

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

**ALBERTO TORRES GARCIA (deceased); ISABEL CORTEZ AYALA (widow);  
BEATRES TORRES-CORTEZ (daughter),  
*Applicants***

**vs.**

**SERGIO ANDRADE dba SA FARM LABOR  
SERVICE; ZENITH INSURANCE COMPANY,  
*Defendants***

**Adjudication Number: ADJ10966476  
Los Angeles District Office**

**OPINION AND DECISION  
AFTER RECONSIDERATION**

We previously granted reconsideration to allow us time to further study the factual and legal issues in this case. This is our Opinion and Decision After Reconsideration.<sup>1</sup>

Applicants and defendant each seek reconsideration of the Findings and Order (F&O) issued on March 14, 2022, by the workers' compensation administrative law judge (WCJ). The WCJ found in pertinent part that decedent, while employed on July 29, 2017, as a farm laborer by defendant sustained a traumatic brain injury arising out of and in the course of employment; that decedent's widow is entitled to payment for home health care services from April 5, 2019 to October 17, 2019 at the rate of \$12.00 for 283 hours per month; and that decedent's daughter has been adequately compensated for home health care services from April 2, 2018 to August 17, 2018 and is not entitled to further payment other than what she has been paid through her employment with Fresno Yosemite Health. The WCJ awarded decedent's widow reimbursement for home health care services.

Applicants contend that the evidentiary record supported home health care services for the additional period of July 4, 2018 to April 4, 2019; that the WCJ failed to consider that defendant had

---

<sup>1</sup> Commissioner Sweeney was on the panel that issued the order granting reconsideration. Commissioner Sweeney no longer serves on the Appeals Board. A new panel member has been appointed in her place.

a duty to investigate upon notice of the need for 24/7 home health care services and did not adequately reimburse them.

Defendant contends that it is not liable to decedent's widow for self-procured medical treatment outside of its medical provider network; and that she failed to submit sufficient evidence to support her claim for reimbursement.

We have received answers from applicants and defendant. The WCJ filed a Report and Recommendation on Petition for Reconsideration (Report) recommending that we deny reconsideration.

We have considered the allegations in applicants' and defendant's Petitions, both Answers and the contents of the WCJ's Report. Based on our review of the record, and for the reasons discussed below, as our Decision After Reconsideration, we will affirm the F&O, except that we will amend it to find that decedent's widow is entitled to reimbursement for home health care services during the period from July 4, 2018 to October 17, 2019 (Finding of Fact 2), and to defer the issues of reimbursement to decedent's daughter (Finding of Fact 3) and the monies payable to both of them (Finding of Fact 9), and return the matter to the trial level for further proceedings consistent with this decision.

## **FACTS**

As set forth by the WCJ in her Report:

Applicant was working as a farm laborer for SA Farm Labor Service on July 29, 2017 when he fell six feet off a ladder and sustained a traumatic brain injury. Applicant was 71 years old at the time of injury. After the fall, he was taken to Community Regional Medical Center (CRMC) in Fresno, California. He remained there until his care was transferred to Centre for Neuro Skills (CNS) in Bakersfield, California on August 10, 2017. He was diagnosed with an occipital skull fracture and bilateral frontal hemorrhagic contusions. He remained at CNS until he was discharged on January 31, 2018 to his home in Orange Cove, California.

When he returned to his home in Orange Cove, California, he lived with and was taken care of by his girlfriend, Carmen Lopez. Ms. Lopez is not a party to this case.

While he was discharged to home and taken care of by Ms. Lopez, his primary treating physician, Dr. Eric Sorensen from Kings Industrial Occupational Medical Center submitted a report dated March 14, 2018 and in that report he indicated "RFA for Dr. Cantrell, neurologist for follow up, evaluation and treatment. RFA will be submitted for Home Health Care for five days a week for 6 hours a day or something to that effect." (Defendant's Exhibit E). Attached to that report is a modified RFA (Request for Authorization) signed by Brian Belanger, D.C./QME from Kings Industrial Occupational Medicine Center dated August 7, 2018. It indicates a

request for Home Health Care (HHC) for 7 days per week 8 hours starting on July 28, 2018 to August 17, 2018 (Defendant's Exhibit E).

Dr. Sorensen referred the applicant to a neurologist, Dr. Cantrell. In his April 3, 2018 report, Dr. Cantrell indicates that there is an RFA regarding HHC dated March 19, 2018 from Kings Industrial Medical Center signed by Dr. John Edwards. In the comment section of his report, Dr. Cantrell said "The day to day management would probably be best addressed by Dr. John Edwards." (Applicant's Exhibit 14).

Incidentally, while in the Emergency Room in August 2017, a CT scan was taken and it revealed a rectal mass in the anal canal. He was seen by colorectal surgery at UCSF but deemed not a surgical candidate due to the extent of the disease. He was referred to GI Medicine Oncology. On March 12, 2018, he was re-evaluated at CNS by clinical evaluator, Michael Raney, B.A. CBIS. The records from CNS revealed that he was diagnosed with stage IV colon cancer. He subsequently sought treatment with Dr. Gilmore at Sante Medical Oncology specialties (Defense Exhibit H). In a March 12, 2018 report from Michael Raney, who is a clinical evaluator, he recommended for applicant to "return to CNS for intensive in-patient neuro rehabilitation program provided his recent diagnoses of squamous cell cancer treatment does not contradict." He added that in order to facilitate this, he requires 24/7 supervision (Applicant's Exhibit 15). It is noted that no RFA accompanied this report and Michael Raney is not a medical doctor.

Applicant was seen by the neurologist, Dr. Cantrell again on June 5, 2018. In this report, Dr. Cantrell indicates that applicant has a history of poorly controlled diabetes, rectal cancer that is unrelated to his industrial accident but with possible metastases to his lungs, hypertension, severe peripheral neuropathy, and head injury with moderate diffuse dysfunction. At the conclusion of this report, Dr. Cantrell stated: "Given the overall picture of the patient, he is clearly unable to care for himself. It is my opinion he is totally disabled. One might wish to perform additional mental status testing, but the patient is clearly, in my opinion, unable to care for himself..." No RFA accompanied this report. However, his report was sent to Dr. Sorensen for review, who later increased the RFA to 8 hours a day 7 days a week (Applicant's Exhibit 13).

Based on the RFA's from Dr. Sorensen, Zenith paid for HHC from April 2, 2018 to August 17, 2018 through their contracted provider Fresno Yosemite Health Care (Defense Exhibit CC). This was based on three RFA's from Dr. Sorensen. The first RFA dated March 19, 2018 requested HHC services 5 days a week for 4 to 6 hours a day for 6 months. UR certified this RFA on March 23, 2018 (Defendant's Exhibit D). Later this increased to 8 hours per day for 7 days a week for 3 weeks based on the second RFA from Dr. Sorensen dated July 6, 2018 (Defendant's Exhibit C). A third RFA was received on August 7, 2018 from Dr. Sorensen requesting HHC services 7 days a week for 8 hours per day from July 28, 2018 to August 17, 2018 for 21 days (Defendant's Exhibit B).

The printout from Zenith indicates that they [*sic*] paid Home Care Connect LLC, who contracted with Fresno Yosemite Health Care to provide HHC (Applicant's Exhibit 1). The actual HHC service was provided by applicant's daughter, Beatres Torres-Cortez, who was hired by Fresno Yosemite Health Care after her father's accident to take care of him. She has a medical assistant license. She would come over in the mornings to take care of him after his girlfriend left for work. She continues to work for Fresno Yosemite Health and has done so for four years now. According to the payroll records from Fresno Yosemite Health Care, Ms. Torres-Cortez was paid 6 to 6.5 hours per day 5 days a week at \$11.50 per hour from April 2, 2018 to July 13, 2018. Additionally, Ms. Torres-Cortez was paid 8 hours a day 7 days a week at \$11.50 per hour from July 16, 2018 to August 17, 2018 (Defense's Exhibit CC).

In July 2018, applicant's girlfriend, Carmen Lopez, moved out. There is no claim for HHC from Ms. Lopez and she is not a party to this claim.

Subsequently, on July 4, 2018, his wife, Isabel Cortez Ayala, moved back in with applicant and took over his care. Prior to that, she and her husband, Mr. Torres Garcia, have been living apart for six to seven years. When they were separated, she did not take care of him. After she moved back in with him, she took over care of all his needs such as dressing, bathing, preparing his meals, cleaning and assisting him with going to the bathroom, including during the nights. They had to switch him to wearing adult diapers because sometimes he would forget to relieve himself. He needed help with daily living (September 29, 2021, SOE p. 9 and 10.). Ms. Cortez Ayala does not have a medical assistant license or any medical training. Before they were separated, they would both do the cooking and cleaning because they both worked (January 26, 2022, SOE p.5).

When she started to take care of her father, Beatres Torres-Cortez worked two jobs. She worked for Wawona Packing and took care of her father at the same time. At first, she worked for Wawona Packing in the morning shift. Later, she switched to the night shift in order to take care of him (January 26, 2022, SOE p.7). As discussed above, she was paid by Fresno Yosemite Health Care through a contracted agreement with Zenith. After her mother moved back in with her father, she assisted her mother with his care and taking him to doctor's appointments. Ms. Cortez Ayala testified that when her daughter came over, she did not stay eight hours per day. She would sometimes stay two hours, three hours, or four hours, and sometimes she stayed all day (January 26, 2022, SOE p.2).

On October 23, 2018, applicant and his wife moved to Los Angeles, California. During this time, his daughter continued to live in Orosi, California, which is near Fresno, CA (January 26, 2022, SOE p.8).

There is no request for HHC from August 17, 2018 to March 14, 2019. This is most likely because applicant switched his treatment to Dr. Stanley Majcher. In his initial report of October 24, 2018, Dr. Majcher diagnosed applicant with traumatic brain injury due to fall from ladder, diabetes, hypertension, hypothyroidism, history of

cancer in the perianal area and poor balance. He indicated that he will need lifetime treatment and he is permanently disabled (Applicant's Exhibit 12). In his second report dated November 28, 2018, Dr. Majcher referred applicant to a series of diagnostic tests such as EKG, Rhythm Strip, Pulse Oximetry, Lung Function Studies/Spirometry, Carotid Artery Ultrasound Screen, Abdominal Aorta Screen and Arterial Screen of the Lower Extremities (Applicant's Exhibit 11). In his December 5, 2018 [report], he requested transfer of care to another specialist presumably due to lack of authorization (Applicant's Exhibit 10). Throughout this time, despite a series of requests for testing, Dr. Majcher did not make any request for HHC.

The next time, there is a request for HHC is in a March 14, 2019 report from Dr. Ian Brodie. In this initial report, Dr. Brodie said, "The patient has not been to neurological rehabilitation at Casa Colina and needs to be in-patient at Casa Colina for a month." He added "Home care 24/7 should be appropriate, but the patient has sent away the people that came to help him indicating to them that he did not want them." (Defendant's Exhibit ZZ). On April 23, 2019, Dr. Brodie's request for in-patient neurological rehabilitation for 30 days was denied by Utilization Review (UR) (Defendant's Exhibit I). However, on June 14, 2019, an Independent Medical Reviewer (IMR) overturned the April 23, 2019 UR denial and authorized the request for in-patient neurological rehabilitation for 30 days (Defendant's Exhibit L).

On June 18, 2019, Zenith authorized in-patient neurological rehabilitation for 30 days within their MPN (Defendant's Exhibit P). However, from June to August 2019, Zenith made several attempts to contact Mr. Torres offering HHC but applicant refused their service (Defendant's Exhibit M, N, O, and P). In June 2019, Center for Neuro Services (CNS), at the request of Zenith, contacted applicant regarding in-patient rehabilitation services, but applicant attorney's office indicated that applicant was looking into another program (Defendant's Exhibit O).

Applicant remained under the care of his wife until October 17, 2019 when he was admitted into Adventist Medical Center for his non-industrial colon cancer (Defendant's Exhibit FF). On October 22, 2019 he was transferred from Adventist to Dycora, a skilled nursing facility for hospice care (Defendant's Exhibit FF and GG).

Eventually, applicant passed away on February 29, 2020 due to his non-industrial terminal metastatic colon cancer (Defendant's Exhibits FF and GG). The cause of applicant's death is not in dispute. The only issue set for trial was the issue of reimbursement for HHC provided by applicant's wife and daughter.

## **DISCUSSION**

Labor Code section 4600<sup>2</sup> requires the employer to provide reasonable medical treatment to cure or relieve from the effects of an industrial injury. (Lab. Code, § 4600(a).) It is axiomatic that

---

<sup>2</sup> Unless otherwise stated, all further statutory references are to the Labor Code.

defendant can be liable for reasonable and necessary medical treatment in the form of home health care services for both skilled and unskilled care, including household tasks that are incidental to the medical treatment. (*Smyers v. Workers' Comp. Appeals Bd.* (1984) 157 Cal.App.3d 36 [49 Cal.Comp.Cases 454]; see Lab. Code, § 4600(h).)

In *Ramirez v. Workers' Comp. Appeals Bd.* (1970) 10 Cal.App.3d 227 [35 Cal.Comp.Cases 383], the Court observed that:

Upon notice or knowledge of a claimed industrial injury an employer has both the right and duty to investigate the facts in order to determine his liability for workmen's compensation, but he must act with expedition in order to comply with the statutory provisions for the payment of compensation which require that he take the initiative in providing benefits. He must seasonably offer to an industrially injured employee that medical, surgical or hospital care which is reasonably required to cure or relieve from the effects of the industrial injury.

(*Ramirez, supra*, at p. 234, italics added.)

As discussed in *Neri Hernandez v. Geneva Staffing, Inc. dba Workforce Outsourcing, Inc.* (2014) 79 Cal.Comp.Cases 682 (Appeals Board en banc), section 4600(h) includes home health care services in the definition of medical treatment, but they must be prescribed by a physician and the prescription received by defendant. As stated in that case, "...in order to obtain an award of home health care services, [§] 4600(h) requires applicant to show that he had a prescription, that it was received by defendant, and that he met the requirements of § 5307.1 or § 5307.8." (*Id.* at pp. 688-689.) We further explained:

The prescription required by [§] 4600(h) is either an oral referral, recommendation or order for home health care services for an injured worker communicated directly by a physician to an employer and/or its agent; or, a signed and dated written referral, recommendation or order by a physician for home health care services for an injured worker.

(*Id.* at p. 693; italics omitted.)

We also stated that the definition of "prescription" does not require a detailed description of the recommended services, that there is no requirement that an injured worker have actually incurred the cost of services before home health care services are sought, and that an employer has a duty to investigate a request. (*Id.* at pp. 694, 697.) Thus, *Neri Hernandez* defines "prescription" very broadly.

Additionally, under section 4600, where an employer has actual notice of an injured worker's need for medical treatment, the employer has a duty to investigate. (*Id.*; *United States Cas. Co. v. I.A.C. (Moynahan)* (1954) 122 Cal.App.2d 427 [19 Cal.Comp.Cases 8].) As stated in *Moynahan*:

[§] 4600 of the Labor Code places the responsibility for medical expenses upon the employer when he has knowledge of the injury....The duty imposed upon an employer who has notice of an injury to an employee is not ... *the passive one of reimbursement but the active one of offering aid in advance and of making whatever investigation is necessary* to determine the extent of his obligation and the needs of the employee.

(*Moynahan, supra*, at p. 435.; emphasis added.)

Similarly, in *Braewood Convalescent Hospital v. Workers' Comp. Appeals Bd. (Bolton)* (1983) 34 Cal.3d 159 [48 Cal. Comp. Cases 566], the Supreme Court wrote as follows:

[§] 4600 requires more than a passive willingness on the part of the employer to respond to a demand or request for medical aid. [] This section requires some degree of active effort to bring to the injured employee the necessary relief. [] Upon notice of the injury, the employer must specifically instruct the employee what to do and whom to see, and if the employer fails or refuses to do so, then he loses the right to control the employee's medical care and becomes liable for the reasonable value of self-procured medical treatment.

(*Id.* at p. 165) (Citations omitted.)

Here, in his report of April 3, 2018, treating physician Frank L. Cantrell, M.D., referenced a request for authorization by John Edwards, M.D., dated March 19, 2018, recommending a “specialist in home health services.” (App. Ex. 11, p. 4.) Moreover, in Dr. Cantrell’s report dated June 5, 2018, he explained, “the patient is clearly, in my opinion, unable to care for himself.” (App. Exh. 12, p. 4.)

In addition, in treating physician Ian Dallas Brodie, M.D.’s first report of occupational injury dated March 14, 2019, he referenced a history and physical report from Dr. Edwards dated August 30, 2017. (Joint Ex. ZZ.) In that report, Dr. Edwards wrote that applicant’s “girlfriend may need to be paid for a minimum of four hours per day, to assist in his caregiving process and ensure that he will be safe in the home.” (*Id.* at p. 6.)

Finally, in treating physician Eric Sorensen, M.D.’s report dated April 2, 2018, he wrote, “we need to put forth an RFA for him for in-home care, five days a week per week for 6 hours per day or something to that effect.” (Def. Ex. E, p. 2.) Attached to the exhibit was a request for authorization by Brian Belanger, D.C., dated August 7, 2018, requesting authorization for home health care services for seven days per week, eight hours per day from July 28, 2018 to August 17, 2018.

Those requests satisfy the requirements for a prescription as outlined in *Neri Hernandez*. Defendant does not deny receiving the requests, but nonetheless, there is no evidence that defendant

performed any investigation into the need for home health care services during that period. Therefore, the record confirms the need for home health care services during the period July 4, 2018 to October 17, 2019. We also conclude that the evidentiary record supports the reasonableness of the services in accordance with the medical treatment utilization schedule for home health care services.

With respect to defendant's assertion that the services were out-of-network and therefore, unauthorized self-procured treatment not subject to reimbursement, we note that an applicant may select a family member to serve as a home health care provider where there is a documented need for the care and the family member is able to provide it. (*Crater v. Crate & Barrel Holdings Inc.* [2025 Cal. Wrk. Comp. P.D. LEXIS 332, \*11]; *Henson v. Workmen's Comp. Appeals Bd.* (1972) 27 Cal.App.3d 452 [37 Cal.Comp.Cases 564]; see *Byrd (Minnie) v. City of Los Angeles* (2023) 88 Cal.Comp.Cases 820, 829 (“those services constituted not only treatment within the meaning of [§] 4600 but also care of a personal and sensitive nature requiring applicant's confidence with respect to her own personal dignity”).) Accordingly, we find that argument unpersuasive.

In addition, with respect to the periods of home health care services where decedent's daughter is entitled to reimbursement, we note that applicants failed to disaggregate their invoice dated March 7, 2019 (App. Ex. 7) to allow a determination of what specifically is owed to her. (§ 4603.2(b)(1)(A) (“A provider of . . . home health care services, shall submit its request for payment with an itemization of services provided and the charge for each service”); § 5307.8(a); *Neri Hernandez, supra*, 79 Cal.Comp.Cases at pp. 695-696.) Upon remand, applicants shall cure this deficiency.

Finally, with respect to the amounts owed to applicants, they must show that the provided services and claimed costs or fees are reasonable. (See, e.g. *Torres v. AJC Sandblasting* (2012) 77 Cal.Comp.Cases 1113 (Appeals Board en banc); *Kunz v. Patterson Floor Coverings, Inc.* (2002) 67 Cal.Comp.Cases 1588 (Appeals Board en banc); *Tapia v. Skill Masters Staffing* (2008) 73 Cal.Comp.Cases 1338 (Appeals Board en banc); *Beverly Hills Multispecialty Group, Inc. v. Workers' Comp. Appeals Bd.* (1994) 26 Cal.App.4th 789 [59 Cal.Comp.Cases 461]; *Midas Recovery Services v. Workers' Comp. Appeals Bd. (Garcia)* (1997) 62 Cal.Comp.Cases 537 (writ denied).) We find the evidentiary record insufficient to render a determination on that issue and return the matter to the trial level for further supporting evidence as to a reasonably owed hourly amount. That calculation should consider decedent daughter's prior earnings with Fresno Yosemite Health Care, Inc.

Finally, we admonish applicant's attorneys Karen Phung and Solov and Teitell, APC, for failing to cite specifically to the record, as required by WCAB Rule 10945 (Cal. Code Regs., tit. 8, § 10945) and for alleging some "facts" that were not in the record.

Accordingly, as our Decision After Reconsideration, we affirm the F&O, except that we amend it to find that decedent's widow is entitled to reimbursement for home health care services during the period from July 4, 2018 to October 17, 2019 (Finding of Fact 2), and to defer the issues of reimbursement to decedent's daughter (Finding of Fact 3) and the monies payable to both of them (Finding of Fact 9), and return the matter to the trial level for further proceedings consistent with this decision.

For the foregoing reasons,

**IT IS ORDERED** as the Decision After Reconsideration of the Workers' Compensation Appeals Board that the Findings and Order issued by the WCJ on March 15, 2022 is **AFFIRMED** except that it is **AMENDED** as follows:

#### **FINDINGS**

2. Isabel Cortez Ayala (decedent's widow) is entitled to reimbursement for 24/7 home health care services provided from July 4, 2018 to October 17, 2019.

3. The issue of whether Beatres Torres-Cortez (decedent's daughter) has been adequately compensated for provision of home health care services is deferred.

...

9. The issues of the rate of payment, the amount owed, and attorney's fees are deferred.

**ORDERS**

**IT IS ORDERED** that decedent's widow, Isabel Cortez Ayala, is entitled to 24/7 home health care reimbursement for services rendered from July 4, 2018 to October 17, 2019.

**IT IS FURTHER ORDERED** that all other issues are deferred.

**WORKERS' COMPENSATION APPEALS BOARD**

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

**I CONCUR,**

**/s/ CRAIG L. SNELLINGS, COMMISSIONER**

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



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

**MAY 29, 2026**

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

**ALBERTO TORRES GARCIA  
SOLOV & TEITELL, APC  
MICHAEL SULLIVAN & ASSOCIATES, LLP**

**DLP/md**

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