stated yes.

He was then asked about the October 27, 2022 report at page 2, under the "Plan" section, the statement therein that *Applicant needs assistance at home, "most especially for his safety in the setting of cognitive and balance impairment, as well as the potential for seizure at any time," and whether those are the three main issues that he believes warrant Applicant receiving home health assistance; to which he responded, "Yes, those are the critical issues we've identified," and "those are broad categories that involve a lot of different impairments, and there are still other issues that may be involved, but those are the three major issues that are affecting his risk of injury."* (Emphasis added.)

When asked about Mr. Chavez's *balance*, and if there were any reports in 2022 that state objectively that he had balance issues, he stated he didn't recall, but it *has been a persistent issue and wasn't likely to change; however, he doesn't recall actual testing of balance. When asked about reports from 2022 to present that discuss balance issues, he stated it is an ongoing condition which he referred as chronic/ static.* (Emphasis added.)

When asked if he observed any balance issues within the last two years, he stated he didn't know because he doesn't have his notes in front of him. When asked if he noticed any balance issues within the sub rosa videos he observed, he stated he really didn't notice any.

When asked if he in his reports had any objective findings of cognitive impairment, he stated there was no change in that condition. When asked if he reviewed any reports in 2022 regarding cognitive deficiency, he stated that neuropsychology may have opined on that issue but he doesn't recall when. (Id. p. 4.)

When asked if any 2022 reports document any seizures, Dr. Huang stated he knew Mr. Chavez had a seizure a year or two ago, and he quite possibly has had more in the meantime, and that he would need to review his notes to know for certain. (Id. p. 5.)

When asked if there were any medical reports in the last two years that documented Mr. Chavez having suffered any seizures, he stated he didn't recall because he didn't have his chart in front of him. Defendant stated that no medical report in her possession from the last two years documents any new seizures, and then asked the doctor if that refreshed his memory. *The doctor answered he doesn't know if Mr. Chavez had any seizures in the last two years and that it wouldn't change his opinion regardless.* (Emphasis added.)

When asked if every person with seizure disorder needs home health care, he stated the main reason for home health care would be for cognitive and safety issues. When asked if he could identify specific cognitive issues, Dr. Huang stated poor memory, lack of focus, fall risk, specifically in a busy environment, because he is easily distracted, and he has been known to leave the stove on.

When speaking about Exhibit X, and the fact that Mr. Chavez drove his car, he stated no, he wasn't aware of that. When asked if he knew that Mr. Chavez received a commercial license, he stated no. When asked if Mr. Chavez told him that he requested a commercial license, he stated no, and went on to state that Mr. Chavez shouldn't drive his personal vehicle or a commercial vehicle. When asked if he knew about the 2/16/2021 Department of Transportation medical examination, Dr. Huang stated no.

When asked if he knew that Mr. Chavez would independently go to stores and make purchases, Dr. Huang stated he wouldn't trust him to do these things. When asked if he knew if Mr. Chavez had become lost within the last year, he stated he was not informed about that. When asked if he was aware of any instances where Mr. Chavez had put himself in dangerous situations within the last year, he stated no. When asked who the people within Mr. Chavez's aides are not there for domestic tasks, and he stated they are not there all the time. When asked if Mr. Chavez could do yard work, he said it depends on the time and the task required. When asked whether home health care had not been received in the last five months, Dr. Huang stated he is not sure of the time frame. (Id. pp. 5-6.)

When asked if he was aware of any dangerous situations within the last five months, he stated he was not informed of any. When asked if Mr. Chavez had sustained grievous physical harm within the last five months, he stated not that he was aware of.

He stated that he was sent sub rosa tapes and that he didn't recall specific dates, but he reviewed seven or eight videos. When asked if he received twenty-three videos, and the Department of Transportation documentation, he stated he didn't recall. When asked if he received a flash drive, he stated he was "pretty sure" he did not receive that.

When asked if he reviewed a video of Mr. Chavez going shopping, he stated no. When asked if he reviewed a video of Mr. Chavez shopping at a store and making purchases, going to an ATM and driving a car, he stated no. He doesn't recall if he reviewed Mr. Chavez's deposition testimony. When asked if he reviewed any video showing Mr. Chavez in public, he stated he doesn't recall. He went on to say that if true, that what he heard about was revealed by the sub rosa videos, it doesn't change his opinion, and people in his situation often do dangerous things which Mr. Chavez shouldn't.

When asked if he sees a lot of brain injuries in his patients, he stated yes. When asked if it was unusual for his patients to do things that he advises against, he says that is correct, and everything that was just stated does not change his opinion on these issues. When asked if activities such as Mr. Chavez being under a car, crossing the street, going into a shopping center, and even if he was doing cartwheels on a roller coaster, would that change his opinion with respect to his cognitive deficits and needs as documented in all of his medical reporting, he stated no. When asked if the Department of Transportation requested any medical records, he stated he didn't recall any request. (Id. p. 6.)

He further stated that Mr. Chavez is a very poor historian. When asked if there were any indications within the last year and three months of Mr. Chavez getting lost after moving to a new home, he stated Mr. Chavez was getting lost at his old address. *When asked what the meaning of an old injury is, he stated that the most progress is made in the first two years post TBI, and the individual then becomes either stable or starts to decline regarding cognition.* (Emphasis added.)

When asked about the impressions the witness has indicated, inclusive of cognition, seizure, balance, and strength loss, and whether the doctor is expecting to see a chronicity of those symptoms with respect to Mr. Chavez, he answered yes, they are chronic. He also stated that seizure activity could be subclinical and may not be captured on an EEG. He went on to state that when his Keppra medication was decreased, he had a seizure which necessitated an increase in the Keppra to prevent further seizures. (Emphasis added.)

When asked if he knew about Mr. Chavez's wife, Cathy, and her ability to serve as a caregiver, he stated no. He went on to state that caregivers should not be loved ones, which allows a separation or space in their relationship,

which is helpful. *When asked if his vestibular issues and lack of strength in his body make him a fall risk, he stated yes.* (Emphasis added.)

When asked if having a commercial license was a problem, *he stated he shouldn't have one.* When asked if he is safe without supervision, he stated that his recommendation stands.

When asked if his second seizure was due to his failure to take his medicines, he stated he didn't recall, that he would need to look at the records. When asked if Mr. Chavez would have brought up his brain injury during the Department of Transportation examination, he stated he doesn't know.

When asked if medical management may have caused Mr. Chavez's seizure, and whether the lack of having the nurse come by once a week for medical management might also have been a cause, he stated yes. (Id. p. 7.)

When discussing the issue of medical management and whether within the last five months it caused any issues, he stated he wasn't aware. When asked if within the last five months Applicant had not had home health care services which he recommended, he stated that as far as he is aware, that is correct. (Id. p. 8.)

PATTERSON

In Patterson, the Board held in pertinent part that: An employer may not unilaterally cease to provide approved nurse case manager services when there is no evidence of a change in the employee's circumstances or condition showing that the services are no longer reasonably required to cure or relieve the injured worker from the effects of the industrial injury. . . [And] *It is not necessary for an injured worker to obtain a Request for Authorization to challenge the unilateral termination of the services of a nurse case manager.* (79 Cal. Comp. Cases at p. 917.) We concluded that: Unilaterally terminating medical treatment that was earlier authorized as reasonably required to cure or relieve the injured worker from the effects of the industrial injury is contrary to section 4600(a) unless supported by substantial medical evidence. (Emphasis added.)

In a recent case, the Second District Court of Appeal denied a defendant's Petition for Writ of Review, wherein the defendant asserted that the WCAB erred in relying on Patterson to award an applicant continued inpatient care at Casa Colina. (Nat'l Cement Co., Inc. v Workers' Comp. Appeals Bd. (Rivota) (2021) 86 Cal. Comp. Cases 595, 2021 Cal. Wrk. Comp. LEXIS 21.)

In affirming the WCAB's decision, the Court of Appeal stated that the applicant was not required to provide ongoing requests for authorization for his ongoing inpatient stay at Casa Colina, that defendant could not force applicant to be discharged from the facility by obtaining utilization review without showing a change in applicant's condition or circumstance, and that applicant's continued stay at Casa Colina absent a change in circumstances was required to prevent disruption of his medical care and promote continuity in his living situation. In Rivota, the WCJ found that defendant improperly discontinued the applicant's inpatient care and awarded applicant further medical treatment in the form of continued interdisciplinary, post-acute residential rehabilitation at Casa Colina in accordance with Patterson, *without need for ongoing RFAs, until such time as defendant established a change in applicant's condition or circumstance justifying termination of inpatient care at the center. (Emphasis added.)*

If there is no need for ongoing RFAs then there is no need for IMR.

Additionally, in Ferrona v. Warner Brothers (2015) 2015 Cal. Wrk. Comp. LEXIS P.D. 220, the WCAB, citing Patterson, upheld the WCJ's decision and found that defendant was not entitled to unilaterally terminate applicant's home health care services because there was no evidence of change in applicant's condition or circumstances to indicate that home care services were no longer reasonably required to cure or relieve from effects of industrial injury. Notwithstanding defendant's contention that Patterson should not apply to the present case, the WCAB has not limited the holding of Patterson only to "nurse case managers" and "home health care" services. In fact, the WCAB has affirmed its application to various other medical treatment modalities. Subsequent to Patterson, multiple noteworthy panel decisions have clarified the types of medical treatment to which Patterson applies:

(Kumar v. Sears Holding Corp., 2014 Cal. Wrk. Comp. P.D. LEXIS 502, [no good cause to reduce or eliminate home health care services because the defendant had not made a showing that the applicant's condition or circumstances had changed]; (Gunn v. San Diego v. San Diego Dept. of Social Services, 2015 Cal. Wrk. Comp. P.D. LEXIS 414, [medical transportation services]; (Rabenau v. San Diego Imperial Counties Development Services Incorporated, 2018 Cal. Wrk. Comp. P.D. LEXIS [non-medical transportation services]; (Ramirez v. Kuehne and Nagel, Inc., 2014 Cal. Wrk. Comp. P.D. LEXIS 537 [non-medical transportation services]; (Duncan v. County of Ventura, 2017 Cal. Wrk. Comp. P.D. LEXIS 131 [medical treatment in the form of board and care facility/assisted living]; (Tinsley v. Vertis Communications, 2015 Cal. Wrk. Comp. P.D. LEXIS 575 [no valid UR, WCJ correctly found continued inpatient care at Casa Colina was supported by substantial evidence]; and (White v. Department of Social Services, 2015 Cal. Wrk. Comp. P.D.

LEXIS 454 [payment of assisted living expenses to avoid an applicant's eviction].)

As the foregoing cases instruct, a request for an RFA must be based on a change in applicant's condition or circumstances sufficient to show that the treatment is no longer reasonably required to cure or relieve the effects of the industrial injury. *"[I]t is defendant's burden to show that the continued provision of the services is no longer reasonably required because of a change in applicant's condition or circumstances. Defendant cannot shift its burden onto applicant by requiring a new Request for Authorization and starting the process over again."* (Patterson, supra, at p. 918.) Here, we find that that applicant's condition and circumstances have not changed in a way that made the further provision of the multi-disciplinary neuro-rehabilitation treatment program no longer reasonable medical treatment in this case. (Emphasis added.)

Applicant has been receiving home health care services from the time of discharge from Casa Colina Transitional Living Center in June of 2020 on a continuous basis pursuant to PTP Dr. Huang's recommendations and requests for authorization, which have been continuously authorized by Defendants.

All requested treatment in the December 4, 2020 RFA and January 11, 2020 RFA, were denied by Defendants. (Applicant's Exhibit 7, Utilization Review Certification dated May 21, 2020. (Applicant's Exhibit 8, Utilization Review Certification dated July 3, 2020, Applicant's Exhibit 9, Utilization Review Certification dated August 29, 2020, (Applicant's Exhibit 10, Utilization Review Certification dated October 21, 2020.)

Thereafter, on December 4, 2020, PTP, Dr. Huang issued a request for authorization for 1) caregiver services (outside caregiver 16 hours during daytime and fiancée 8 hours at nighttime), 2) LVN Services (to check on pill counts in his pillbox) and 3) RN Services (to fill pill box), in order to continue Applicant's home health aide and caregiver services. (Applicant's Exhibit 5, Allen Huang, M.D. Request for Authorization, dated December 4, 2020.)

Dr. Huang issued a report dated November 24, 2020, wherein he indicates, "Continue 24 hrs/day caregiver as he has significant cognitive dysfunction related to this TBI which is complicated by his memory impairments. The patient was losing track of large portions of his day possibly related to his seizure disorder which puts him at high risk for wandering into dangerous situations." (Applicant's Exhibit 1, Report of Allen Huang, M.D., dated November 24, 2020.)

On December 11, 2020, Defendants denied Dr. Huang's request for authorization for caregiver services pursuant to Dr. Huang's December 4, 2020 RFA, despite the fact that there was no change in circumstances in Applicant's medical condition from the prior months in which he received home health aide and/or caregiver services. (Applicant's Exhibit 11, Utilization Review Determination (Non-Certification), dated December 11, 2020.)

Subsequently, Dr. Huang issued another request for authorization, dated January 11, 2021 requesting the following: 1) RN Services (to fill pill box), 2) LVN Services (to check on pill counts in his pillbox) and 3) Attendant Care Services 24 hours/day, 7 days/week. (Applicant's Exhibit 6, Allen Huang, M.D. Request for Authorization, dated January 11, 2020.)

Dr. Huang's request was once again supported by his medical findings, as well the requests and recommendations made from the Nurse Case Manager, Esther Salazar, R.N. and neurology QME, Dr. Daniel Franc. In his report dated January 5, 2021, Dr. Huang once again indicates Applicant's need for continuous caregiver services due to his significant cognitive dysfunction related to his industrial TBI. (Applicant's Exhibit 2, Report of Allen Huang, M.D., dated January 5, 2021.)

Defendants again denied Dr. Huang's request for 1) caregiver services, 2) RN services (to fill pill box) and 3) LVN services (to check on pill count in pill box). (Applicant's Exhibit 12, Utilization Review Determination (Non-Certification), dated January 16, 2021.)

Generally, the injured worker has the burden of proving that requested medical treatment is reasonably required to cure or relieve from the effects an industrial injury. In *Patterson v. The Oaks Farm*, however, the appeals board issued a significant panel decision holding that if an employer authorizes medical services, the applicant does not have the burden of proving the ongoing reasonableness and necessity of the services. Rather, the employer has the burden to show that the continued provision of the services is no longer reasonably required due to a change in the applicant's condition or circumstances. (2014) 79 CCC 910 (significant panel decision).

Obviously, IMR does not apply in an untimely UR or a Patterson issue.

It is found that the defendant acknowledged the reasonableness and necessity of the medical treatment at issue when it first authorized it. The board relied on the credible testimony from Dr. Huang that there was no change in the applicant's circumstance and no reasonable basis to discharge him from care. *National Cement Co., Inc. v. WCAB (Rivota)* (2021) 86 CCC 595 (writ denied). See also *Castillo v. Midnight Impressions* (2022) 87 CCC

511 (panel decision); *Zepeda v. Starview Adolescent Center*, 2022 Cal. Wrk. Comp. P.D. LEXIS 166.

The employer has the burden to show that the continued provision of the services is no longer reasonably required due to a change in the applicant's condition or circumstances. The Defendant failed to meet this burden. (Report, pp. 2-16.)

DISCUSSION

We turn first to defendant's contention that the WCJ erroneously found that defendant failed to meet its burden of proving that the provision of RN, attendant care, and LVN services were no longer reasonably required due to a change in applicant's condition or circumstances.

In *Patterson v. The Oaks Farm* (2014) 79 Cal.Comp.Cases 910 (Appeals Board significant panel decision),² the Appeals Board held that an employer may not unilaterally cease to provide treatment authorized as reasonably required to cure or relieve the effects of industrial injury upon an employee without substantial medical evidence of a change in the employee's circumstances or condition. The panel reasoned:

Defendant acknowledged the reasonableness and necessity of [the medical treatment at issue] when it first authorized [that treatment], and applicant does not have the burden of proving [its] ongoing reasonableness and necessity. Rather, it is defendant's burden to show that the continued provision of the [treatment] is no longer reasonably required because of a change in applicant's condition or circumstances. Defendant cannot shift its burden onto applicant by requiring a new Request for Authorization [RFA] and starting the process over again. (*Patterson, supra*, at p. 918.)

In *Nat'l Cement Co., Inc. v Workers' Comp. Appeals Bd. (Rivota)* (2021) 86 Cal.Comp.Cases 595, the Second District Court of Appeal upheld the Appeals Board's application of *Patterson* to award an applicant continued inpatient care at Casa Colina, stating:

[T]he principles advanced in [*Patterson*] apply to other medical treatment modalities as well. Here . . . Applicant had continued need for placement at

² Significant panel decisions are not binding precedent in workers' compensation proceedings; however, they are intended to augment the body of binding appellate court and en banc decisions and, therefore, a panel decision is not deemed "significant" unless, among other things: (1) it involves an issue of general interest to the workers' compensation community, especially a new or recurring issue about which there is little or no published case law; and (2) all Appeals Board members have reviewed the decision and agree that it is significant. (See *Elliott v. Workers' Comp. Appeals Bd.* (2010) 182 Cal.App.4th 355, 361, fn. 3 [75 Cal.Comp.Cases 81]; *Larch v. Workers' Comp. Appeals Bd.* (1999) 64 Cal.Comp.Cases 1098, 1099-1100 (writ den.); see also Cal. Code Regs., tit. 8, §§ 10305(r), 10325(b).)

Casa Colina. Further, [applicant’s witness] stated that there was no change in Applicant’s circumstance and no reasonable basis to discharge Applicant from care. The WCJ . . . concluded that Applicant’s continued care at Casa Colina was necessary, without ongoing RFAs, to ensure Applicant’s safety and provide him with a stable living situation and uninterrupted medical treatment.
(*Rivota, supra*, at p. 597.)

In upholding this application of *Patterson*, the *Rivota* court rejected the employer’s attempt to distinguish it on the grounds that it had never authorized inpatient care for an unlimited or ongoing period, never relinquished its right to conduct UR, and never been subject to a finding that inpatient treatment was reasonable and necessary for the applicant under section 4600. (*Id.*)

In this case, as stated in the Report, applicant received home health care services from defendant on a continuous basis following his June 2020 discharge from Casa Colina Transitional Living Center until Dr. Huang’s December 4, 2020 RFA was denied by UR on December 11, 2020. (Report, pp. 14-15.)

Initially, defendant authorized applicant to receive home health care services of one home health care assistant for twenty-four hours per day, one LVN for medical management for one hour per day, and one RN for medical management for one hour per week. (Ex. A, Genex Utilization Review Decision, May 21, 2020, p. 1.)

These services continued, with the LVN services expanding to 2 hours per day and the home health service reduced to 16 hours per day based upon the recommendations of Dr. Huang. (Ex. B, Genex Utilization Review Decision, July 3, 2020, p. 1; Ex. C, Genex Utilization Review Decision, August 29, 2020, p. 2.)

These services were discontinued by defendant’s December 11, 2020 UR decision, which asserted that home health care treatment was no longer necessary because (1) “[i]t is unclear as to why LVN services 2 hours per day for pill count is necessary”; (2) the authorization “for an RN to fill the pillbox . . . should [have] be[een] sufficient time to provide the necessary education to set the [applicant] for success [in taking the correct medication]”; and “home health [assistance] is for individuals who are homebound with not only cognitive deficits but physical deficits” and the “provider fail[ed] to document th[at] claimant is homebound and if so, why.” (Ex. E, Genex Utilization Review Decision, December 11, 2020, pp. 2-5.)

After the June 4, 2021 order vacating trial of the issue of whether defendant was entitled to unilaterally cease providing attendant care, LVN, and RN services without showing that a

change of applicant’s circumstances or condition rendered that care no longer medically necessary, defendant denied applicant one hour per week of RN services and twelve hours per day of attendant care services. (Order Vacating Submission and Notice of Hearing, June 4, 2021; Minutes of Hearing and Summary of Evidence, March 9, 2021, pp. 2:13-4:5; Ex. CC, Genex Utilization Review Decision, October 13, 2022, pp. 1-3.) The reason for denying the RN services was that the task of “filling the pill box . . . does not require a medical professional.” (Ex. CC, Genex Utilization Review Decision, October 13, 2022, pp. 1-3.) The reason for denying the attendant care services was that there had not been a “clear demonstration of ongoing cognitive deficits that would warrant the 12+ hours of combined supervision (combination of assistant+ family members).” (*Id.*)

Defendant then denied applicant LVN care of two hours per day, seven days per week on the grounds that there were no “clear indications that medical treatment on a home basis would require” that amount of LVN care. (Ex. BB, Genex Utilization Review Decision, January 24, 2023, pp. 2, 4.)

Notably, none of these grounds for discontinuing and denying home health care services rely on any claim that applicant experienced a change of circumstances or condition warranting review and determination of the issue of whether these previously-authorized services were no longer medically necessary. To the contrary, these grounds rely on assertions that the medical records fail to provide adequate documentation for the previously-authorized treatment or to show that applicant and his household members cannot perform the same services as previously-authorized personnel. It follows that defendant discontinued previously-authorized home health care services without establishing beforehand that grounds existed for review and determination of the issue of whether those services no longer medically necessary.

Moreover, as explained by *Rivota*, the mere fact that the authorizations for treatment were limited as to time does not justify the cessation of treatment without showing a change in applicant’s circumstances or condition warranting review and determination of the issue of medical necessity. (See *Rivota, supra*, at p. 597.) Rather, as we have explained, defendant holds the burden of establishing the occurrence of a change of circumstances or condition in order for the issue of the medical necessity of the treatment to be subject to review and determination irrespective of whether or not time limitations have been placed on the original treatment authorization.

In addition, we are unpersuaded that *Gonzalez v. First Presbyterian Church of Santa Barbara*, 2018 Cal. Wrk. Comp. P.D. LEXIS 531³ or *Allied Signal Aerospace v. WCAB* (2019) 35 Cal.App. 5th 1077 [84 Cal.Comp.Cases 367] may be read to shift the burden of proof. The *Gonzalez* panel concluded that it lacked jurisdiction over the issue of whether home health care services were medically necessary where, though there had been no showing of a change in applicant's circumstances or condition rendering the services no longer necessary, twelve months had elapsed since the services had been denied and the treating physician was permitted to request the services if he now deemed them medically necessary. In *Allied Signal Aerospace*, the court concluded that it lacked jurisdiction over the medical necessity issue based upon the contents of a stipulation between the parties.

Hence we agree with the WCJ that defendant discontinued applicant's treatment without having met its burden of showing that a change of applicant's circumstances or condition rendered the provision of previously-authorized home health care services no longer medically necessary. (Report, pp. 15-16.) Notwithstanding that we are unable to discern merit to defendant's contention that the WCJ erroneously found that defendant failed to meet its burden of proof, we will substitute a finding that defendant failed to meet its burden of establishing the occurrence of a change of circumstances or condition warranting review and determination of the issue of whether the provision of one hour per week of RN services; twelve hours per day, seven days per week of attendant care services; and two hours per day, seven days per week of LVN services are no longer medically necessary to clarify the record regarding the extent of home health care services subject to the *Patterson/Rivota* burden of proof.

Having concluded that defendant failed to meet the applicable burden of proof, we also concur with the WCJ's reasoning in the Report that the determination of that issue in applicant's favor renders the issues of whether the WCJ erroneously found that applicant's condition is 'catastrophic', and that section 4610(i)(3) applies to require that UR be conducted within seventy-two hours of receipt of applicant's RFAs need not be addressed herein because those issues, if and when properly raised, only ripen where the requested treatment is subject to UR in the first instance. (See Report, pp. 2, 4; see also *Zepeda v. Starview Adolescent Center* (2022) 87

³ Unlike en banc decisions, panel decisions are not binding precedent on other Appeals Board panels and WCJs. (See *Gee v. Workers' Comp. Appeals Bd.* (2002) 96 Cal.App.4th 1418, 1425, fn. 6 [67 Cal.Comp.Cases 236].) However, panel decisions are citable authority and we may consider these decisions to the extent that we find their reasoning persuasive. (See *Guitron v. Santa Fe Extruders* (2011) 76 Cal.Comp.Cases 228, 242, fn. 7 (Appeals Board en banc).)

Cal.Comp.Cases 828 (holding that a physician's request to continue the applicant's previously-authorized inpatient treatment was not subject to UR because there was no substantial medical evidence of change in applicant's circumstances or condition as required by *Patterson*.)

For the same reasons, our conclusion that defendant failed to meet its burden of proof also renders defendant's argument that the WCJ erroneously failed to postpone trial to await review of surveillance videos moot. We note, moreover, that the record fails to disclose any objection to trial or request to continue trial on the part of defendant.

Accordingly, we will substitute a finding that defers all other issues, including issues of whether applicant's condition is 'catastrophic', section 4610(i)(3) applies to require that UR be conducted within 72 hours, and the WCJ erred by failing to postpone trial.

Accordingly, we will rescind the F&O and substitute findings that (1) defendant failed to meet its burden of establishing the occurrence of a change of circumstances or condition required for review and determination of the issue of whether the provision of services by one home health care attendant for sixteen hours per day, seven days per week, one LVN for medical management for two hours per day, seven days per week, and one RN for medical management for one hour per week are no longer medically necessary; and (2) all other issues are deferred.

For the foregoing reasons,

IT IS ORDERED that the Petition for Reconsideration of the Findings of Fact and Order issued on June 27, 2023 is **GRANTED**.

IT IS FURTHER ORDERED, as the Decision After Reconsideration, that the Findings of Fact and Order issued on June 27, 2023 is **RESCINDED** and the following is **SUBSTITUTED** therefor:

FINDINGS OF FACT

1. Darrin Chavez, born _____, while employed on 5/25/2018, as a Ready-Mix concrete driver, at Van Nuys, California, by Bonanza Concrete, Inc. sustained injury arising out of and in the course of employment to the head and brain. All claimed body parts shall be deferred. At the time of injury, the employer's workers' compensation carrier was ICW Group Sacramento. The primary treating physician is Dr. Allen Huang.
2. Defendant failed to meet its burden of establishing the occurrence of a change of circumstances or condition as required for review and determination of the issue of whether the provision of previously-authorized services of one home health care assistant for sixteen hours per day, seven days per week, one LVN for medical management for two hours per day, seven days per week, and one RN for medical management for one hour per week are no longer reasonably required to cure or relieve applicant from effects of his injury.
3. All other issues are deferred.

ORDER

- a. Defendant shall provide the following services to applicant until there is a legitimate change in applicant's condition or circumstances pursuant to Dr. Huang's RFA, dated January 16, 2023.
 - b. 1. Prospective request for 3 months of continued RN services (1 hour/week).
 2. Prospective request for 3 months of continued attendant care services (12 hours per day x 7days/week).
 3. Prospective request for 3 months of continue licensed vocational nurse (2 hours per day x 7 days/ week).

c. Applicant objects to Defendant's Exhibit "PP" as not having been served with this exhibit prior to the time of trial on. May 2, 2023, based upon due process rights. Defendant's Exhibit "PP" is excluded from evidence.

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER

I CONCUR,

/s/ CRAIG SNELLINGS, COMMISSIONER

/s/ KATHERINE A. ZALEWSKI, CHAIR



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

September 22, 2023

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

**DARRIN CHAVEZ
TINA ODJAGHIAN LAW GROUP
GREENUP, HARTSON & ROSENFELD**

SRO/abs

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