

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

COLIN JOINER

vs.

BEST FORMULATIONS, INC.;
TRAVELERS PROPERTY CASUALTY COMPANY OF AMERICA, *Defendants*

Adjudication Number: ADJ15853585
Los Angeles District Office

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

Applicant seeks reconsideration of the Findings of Fact, Order; Opinion on Decision (F&O) issued on December 7, 2023, wherein the workers' compensation administrative law judge (WCJ) found that (1) applicant is entitled to reasonable and necessary medical treatment as authorized by defendant pursuant to Labor Code section 4600; (2) there is no good cause to order defendant to pay for inpatient medical services at any Casa Colina facility for any date on or after the date of service of the F&O; (3) there is no finding as to defendant's liability, if any, for services provided by Casa Colina as to any date prior to the date of service of the F&O; (4) defendant is ordered to authorize any and all reasonable and necessary outpatient services to cure or relieve from the effects of applicant's industrial injury; and (5) upon a showing of good cause, applicant may be awarded reimbursement of the reasonable cost of alternative housing, medication assistance, or any other needed outpatient services for 30 calendar days following service of the F&O.

The WCJ ordered defendant to authorize all outpatient medical treatment services reasonably required to cure or relieve applicant from the effects of his injuries.

Applicant contends that the WCJ erroneously failed to find that (1) defendant failed to meet its burden of establishing the occurrence of a change of circumstances or condition warranting the termination of his ongoing inpatient treatment; and (2) defendant violated Labor Code section 4610(i)(4)(c) by failing to provide an adequate discharge plan for applicant.

We did not receive an Answer.

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 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 defendant failed to meet its burden of establishing the occurrence of a change of circumstances or condition warranting discontinuation of applicant's inpatient treatment and that all other issues are deferred.

FACTUAL BACKGROUND

In the Report, the WCJ states:

The 1/25/22 injury at issue herein, per clinic records on the same date, occurred when the applicant "was mopping the floors when he slipped and fell backwards onto his tailbone and hit his head." The initial report from Concentra Clinic of 1/25/22 described the applicant as "alert and oriented as to person, place and time." This report makes no specific mention of loss of consciousness, although it does diagnose "concussion with loss of consciousness of 30 minutes or less" and a cervical strain. (Id. at pp. 4-5.)

According to the applicant's deposition testimony on 5/16/22, as summarized by PQME Dr. Khaled Anees, the applicant, upon falling, lost consciousness "for a few seconds" and got up on his own. He then reported the injury to his supervisor and drove himself to the Concentra clinic. (Id. at p. 13.)

...

As noted above, the applicant suffered a second industrial injury with defendant herein on 3/17/22, also due to a fall, this time on an oily spot, at which time he fell backwards. He was diagnosed with a cervical and lumbar strain and continued on modified duty. When seen on 3/24/22 he was described as having "normal gait" with "full weightbearing." A treatment report on 4/7/22 describes him as continuing on modified duty. (Id. at pp. 5-6.)

Apparently based on a referral from his treating physician, the applicant was admitted to Casa Colina Hospital in Pomona on 4/7/22, at which time he registered complaints of "headache and imbalance, memory difficulties and intermittent blurry vision" as well as trouble having conversations and excessive fatigue and sleepiness. A brain CT done at the time of admission was negative, as was a head CT that disclosed "no acute intracranial abnormality." During his six-day stay there in April 2022, he received physical therapy, psychological counseling and a neuropsychiatric and

neuro-optometry evaluation. Although the providers at Casa Colina expresses some concern about releasing him in light of potential fall risk and cognitive impairment, the consensus of his care team was to discharge the patient on 4/13/22 “for outpatient monitoring of the aforementioned problem.” (Id. at pp. 7-10.) At that point he was placed on medical leave and apparently never returned to his job.

...

The applicant apparently changed treaters to neurologist Dr. Roger Bertoldi, who prepared a doctor’s first report on 5/25/22. Dr. Bertoldi noted similar complaints of headaches, imbalance and blurred vision. In this report and in a subsequent report dated 6/22/22, Dr. Bertoldi noted several dramatic new symptoms I do not find mentioned previously in PQME Anees’s detailed record review, including “vertigo with multiple near falls approximately 2 times per day,” and vomiting. In connection with the applicant’s 6/22/22 visit, Dr. Bertoldi recommended that the applicant return to Casa Colina for “inpatient treatment 5 days a week and home on weekends.” (Id. at pp. 10-11.)

A second brain MRI done at a different facility on 7/5/22 indicated “small amount T2-weighted hyperintensities . . . within the periventricular, deep and subcortical white matter. The differential diagnosis includes nonspecific white matter changes, premature small vessel ischemic disease, a demyelinating process, migrainous angiopathy and Lyme disease.” (Id. at p. 11.)

Readmission to Casa Colina on 7/20/22; Casa Colina Care During 2022

Based on utilization review (UR) approval of a request for authorization (RFA) prepared by Dr. Bertoldi, the applicant was re-admitted to Casa Colina, at their Transitional Living Center in Pomona, on 7/20/22. (Id. at p. 11.) The RFA requested a three-month outpatient program, however this was modified on UR to one month. (Exh. 9.) To the undersigned’s best knowledge, since that date, the applicant has continuously been an inpatient at Casa Colina for the past 18 months.

...

Evaluation of Neurological QME Khaled Anees, 12/17/22; Continued Inpatient Care at Casa Colina through 3/21/23

The applicant was seen by neurological QME Dr. Khaled Anees on 12/17/22. In the “Conclusions” section of his report, Dr. Anees stated as follows:

His neurological examination today was essentially unremarkable. He had normal mental status and cognition, normal speech/language and memory, normal cranial nerve function, normal sensory and motor examinations, normal reflexes, normal coordination, and normal balance and gait. There

is no objective evidence of fixed neurological deficits or physical/cognitive loss of function, from a neurological standpoint. (Exh. C, p. 6.)

However, Dr. Anees also opined that the applicant's post-traumatic headaches were not adequately controlled on his current treatment regimen and deferred his permanent and stationary findings pending a different course of medication that Dr. Anees recommended. Dr. Anees stated that the applicant "should not be on temporary total disability based solely on the diagnosis of headaches," "and that "no specific work restrictions are warranted." (Exh. C, p. 8.)

On 1/19/23, the applicant was approved through UR for continued inpatient services at Casa Colina for 60 more days beginning 1/21/23. In approving this request, the UR reviewer cited treatment guidelines noting the potential benefit of "ongoing treatment targeting functional outcomes to improve the patient's overall prognosis. Improved likelihood of achieving goals including RTW." (Exh. 7, p. 2.)

2/28/23 Neuropsychological Evaluation of Dr. Cisneros

On 2/8/23, neuropsychologist Dr. Elizabeth Cisneros prepared, on behalf of Casa Colina and on Casa Colina letterhead, a detailed 15-page report, which included, by my count, 17 separate neuropsychiatric tests administered to the applicant. (Exh. R.)

I believe it is important to note that this 2/8/23 report was *not* presented in evidence at the time of the subsequent 4/25/23 expedited hearing discussed below, after which I determined that there was good cause to order continued authorization of inpatient services at Casa Colina. This same report, however, was placed in evidence at the subsequent expedited hearing of 11/16/23 and played a prominent role in my determination to the contrary in my 12/7/23 findings and order.

...

Notably, Dr. Cisneros did *not* find any evidence of traumatic brain injury, specifically stating on page 11 of her report, "At more than one-year post-injury, *Mr. Joiner's cognition does not reflect a change from premorbid estimates. As such, no ratings for disability related to cognition are assigned.*" (Emphasis added.)

Dr. Cisneros did opine that the applicant had a significant depressive disorder which may have pre-existed the 1/25/22 injury but was substantially aggravated or "lit up" by the stress of the 1/25/22 injury. Accordingly, she apportioned 100% of the applicant's psychiatric disability to the applicant's work injury. She assigned a GAF score of 51 to this impairment, which was "equivalent to a WPI of 29%, reflecting moderate symptoms of psychiatric disturbance." (Id. at pp. 10-11.)

In connection with her treatment recommendations, Dr. Cisneros stated,

Mr. Joiner's treatment at the TLC is recommended to focus on functional living skills and functional problem-solving skills. Determining a safe discharge location is necessary, given that Mr. Joiner reports having no home to which he can return at present. Given Mr. Joiner's longstanding cognitive difficulties, he requires extended time and repetition to learn new skills or routines. He will require a home and community therapy program to aid in transitioning him to any new home environment, given the amount of time he has been institutionalized. He may require assistance in carrying out these routines and any medically-recommended therapeutic activities and exercise, as he is less likely to be able to implement and problem-solve these independently. (Id. at p. 12.)

Denied 3/9/23 RFA for Extended Inpatient Care; Treatment During March and April, 2023

On or about 3/9/23, Dr. David Patterson, Director of the Casa Colina Transitional Living Center, submitted an RFA requesting a continued stay at a residential rehabilitation program at Casa Colina from 3/21/23 to 5/20/23. In support of this, Dr. Patterson submitted a progress report noting a continuation of the same symptoms including visual problems, memory problems, fatigue and pain. The progress report noted that “patient’s partner has cut ties with the patient and has left the patient without a home.” (Exh. 8, pp. 3, 7.)

...

The proposed action plan was continuation of therapy to increase the applicant’s independence as to medication management, handling interpersonal issues, productively setting day schedules and community activities. (Exh. 8, p. 8.) He was also noted at page 17 of the report that he “feels he is doing well emotionally” and is “always in a good mood.” The progress report noted that applicant had been prescribed approximately 11 medications either on a regular or as-needed basis. (Id. at pp. 19-20.)

On 3/16/23, defendant Travelers Insurance issued a UR denial of the RFA noted above for another 60 days of inpatient services at Casa Colina, stating in relevant part,

[MTUS] indications for a residential rehabilitation program include the presence of sufficient residual symptoms and/or signs of post-TBI to necessitate ongoing outpatient treatment, be it medical, physical therapy, occupational therapy, or other. The MTUS . . . notes that such programs are used for those with more numerous impairments, an inability to return to home unassisted, and/or greater numbers and magnitudes of mismatch between current abilities and activities of daily living (ADLs), job cognitive

and physical demands. Here, however, there is no record of the claimant's having sustained a severe traumatic brain injury for which continued care in the residential rehabilitation program would be indicated. . . . The MTUS Traumatic Brain Injury Chapter Residential Rehabilitation section further stipulates that indications for discontinuation of treatment include a claimant's effecting a sufficient recovery. Here, the claimant is independently ambulatory. The claimant exhibited fluent speech "with expression and comprehension intact," the attending provider asserted on a progress note dated [sic] July 25, 2023. The claimant is reportedly able to walk for up to 2 miles at a time The documentation on file, it is further noted, suggested that the claimant has been staying in the rehabilitation facility in question on the grounds that the claimant does not have a home to return to. There is, however, no seeming medical reason or medical basis for the claimant to continue staying in the facility in question. (Exh. 10, p. 3.)

...

Expedited Hearing of 4/25/23; 5/18/23 Findings and Order

...

Via findings and order dated 5/18/23, I determined that the Board had jurisdiction to determine the medical necessity of the requested services as the UR denial was untimely. I further found that there was good cause to order authorization of the requested inpatient services from 3/21/23 to 5/20/23. I explicitly did not order provision of services for any date after 5/20/23.

...

Denied 6/6/23 RFA for Extended Inpatient Care

On 6/6/23, Casa Colina director Dr. David Patterson submitted another RFA for six weeks of additional inpatient treatment services at the "Casa Colina Transitional Living Center Interdisciplinary Post Acute Residential Rehabilitation Program." This request covered the period from 5/21/23 to 6/20/23. (Exh. 14, p. 1.)

...

The treatment plan in this report, which proposed another 6 weeks of residential treatment at Casa Colina five days a week, appeared to this judge to be little different than that in the prior RFAs discussed above.

The defendant denied authorization of this request in a UR dated 6/14/23, stating in relevant part,

The claimant has been attending an interdisciplinary rehab program since July of 2022. There is no clear evidence of the claimant sustaining a severe TBI. In any case, the claimant has attended this program for several months with no clear evidence of sustained functional benefit. The most recent progress note documents essentially the same findings despite the reported

treatment. While the claimant is noted to have no family support, that is not sufficient medical justification for continuing this treatment. (Exh. F, p. 2.)

...

Temporary Hospitalization in June 2023; Partially granted RFA of 6/20/23

In the meantime, on 6/13/23, a Casa Colina report indicated that the applicant had been temporarily hospitalized at the Casa Colina hospital facility for elevated blood pressure, possibly related to back pain. (Exh. 17, p. 6.)

Another RFA from Dr. Patterson dated 6/20/23 requested approval of 30 days of inpatient services from 6/21/23 to 7/20/23. (Exh. 20.) This report stated that “patient has no change in circumstances for his traumatic brain injury and should continue rehabilitating.” The report noted a recent hospitalization at the Casa Colina hospital ward for low back pain. (Id. at p. 7.) This report appears quite similar to those discussed earlier, noting, again, participation in many of the same activities as are discussed above, including successfully making a wallet in a leather working class “with [minimum] cues for problem solving to complete task thoroughly.” (Id. at p. 12.)

...

The UR dated 6/23/23, documented an agreement between the utilization reviewer and a Casa Colina representative to authorize 14 more days of treatment rather than the 30 days requested during the period from 6/21/23 to 7/20/23. In reaching this determination, the Utilization reviewer stated,

Per the designated representative, the claimant was recently hospitalized for issues related to what was described as a cardiovascular emergency. The claimant has been a resident in a transitional living Center since 07/20/2022. The records available for review indicate that objectively, there is documentation of an ability to be at a modified independent level for home management issues. Additionally, it is documented that a driving evaluation was recently passed. Thus, it would truly appear that the claimant is nearing a level whereby there can be a transition to a community setting. . . . *The facility is expected to develop a discharge plan that can be implemented at the completion of the currently authorized stay.* [Emphasis added.] (Exh. G, p. 3.)

Denied RFAs of 7/7/23 and 7/26/23 for Further Extended Inpatient Services

Dr. Patterson submitted yet another RFA dated on or about 7/7/23 for residential treatment from 7/1/23 to 7/31/23 (the RFA itself requests authorization for July 2022 but this appears to be a misprint). (Exh. 21, p. 1.) I find little in this 22-page RF22-page supporting report to distinguish it

from earlier similar requests. Defendant denied this request via UR dated 7/20/23, noting that it was unclear if applicant was “making continuous improvement in the program” and that the year of the request was incorrect. (Exh. H, p. 3.)

An additional RFA dated 7/26/23 requested continued inpatient services from 7/15/23 to 8/31/23. This request differed from the earlier ones as it requested placement in Casa Colina’s “Long Term Residential Program.” (Exh. 23, p. 1.) It is this judge’s understanding that this program is situated in a separate facility in Apple Valley, California, and has a primary goal of safe maintenance of the patients in that program rather than rehabilitation and return to the community.

This request stated in relevant part,

Given the manifestation of symptoms that align with the patient's traumatic brain injury (TBI) diagnosis, the patient finds it challenging to independently manage his own care. An extensive neuropsychological assessment could allow for a more accurate evaluation of the patient's cognitive impairments, thereby assisting in prognostication. [As noted above, Dr. Cisneros had already performed such an evaluation on behalf of Casa Colina.] The presence of these cognitive deficits renders patient incapable of reliably managing his own care and treatment. Consequently, it is necessary to incorporate him into a long-term care program. . . . Care may be necessary or limited periods of time, or in some cases may be required for the course of the individual's lifetime.” (Exh. 23, pp. 8-9.)

Defendant likewise denied this request through UR on 7/28/23, again noting a lack of documented improvement in the applicant’s condition. (Exh. J.)

Denied RFA of 8/23/23 for Commitment to Casa Colina Long Term Care Facility

Yet another RFA dated 8/23/23 again requested long-term care within Casa Colina’s Long Term Residential Program, for a period from 9/1/23 to 10/31/23. (Exh. 26.) This request appears to this judge to be similar to the earlier one, discussed above, dated 7/26/23. The Casa Colina progress report included with this request asserted that the applicant was “still experiencing phobias of getting out in the environment and functions best in a group of 2-3 people.” (Id. at p. 13.) I do not recall seeing any mention of this sort of behavior in any of Casa Colina’s earlier reports.

This request led to yet another UR denial on 8/25/23, again primarily for the reason that it did not document improvement in the existing treatment program. (Exh. K.)

...

Casa Colina 9/14/23 Progress Report; Denied 10/19/23 RFA for Long Term Care Placement

A Casa Colina progress report dated 9/14/23 describes the applicant as “consistently reporting positive emotional and psychosocial functioning within the program.” In connection with a crisis involving a family member, the applicant stated that “besides the acute family crisis, he has been maintaining positive mood, outlook and psychosocial functioning.” He reported that he continues to feel that “he does not need individual psychotherapy but appreciated the opportunity for an individual session” Per this report, the applicant “continues to be an active member in choir and dance groups.” The applicant also “reported that some extended family members (and now even people they know but whom he does not) continue to frequently ask him for money but that he has grown accustomed to telling them no and maintaining appropriate boundaries, though it remains a source of frustration for him.” (Exh. 36, pp. 16, 17.)

The most recent RFA for continued residential treatment is dated 10/19/23. This was the RFA that was at issue at the trial herein. This RFA likewise requested continued placement at the Casa Colina Long Term Residential Program, this time for the period from 11/1/23 to 12/31/23. It is quite similar to the earlier long-term care RFAs discussed above. The 10/19/23 asserted that the applicant was “unable to care for himself adequately” and that the placement in question “may be necessary for a limited period of time, or in some cases may be required for the course of the individual’s lifetime.” (Exh. 37, pp. 8-9.)

The 10/19/23 RFA generated three separate UR denials. It is unclear to me exactly why there were three separate UR denials and not just one.

It appears that in reaching the decision at issue herein, I somehow overlooked the 10/23/23 UR denial, which was *arguably* timely, as noted in my discussion below. (Exh. S.) This denial noted that in the RFA, “there are no skilled nursing needs documented” and that “there is no plan to discharge the claimant home with home care provided.” The utilization reviewer concluded that the requested program was not medically necessary. (Id. at p. 2.)

A second UR denial dated 11/6/23 reviewed a series of earlier UR and IMR denials of similar requests and stated, “No new information has been submitted to support overturning these previous denial rationales. The documentation again does not highlight ongoing medical needs that can be addressed with nursing care.” (Exh. T, p. 5.) A third UR denial dated 11/7/23 provided similar reasons for the UR determination. (Exh. U.)

11/10/23 Deposition of Casa Colina Director Dr. David Patterson

...

Dr. Patterson stated at this deposition that he did not believe discharge from Casa Colina to be appropriate partly because the applicant “doesn’t have . . . a place to go [home].” Dr. Patterson also asserted that the applicant has “behavioral issues,” “moderate cognitive disorder” “traumatic brain injury” and “neurological damage” “that make him a safety risk.” Per Dr. Patterson, the applicant needed to be in a care facility “that understand, you know, how to deescalate brain injury.” Dr. Patterson also opined that the applicant, if released, would be “at risk for fall because of his balance issues.” (Id. at pp. 7-12.)

Dr. Patterson noted that while the applicant had carried out a variety of activities while on outings, each of these was done under staff supervision. Dr. Patterson also expressed concerns about the applicant’s ability to handle his medication regimen on his own. He also dismissed the option of outpatient skilled nursing assistance, stating, “most of them don’t have any brain injury training.” He also stated, “It’s really hard to find people to supervise these home health agencies. Unfortunately, there’s a shortage on that level of care.” (Id. at pp. 14, 19.)

...

Defendant questioned Dr. Patterson at length about the findings of Casa Colina’s own neuropsychologist, Dr. Elisabeth Cisneros. In my view, Dr. Patterson never provided any clear explanation of his own conclusion that the work injury caused major cognitive dysfunction in the face of Dr. Cisneros’ findings to the contrary. (Id. at pp. 29-30, 34-36.) Dr. Patterson admitted he was “not a neuropsychologist, but I’ve got a background in trying to parcel out these issues.” (Id. at p. 36.)

...

12/7/23 Findings and Order

Based on the above record, I held on 12/7/23 that the 11/6/23 UR denial of the 10/23/23 RFA for inpatient care for the rest of 2023 was untimely. However, I also held that applicant’ had failed to sustain his burden of showing that the UR should have been granted. Accordingly I upheld the UR denial and stated that Casa Colina was not required to authorize inpatient services during the months of November and December of 2023 as Dr. Patterson had requested.

However, to protect the applicant’s right to outpatient care, I also provided that Casa Colina could apply, upon a showing of good cause, for reimbursement of the cost of trying to place the applicant in the community, including the cost of maintaining the applicant at Casa Colina while trying to place him. However, I indicated that any such entitlement would be limited to services or maintenance at Casa Colina over the period of time from 12/7/23 to 1/6/24. (Findings and Order, 12/7/23, pp. 1-2.)

In these findings and order, I specified that I was making no determination of the reasonableness or necessity of any services provided prior to the date of the 12/7/23 findings and order.

...

As I stated in my opinion on decision herein,

It is clear to me that *Patterson* has no application to the present matter. That is because the 10/18/23 RFA at issue herein specifies that “the goal of supported living programs are very *different* from the more broad goals of all interdisciplinary rehabilitation programs.” [Emphasis added.] While earlier RFAs that were approved by the carrier were based on the rehabilitative goals of the “Transitional” Living Center, the 10/18/23 RFA makes no promise of rehabilitation but simply requests these services as a form of maintenance of the applicant’s ability to carry out activities of daily living [evidently at an entirely separate Casa Colina facility in Apple Valley]. Accordingly, we are not presented with a request for continued efforts to rehabilitate Mr. Joiner but rather a “very different” request to simply accommodate his claimed cognitive or other impairments through 24/7 care.”

...

I believe the utilization review denials of long-term care for this seemingly able-bodied individual are, in my view, amply supported a preponderance of the evidence set forth in the statement of facts herein.

(Report, pp. 3-18, 28-29.)

DISCUSSION

Applicant contends that defendant failed to meet its burden of establishing the occurrence of a change of circumstances or condition warranting discontinuation of his ongoing inpatient treatment.

In *Patterson v. The Oaks Farm* (2014) 79 Cal.Comp.Cases 910 (Appeals Board significant panel decision),¹ 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:

¹ 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).)

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 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, defendant authorized applicant's re-admission to Casa Colina for a one-month period in July 2022, and authorized continued inpatient treatment at Casa Colina for a 60-day period on January 19, 2023. (Report, pp. 5-6.) Applicant's physician, David Patterson, M.D., submitted a RFA for continued inpatient treatment in March 2023; and, after defendant denied the request, the issue of applicant's continued inpatient treatment proceeded to trial and the WCJ determined that defendant failed to establish grounds to terminate the treatment. (Report, pp. 9-10.)

Dr. Patterson again requested continued inpatient treatment in June 2023; and defendant authorized fourteen more days of the treatment. (Report, p. 13.) Dr. Patterson again requested continued inpatient treatment in July 2023, including treatment at a separate Casa Colina facility, and defendant denied these requests based upon a lack of improvement in applicant's condition.

(Report, p. 14.) Dr. Patterson again requested continued treatment in August and September 2023, and defendant denied the request for the same reason. (Report, p. 14.)

Dr. Patterson again requested continued inpatient treatment in October 2023, and defendant denied the request by way of three separate UR decisions of late October and early November 2023. (Report, p. 16.) The decisions to deny continued inpatient treatment cited the lack of a discharge plan and the lack of new information as to applicant's condition following previous denials as grounds. (Report, p. 16.)

Notably, none of the grounds cited for discontinuing applicant's inpatient treatment rely on any claim that applicant experienced a change of circumstances or condition warranting discontinuation of the previously-authorized (and court-ordered) inpatient treatment. To the contrary, the denials of continued treatment assert that lack of improvement, lack of a discharge plan, and lack of new information suffice as grounds to discontinue the treatment.

Additionally, and contrary to the reasoning of the WCJ, the burden of proof did not shift to applicant on the grounds that applicant was requesting inpatient treatment beyond the period for which the treatment had been authorized (and ordered). (Report, p. 18.)

As explained by *Rivota*, the mere fact that the previous authorizations for treatment were limited as to time does not justify the discontinuation of the treatment without a showing of a change in applicant's circumstances or condition warranting a determination that the treatment is no longer medically necessary. (See *Rivota, supra*, at p. 597.) Rather, defendant holds the burden of establishing the occurrence of a change of circumstances or condition warranting discontinuation of the treatment irrespective of any time limitations placed on the authorization.

Additionally, and contrary to the reasoning of the WCJ, *Patterson* assigns the burden of proving a change of circumstances or condition warranting discontinuation of treatment without reference to the goal of the treatment. Consequently, the fact that applicant's physician changed the goal of his inpatient treatment from "rehabilitation" to "maintenance" of his ability to carry on activities of daily living has no bearing as to which party bears the burden of proof. (Report, p. 28.)

Additionally, and contrary to the reasoning of the WCJ, defendant must meet its burden of proof with substantial medical evidence. Here, we have explained that the UR decisions cited applicant's lack of improvement as grounds to discontinue treatment—and did not assert that his circumstances or condition had changed in a manner warranting discontinuation of inpatient

treatment. Given the absence of medical evidence, the WCJ exceeded his discretion by concluding that applicant no longer reasonably required inpatient treatment because he was “seemingly able-bodied.” (Report, p. 29; see *E.L. Yeager Construction v. Workers' Comp. Appeals Bd. (Gatten)* (2006) 145 Cal.App.4th 922, 929 [71 Cal.Comp.Cases 1687] (stating that the Appeals Board may not substitute its judgment for that of a medical expert).)

It follows that defendant has not met its burden to establish the occurrence of a change of circumstances or condition warranting discontinuation of applicant’s inpatient treatment.

Accordingly, we will substitute a finding that defendant failed to meet its burden of establishing the occurrence of a change of circumstances or condition warranting discontinuation of applicant’s inpatient treatment.

Applicant also contends that defendant violated Labor Code section 4610(i)(4)(c) by failing to provide an adequate discharge plan for applicant. However, because the record fails to establish grounds for discontinuation of applicant’s inpatient treatment, we conclude that applicant’s contention is moot.

Accordingly, we will substitute a finding that all other issues are deferred.

Accordingly, we will rescind the F&O and substitute findings that defendant failed to meet its burden of establishing the occurrence of a change of circumstances or condition warranting discontinuation of applicant’s inpatient treatment and that all other issues are deferred.

For the foregoing reasons,

IT IS ORDERED that the Petition for Reconsideration of the Findings of Fact, Order; Opinion on Decision issued on December 7, 2023 is **GRANTED**.

IT IS FURTHER ORDERED, as the Decision After Reconsideration, that the Findings of Fact, Order; Opinion on Decision issued on December 7, 2023 is **RESCINDED** and the following is **SUBSTITUTED** therefor:

FINDINGS OF FACT

1. Applicant is entitled to reasonable and necessary medical treatment as authorized by defendant herein pursuant to Labor Code section 4600 and other relevant provisions of the law.
2. Defendant failed to meet its burden of establishing the occurrence of a change of circumstances or condition warranting discontinuation of applicant's inpatient treatment at Casa Colina.
3. All other issues are deferred.

WORKERS' COMPENSATION APPEALS BOARD

/s/ CRAIG SNELLINGS, COMMISSIONER

I CONCUR,

/s/ ANNE SCHMITZ, DEPUTY COMMISSIONER

/s/ KATHERINE A. ZALEWSKI, CHAIR



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

FEBRUARY 27, 2024

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

**COLIN JOINER
LAW OFFICES OF SOLOV & TEITELL
WOOLFORD & ASSOCIATES**

SRO/cs

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

CS