WORKERS' COMPENSATION APPEALS BOARD

STATE OF CALIFORNIA

RAY GUTIERREZ, *Applicant*

vs.

CMAX COMMERCIAL MAINTENANCE, INC.;
PALOMAR SPECIALTY INSURANCE COMPANY,
administered by OMAHA NATIONAL GROUP, INC., *Defendants*

Adjudication Number: ADJ18067229
San Bernardino District Office

OPINION AND ORDER DENYING PETITION FOR RECONSIDERATION

We have considered the allegations of the Petition for Reconsideration and the contents of the report of the workers' compensation administrative law judge (WCJ) with respect thereto. Based on our review of the record, and for the reasons stated in the WCJ's Report, which we adopt and incorporate, and for the additional reasons given below, we will deny reconsideration.

Former Labor Code section 5909 provided that a petition for reconsideration was deemed denied unless the Appeals Board acted on the petition within 60 days from the date of filing. (Lab. Code, § 5909.) Effective July 2, 2024, Labor Code section 5909 was amended to state in relevant part that:

> (a) A petition for reconsideration is deemed to have been denied by the appeals board unless it is acted upon within 60 days from the date a trial judge transmits a case to the appeals board.
>
> (b) (1) When a trial judge transmits a case to the appeals board, the trial judge shall provide notice to the parties of the case and the appeals board.
>
> (2) For purposes of paragraph (1), service of the accompanying report, pursuant to subdivision (b) of Section 5900, shall constitute providing notice.

Under Labor Code section 5909(a), the Appeals Board must act on a petition for reconsideration within 60 days of transmission of the case to the Appeals Board. Transmission is reflected in Events in the Electronic Adjudication Management System (EAMS). Specifically, in

Case Events, under Event Description is the phrase "Sent to Recon" and under Additional Information is the phrase "The case is sent to the Recon board."

Here, according to Events, the case was transmitted to the Appeals Board on May 12, 2025, and 60 days from the date of transmission is Friday, July 11, 2025. This decision is issued by or on Friday, July 11, 2025, so that we have timely acted on the Petition as required by Labor Code section 5909(a).

Labor Code section 5909(b)(1) requires that the parties and the Appeals Board be provided with notice of transmission of the case. Transmission of the case to the Appeals Board in EAMS provides notice to the Appeals Board. Thus, the requirement in subdivision (1) ensures that the parties are notified of the accurate date for the commencement of the 60-day period for the Appeals Board to act on a petition. Labor Code section 5909(b)(2) provides that service of the Report and Recommendation shall be notice of transmission.

Here, according to the proof of service for the Report and Recommendation by the workers' compensation administrative law judge, the Report was served on May 12, 2025, and the case was transmitted to the Appeals Board on May 12, 2025. Service of the Report and transmission of the case to the Appeals Board occurred on the same day. Thus, we conclude that the parties were provided with the notice of transmission required by Labor Code section 5909(b)(1) because service of the Report in compliance with Labor Code section 5909(b)(2) provided them with actual notice as to the commencement of the 60-day period on May 12, 2025.

In addition to the reasons set forth in the WCJ's Report, we note that in this case, unlike in *Allied Signal Aero. v. Workers' Comp. Appeals Bd.* (*Wiggs*) (2019) 35 Cal.App.5th 1077 [86 Cal.Comp.Cases 367], the issue is not whether defendant agreed to waive utilization review or refer it to a nurse for alternative dispute resolution on a one-time basis. We do not find any waiver by defendants, nor would we go so far as to characterize the provided treatment in this case as a "stipulation" between the parties. Instead, the issue in the present case is whether ongoing care, which had already been certified as reasonable and necessary through the utilization review process on May 24, 2024 and provided by defendants, should have been sent for a redundant subsequent utilization review absent any evidence that material facts had changed. The WCJ correctly applied the reasoning in *Patterson v. The Oaks Farm* (2014) 79 Cal. Comp. Cases 910 (Appeals Board Significant Panel Decision), and *National Cement Co. v. Workers' Comp. Appeals*

Bd. (*Rivota*) (2021) 86 Cal.Comp.Cases 595 (writ denied), both of which are cited in the WCJ's Report.

In *Rivota*, the Second District Court of Appeal upheld the Appeals Board's application of *Patterson*, noting the following language in *Patterson*:

> 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*, 79 Cal.Comp.Cases 910 at p. 918.)

While *Patterson* involved the ongoing provision of Nurse Case Manager services, *Rivota* noted that the same reasoning should apply to inpatient care:

> [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*, 86 Cal.Comp.Cases 595 at p. 597.)

Thus, following the reasoning in *Patterson* and *Rivota*, defendants must show a change in circumstances, by way of medical evidence, before resubmitting a previously approved request for ongoing care to utilization review. A second utilization review of the same care is not permitted until defendants can meet their burden of proving a change of circumstances to justify what would otherwise be a redundant review. Accordingly, the utilization review in this case is invalid, because defendants did not satisfy their burden of establishing a material change in circumstances. The utilization review determination that defendants obtained in contravention of the principles set forth in *Patterson* is not in and of itself sufficient evidence of a change in circumstances.

The California Supreme Court declined to review this same line of reasoning in *Los Angeles Metropolitan Transit Authority v. W.C.A.B. (Burton)* (2024) 89 Cal. Comp. Cases 977, 980 (review denied), where it was held that:

> … [T]he whole point of *Patterson* is that a Form RFA is not required in certain circumstances involving care of an ongoing nature. The decision is about when an RFA is required, and if one is not required in the first place, then there can be no valid [utilization review] therefrom, timely or otherwise. …
>
> Defendant's argument that its allegedly timely and valid [utilization review] determination provides substantial medical evidence of a change in circumstances is inapplicable because the [utilization review] should never have been issued in the first place under the reasoning in *Patterson*, as explained above.

(*Burton, supra,* 89 Cal. Comp. Cases 977, at 980.)

While *Rivota* and *Burton* dealt specifically with inpatient rehabilitation programs, the reasoning of the significant panel decision in *Patterson* has also been applied to home health care services in numerous recent panel decisions. (See, e.g., *Velasquez v. Blue Core Construction, Inc.,* 2025 Cal. Wrk. Comp. P.D. LEXIS 141, 2025 LX 133366 (Cal. Workers' Comp. App. Bd. May 6, 2025); *Cuellar v. The Habit Burger*, 2025 Cal. Wrk. Comp. P.D. LEXIS 2, 2025 LX 22763 (Cal. Workers' Comp. App. Bd. January 13, 2025); *Rodriguez v. Managed Mobile, Inc.*, 2025 Cal. Wrk. Comp. P.D. LEXIS 9, 2025 LX 90867 (Cal. Workers' Comp. App. Bd. January 3, 2025); *McFall v. ADT Services System*, 2024 Cal. Wrk. Comp. P.D. LEXIS 417, 2024 LX 75172 (Cal. Workers' Comp. App. Bd. November 18, 2024).)

In *McFall*, *supra*, the Appeals Board applied the reasoning in *Patterson* to home care, affirming that it is defendants' burden to show a change of circumstances and that the passage of time itself cannot satisfy that burden:

> Here, we agree with the WCJ's observation that defendant bears the burden to establish a material change in circumstance warranting a renewed review of medical necessity through the RFA and Utilization Review process. Our holding in *Patterson* was clear that "it 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," and that "[d]efendant cannot shift its burden onto applicant by requiring a new Request for Authorization and starting the process over again." (Report, at p. 14; see also *Patterson*, *supra,* 79 Cal.Comp.Cases 910, 918.)
>
> We further agree with the WCJ's observation that "the mere passage of time or the existence of [utilization review] determinations obtained in violation of *Patterson* are not by themselves proof of a change in circumstances." (Report, at p. 11.) The WCJ notes that "[d]ue to the ongoing nature of the home assistance required by Ms. McFall, once it was authorized, the defendants were not entitled to unilaterally terminate her home health care services without

> evidence of a change in her condition or circumstances to indicate that the home care services were no longer reasonably required." (*Id.* at p. 14.) This is because "where circumstances and needs have not changed after the specified number of weeks, it makes no sense to re-submit essentially the same facts to a new utilization review determination to see if a different reviewer will reach a diametrically opposed conclusion. Such an approach, interrupting care of an ongoing nature every few weeks in order to take repeated bites at the same proverbial apple, does not serve the state constitutional mandate that the workers' compensation system 'accomplish substantial justice in all cases expeditiously, inexpensively, and without incumbrance of any character.'" (*Id.* at p. 15, citing Cal. Const., Art. XIV, § 4.)

(*McFall*, *supra*, 2024 Cal. Wrk. Comp. P.D. LEXIS 417, at pp. 5-6.)

As explained in the WCJ's Report, the defendants in the present case have not met their burden of proof to show that there has been a change of circumstances since home care was found to be reasonable and necessary on May 24, 2024. None of the exhibits, nor applicant's testimony at trial, provide substantial medical evidence of a significant change in applicant's medical condition.

Additionally, we note that the Petition misrepresents *Wiggs*, *supra*, as holding that "if Defendants conducted a UR review, it [sic] has met its burden to show medical treatment is no longer reasonably required because of a change in the applicant's condition or circumstances" (Petition for Reconsideration dated April 28, 2025, at p. 7, lines 21-24). This is clearly a misstatement of the holding in *Wiggs*, which held only that the reasoning in *Patterson*, explained above, did not preclude utilization review where the parties stipulated to have a Nurse Case Manager perform a one-time assessment addressing the need for home care services.

For the foregoing reasons,

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

WORKERS' COMPENSATION APPEALS BOARD

/s/ ANNE SCHMITZ, DEPUTY COMMISSIONER

I CONCUR,

/s/ CRAIG SNELLINGS, COMMISSIONER

I DISSENT (see attached dissenting opinion),

/s/ JOSÉ H. RAZO, COMMISSIONER

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

JULY 10, 2025

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

RAY GUTIERREZ
TINA ODJAGHIAN LAW GROUP
CW LAW

CWF/*cs*

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

REPORT AND RECOMMENDATION ON
PETITION FOR RECONSIDERATION
AND NOTICE OF TRANSMITTAL

I.

INTRODUCTION

1. Identity of Petitioner:	Defendant, CMAX COMMERCIAL MAINTENANCE, INC., PALOMAR SPECIALTY INSURANCE COMPANY administered by OMAHA NATIONAL,
2. Timeliness:	The petition was timely filed on April 28, 2025
3. Verification:	The petition was verified.
4. Petitioner's Contentions:	Petitioner contends the WCJ erred by: (1) acting without or in excess of its powers, (2) the evidence does not justify the Findings of Fact, and (3) the Findings of Fact do not support the Award.

Defendant has filed a verified, timely Petition for Reconsideration of this Court's Findings and Award of April 3, 2025. Defendant contends the WCAB lacks jurisdiction to decide medical necessity of PTP Dr. Tran's August 22, 2024 RFA for home health care because Defendant's UR Denial was timely and because *Patterson v. The Oaks Farm* (2014) 79 Cal. Comp. Cases 910 (Significant Panel Decision) does not apply as Defendant's original authorization was for a limited duration. Defendant further contends that should there be a finding that the WCAB has jurisdiction, then Defendant met their burden proving there was a change in Applicant's medical condition or circumstances. This Court recommends the Petition for Reconsideration be denied by the Appeals Board as *Patterson* is applicable to a request for continued home health care previously authorized by Defendant, and because Defendant did not meet their burden of proof that there was a change in Applicant's circumstances.

II.

FACTS

Pursuant to the Findings and Award, Applicant suffered an admitted injury on July 21, 2023 to his head, abdomen, chest and upper extremities as a warehouse worker. On May 24, 2024 Defendant's UR Modification authorized home health care at 8 hours/day, 5 days/wk, to include

bathing, grooming, home care tasks, medication management, meal prep, environmental controls, and mobility. This May 24, 2024 UR Modification was for a limited duration of 60 days. (Applicant's Exhibit 12).

Weekey Home Care Checklists and the Home Health Notes by Nu Grace Family Care confirmed the home health care was provided to Applicant from 6/17/2024 through 8/23/2024. (Applicant's Exhibits 13, 15 – 18, 20; Defendant's Exhibits C, D, E). Skilled Nurse Visit reports of 8/23/2024, 8/30/2024, and 9/4/2024 confirmed the once per week visit to change Applicant's colostomy bag and make sure that he had no infection. (Applicant's Exhibits 19, 21, 22). PTP Dr. Tran's Physical Medicine & Rehabilitation Clinic Evaluation report of 8/13/2025, reiterated his recommendation for a home health care aide as well as a nurse for colostomy care. (Applicant Exhibit 14). PTP Dr. Tran issued a RFA on 8/22/2024, for home health care at 8 hours/day, 5 days/wk, for an additional 3 months. (Joint Exhibit W).

On 8/26/2024, UR denied the request for continued home health care based on Applicant attending outpatient PT and OT, having support of family members, and the services being requested were non-skilled services to care for his pets and housekeeping." (See Joint Exhibit X, pages 1, 14). The above discussed Skilled Nurse Visit reports as well as the subsequent Skilled Nurse Visit reports of 10/17/2024, 10/25/2024, and 10/30/2024, documented Applicant's continued need for home health care, in general, due to mobility issues alone. (Applicant's Exhibits 19, 21, 22, 26 – 28). PTP Dr. Tran also recommended more home health care aide 5 days/wk for 12 weeks pursuant to his Office Visit and Ambulatory Referral reports, both dated 10/1/2024, and his RFA of 10/3/2025. (Joint Exhibit Y, page 5; Applicant's Exhibits 23, 24).

Defendant offered no evidence with any detailed discussion as to any change in the medical condition or circumstance of Applicant, other than the 8/26/2024 UR Denial and some of the above discussed chart/visit notes alluding to the home health care aide caring for Applicant's pets and housekeeping, and medical reports indicating Applicant is doing better.

At the Trial, Applicant credibly testified that he still needed transfer assistance, colostomy bag assistance, medication assistance, meal prep assistance, doctor evaluation assistance and assistance with chores. He confirmed that his current treatment is outside the home, and transportation is provided. Applicant testified that he can mostly only move himself in his wheelchair in a backwards direction. (MOH/SOE, 2/3/2025, page 2, line 25, page 3, lines 1 – 18).

Per the stipulation of the parties in the Pre-Trial Conference Statement (PTCS), the only issue for Trial was "Whether Applicant's continuous and ongoing home health aide should continue to be authorized absent a documented change in medical circumstance/condition warranting discontinuation pursuant to *Patterson v. The Oaks Farm* and subsequent case law."

Pursuant to the Petition for Reconsideration, Defendant disputes the WCAB has jurisdiction to determine medical necessity due to the timely UR Denial of 8/26/2024 and because *Patterson* does not apply, as Defendant's original authorization was for a limited duration of 60 days. Defendant further contends that should there be a finding that the WCAB has jurisdiction, then Defendant argues that they have met their burden of proof that there was a change in Applicant's circumstances.

III.

DISCUSSION

A. Reconsideration or Removal

Should Defendant's appeal filed on April 28, 2025, be a Petition for Reconsideration or a Petition for Removal? Removal is an extraordinary remedy that may be requested to challenge interim and non-final orders issued by a workers' compensation judge (*Cortez v. Workers' Compensation Appeals Board* (2006) 136 Cal. App. 4th 596, 600 fn 5, [71 Cal. Comp. Cases 155, 157, fn 5]; *Kleeman v. Workers' Compensation Appeals Board* (2005) 127 Cal. App. 4th 274, 281, fn 2 [70 Cal. Comp. Cases 133, 136, fn 2]. The petitioning party must demonstrate that substantial prejudice or irreparable harm will result if removal is not granted (Title 8 Cal. Code Regulations, Section 10955(a) and that reconsideration will not be an adequate remedy if a final decision adverse to the petitioner ultimately issues.

A Petition for Reconsideration on the other hand is the appropriate mechanism to challenge a final order, decision, or award. Labor Code Section 5900. An order that resolves or disposes of the substantive rights and liabilities of those involved in a case is a final order. See *Maranian v. Workers' Compensation Appeals Board* (2000) 81 Cal. App. 4th 1068 [65 Cal. Comp. Cases 650; *Safeway Stores, Inc. v. Workers' Compensation Appeals Board (Pointer)* (1980) 104 Cal. App. 3d 528 [45 Cal. Comp Cases 410]. The instant case involves the Applicant's and Defendant's respective substantive rights and liabilities and therefore, Reconsideration is the proper mechanism for the Applicant to challenge this Court's Findings and Award.

B. <u>Whether the WCAB has Jurisdiction to Determine Medical Necessity When Defendant's UR Denial was Timely and *Patterson* is Not Applicable.</u>

It is well established that an issue not raised at trial, cannot be raised on appeal by Petition for Reconsideration for the first time, as said issues are deemed waived. This jurisdiction issue raised by Defendant was not raised in the PTCS nor at trial. Thus, this issue is deemed waived.

Regardless of above, Defendant improperly argues that since the requested continued home health care was subject to a timely UR Denial, per *Allied Signal Aerospace v. WCAB (Wiggs)* (2019) 84 CCC 367 holding that *Patterson* is inapplicable when requested medical services were timely denied by UR, then there is no jurisdiction for the WCAB to determine medical necessity. However, in *Wiggs*, the court held that there was no clear original stipulation between the parties to provide ongoing home care services.

Here, in the instant case, Defendant essentially stipulated, via their authorization per the 5/24/2024 UR, to the very specific home health care of 8 hours/day, 5 days/wk, for 60 days, to include bathing, grooming, home care tasks, medication management, meal prep, environmental controls, and mobility. (Applicant's Exhibit 12). Defendant acknowledged reasonableness and necessity of the medical treatment at issue when they first authorized it per the 5/24/2024 UR determination.

Then, in addition to the original authority, Defendant provided the home health care for 68 days, rather than the 60 days, thus, confirming their lack of strict reliance on the end-date of the requested treatment. (Applicant's Exhibits 13, 15 – 18, 20; Defendant's Exhibits C, D, E).

Pursuant to *White v. Department of Social Services*, 2014 Cal. Wrk. Comp. P.D. LEXIS 420, the Appeals Board held that the Defendant's continued payment of authorized treatment would render irrelevant whether a UR determination includes an expiration date. Further, there is a holding that even when the initial UR authorization was for a period certain, there will still have to be proof of a change of applicant's condition or circumstance. See National Cement Co., Inc. v. WCAB (Rivota) (2021) 86 CCC 595 (writ denied) and Chavez v. Bonanza Concrete, 2023 Cal. Wrk. Comp. P.D. LEXIS 258.

Therefore, the WCAB has jurisdiction to determine medical necessity because of the application of *Patterson* and subsequent case law, regardless of a timely UR Denial, to the instant matter.

C. Whether Defendant Met their Burden of Proof that Applicant's Medical Condition or Circumstances has Changed such that Continuance of Services if No Longer Reasonably Required.

Defendant has the burden of proof to show that continuation of medical services is no longer reasonably required due to a change in the applicant's medical condition or circumstances when the Defendant has previously authorized these same services. *Patterson v. The Oaks Farm*, (2014) 79 Cal. Comp. Cases 910 (Significant Panel Decision). Here, Applicant does not have the burden of proof regarding the reasonableness and necessity of the treatment.

Further, a WCJ's determination of the credibility of witnesses is to be given great weight because the WCJ had the opportunity to observe the demeanor of the witnesses, when it is supported by ample, credible evidence, and can only be rejected if substantial evidence supports a contrary finding (*Garza v. WCAB* (1970) 35 CCC 500). In this instance, Applicant was determined to be a credible witness.

Quite simply, Defendant did not present any substantial medical evidence to demonstrate a change in the Applicant's medical condition or circumstances. The various "chart" notes and other reports with reference to Applicant doing better, going to treatment outside the house, and that the home health aide's activities involving house cleaning and pet care, are not substantial medical evidence. Nothing in Defendant's offered medical reports identify any discussion of any change of medical condition or circumstances of the Applicant.

D. Conclusion

Thus, based on the foregoing, this Court found Defendant did not meet its burden of proof that Applicant's continuation of home health care at 8 hours/day, 5 days/wk, was no longer reasonably required due to a change in the applicant's medical condition or circumstances.

IV.

RECOMMENDATION

Therefore, based on the above, it is respectfully recommended that the Defendant's Petition for Reconsideration be DENIED.

THE MATTER WAS TRANSMITTED TO RECONSIDERATION UNIT ON MAY 12, 2025.

Dated 05/12/2025 at San Bernardino, California:

Johann L. Van Kolken
WORKERS' COMPENSATION
ADMINISTRATIVE LAW JUDGE

DISSENTING OPINION OF COMMISSIONER RAZO

I dissent. I would grant the Petition for Reconsideration and rescind the April 3, 2025 Findings and Award to find that here, as in *Allied Signal Aero. v. Workers' Comp. Appeals Bd.* (*Wiggs*) (2019) 35 Cal.App.5th 1077 [86 Cal.Comp.Cases 367], the reasoning of *Patterson v. The Oaks Farm* (2014) 79 Cal. Comp. Cases 910 (Appeals Board Significant Panel Decision) does not apply.

The utilization review of May 24, 2024, admitted into evidence as Applicant's 12, granted home health care for a limited time and modified the requested services. The parties did not stipulate to open-ended treatment, nor did the defendants indefinitely waive utilization review. The utilization review of August 26, 2024, admitted into evidence as Joint X, timely non-certified the request for ongoing home health care in response to the Request for Authorization (RFA) of August 22, 2024 in accordance with Labor Code section 4610. Because defendants' agreement to furnish home health care was limited in time, *Patterson* should not apply to this case, following the reasoning in *Wiggs*, *supra*.

Even if *Patterson* were applicable, the utilization review of August 26, 2024 considered applicant's treatment records and concluded as follows:

> The patient has had home health care over 3 months after being released from a skilled nursing/rehab facility. He has been approved for, and is able to attend outpatient PT [physical therapy] and OT [occupational therapy]. He has support of family members, and the services being requested are non-skilled services to care for his pets and housekeeping. The ongoing and prolonged home healthcare is not supported by the guidelines. Therefore, my recommendation is to NON-CERTIFY the request for Home health caregiver services, 8 hours a day, 5 days a week for 3 months s/p multi-trauma stabbing injury.
>
> The 7/22/2024 peer review modified the request for a home health nurse to have weekly visits to change his colostomy x12 weeks to allow 4 weeks, as the patient should be well-versed in ostomy care. He was allowed sessions for the nurse to educate the patient and family on ostomy care. At this point there is no new information provided to suggest that additional nursing care is necessary. Therefore, my recommendation is to NON-CERTIFY the request for Wound/Ostomy care nurse once a week for 12 weeks s/p multi-trauma stabbing injury.

(Joint X, Utilization Review Denial of home health aide dated August 26, 2024, at p. 14, lines 8-20.)

The utilization review dated August 26, 2024 was timely with respect to the RFA of August 22, 2024. As noted by the reviewing physician, applicant was attending physical therapy and occupational therapy outside the home. (*Id*., at p. 8, lines 9-10.) Additionally, the home care provider's notes for August 2024, which were admitted into evidence as Defendant's C, D, and E, documented multiple changes of circumstances since the prior home health care utilization review, which provided for assistance with bathing, grooming, managing medications, and environmental control and mobility. According to the home health notes, applicant was bathing and dressing himself without assistance by August 9, 2024. (Defendant's C, Nu Grace Family Care home health notes dated August 9, 2024, at p. 1, listed items 1 and 4.) By August 22, 2024, his caregivers were spending some of their time listening to music with him and playing with his dog. (Defendant's E, Nu Grace Family Care home health notes dated August 22, 2024, at p. 1, listed items 2 and 5.) These were clearly not the same circumstances that existed three months before, when the RFA of May 9, 2024 was modified by utilization review to allow home health care of eight hours per day, 5 days per week. The developments noted in the August 26, 2024 utilization review and home health notes should be considered sufficient evidence of a change in circumstances in applicant's condition to warrant further review of reasonableness and necessity.

WORKERS' COMPENSATION APPEALS BOARD

/s/ JOSÉ H. RAZO, COMMISSIONER

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

JULY 10, 2025

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

RAY GUTIERREZ
TINA ODJAGHIAN LAW GROUP
CW LAW

CWF/*cs*

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