

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

ANTONIO LIRA, *Applicant*

vs.

**A.G. PRODUCTION COMPANY; CYPRESS INSURANCE COMPANY, *adjusted by*
BERKSHIRE HATHAWAY HOMESTATE COMPANIES, *Defendants***

**Adjudication Number: ADJ11777176
Stockton District Office**

**OPINION AND DECISION
AFTER RECONSIDERATION**

We previously granted defendant's Petition for Reconsideration of the "Findings of Fact, Award, Orders, and Opinion on Decision" (F&A) issued on March 25, 2022, by the workers' compensation administrative law judge (WCJ), in order to further study the factual and legal issues.¹ This is our Opinion and Decision After Reconsideration.

The WCJ found, in pertinent part, that the services of lien claimant, Dental Trauma Center, were reasonable and necessary and awarded lien claimant the balance of its lien with penalties and interest.

Defendant contends that the WCJ erred because lien claimant failed to submit requests for authorization (RFAs) for diagnostic testing and that the balance of the lien should be reduced to reflect only the value of the treatment, which defendant authorized.

We have not received an answer from lien claimant. The WCJ filed a Report and Recommendation on Petition for Reconsideration (Report) recommending that we deny reconsideration.

¹ Commissioner Lowe was on the panel that issued the order granting reconsideration. Commissioner Lowe no longer serves on the Appeals Board. A new panel member has been substituted in her place.

We have considered the allegations of the Petition for Reconsideration, the Answer, 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 March 25, 2022 F&A.

FACTS

Applicant sustained an admitted injury to his teeth on June 28, 2017. (Minutes of Hearing and Summary of Evidence, February 2, 2022, p. 2, lines 5-7.)

Defendant sent an authorization letter to lien claimant on November 26, 2019, which authorized lien claimant to conduct a consult evaluation and provide treatment. (Joint Exhibit 1, 4600 Authorization Letter, November 26, 2019.)

Lien claimant examined applicant, conducted a full oral evaluation with diagnostic testing, and generated a ten-page report. (Lien Claimant's Exhibit 2, Report of Dr. Schames, DDS, February 12, 2020.) Lien claimant took diagnostic photographs, performed an ultrasonic doppler analysis, and performed additional testing to determine applicant's diagnosis and to develop a treatment plan. (See generally, *id.*) Based upon the testing and examination, lien claimant generated a treatment plan and submitted the plan via RFA, which defendant subsequently authorized. (Joint Exhibit 2, Berkshire Hathaway Homestate Companies Authorization Letter, November 26, 2019.)

The sole issue for trial is whether defendant is liable to pay for services provided in issuing the February 12, 2020 report.

DISCUSSION

Defendant authorized lien claimant to conduct an examination of applicant. However, defendant argues that such an examination does not implicitly include diagnostic tests required to diagnose applicant's condition. Defendant argues that diagnostic testing is subject to utilization review (UR).

Per Labor Code² section 4610(a):

For purposes of this section, "utilization review" means utilization review or utilization management functions that prospectively, retrospectively, or concurrently review and approve, modify, or deny, based in whole or in part on medical necessity to cure and relieve, **treatment recommendations by physicians**, as defined in Section 3209.3, prior to, retrospectively, or concurrent with the provision of medical treatment services pursuant to Section 4600.

² All future references are to the Labor Code unless noted.

Diagnostic testing is not generally considered medical treatment, but instead it is ordinarily considered a form of medical-legal expense as, by its very name, it is designed to diagnose and not to treat. (§ 4620.) This is further evidenced in this record by the fact that the initial consultation report diagnosed applicant's condition and outlined a specific plan for *medical treatment*, which defendant subsequently authorized.

Whether a medical-legal expense is compensable depends on whether the expense is "reasonably, actually, and necessarily incurred". (§ 4621.) While a primary treater *may* request authorization for diagnostic testing, such a request is not generally subject to utilization review, but instead is simply seeking defendant's agreement that the medical-legal expense is reasonable before it is provided. Here, the primary treater provided medical-legal services in connection with an examination that defendant expressly authorized. All of the medical-legal services provided appear reasonable.

In essence, defendant argues that it authorized an examination with applicant, but that any specific modality of examination should have been approved by UR. Defendant's argument is not supported by the law. Defendant was free to challenge the medical-legal services provided at the consultation as unreasonable, but defendant produced no evidence of this. Furthermore, even if the medical-legal testing in this case was subject to UR, defendant was free to conduct retrospective UR to establish whether the services provided were reasonable, but no evidence of retrospective UR is in the record. Furthermore, defendant was required to inform the primary treater of its objection, but no proper objection from defendant is in the record pursuant to section 4603.2(b)(2).

Accordingly, as our Decision After Reconsideration we affirm the March 25, 2022 F&A.

For the foregoing reasons,

IT IS ORDERED as the Decision After Reconsideration of the Workers' Compensation Appeals Board that the Findings of Fact, Award, Orders, and Opinion on Decision issued on March 25, 2022, by the WCJ, is **AFFIRMED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER

I CONCUR,

/s/ KATHERINE A. ZALEWSKI, CHAIR

/s/ JOSÉ H. RAZO, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

February 11, 2026

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

**ANTONIO LIRA
LAW OFFICES OF SAAM AHMADINIA
RICHARD, THORSON, GRAVES & ROYER**

EDL/mt

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