WORKERS' COMPENSATION APPEALS BOARD

STATE OF CALIFORNIA

GLORIA WILTZ, *Applicant*

vs.

CITY OF LOS ANGELES, permissibly self-insured, administered by ECM, *Defendants*

Adjudication Number: ADJ403553
Oxnard District Office

OPINION AND DECISION AFTER RECONSIDERATION

We previously granted reconsideration[1] in this matter to provide an opportunity to further study the legal and factual issues raised by the Petition for Reconsideration. Having completed our review, we now issue our Decision After Reconsideration.

Defendant City of Los Angeles seeks reconsideration of the October 25, 2021 Findings and Orders (F&O), wherein the workers' compensation administrative law judge (WCJ) allowed the lien of The Prescription Center Pharmacy ("Prescription Center") in the amount of $50,871.51 plus statutory increase.

Defendant contends that the F&O fails to address one of the liens submitted for decision, that of Siena Management; that the WCJ's determination that defendant's UR decisions were untimely is not adequately explained or sourced in the evidence; and that lien claimant did not meet its affirmative burden of establishing that the services provided were medically reasonable and necessary.

We have not received an answer from any party. The WCJ prepared a Report and Recommendation on Petition for Reconsideration (Report), recommending that the Petition be granted to address the lien of Siena Management Group, but denied as to the lien of Prescription Center.

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[1] Commissioner Sweeney, who was previously a member of this panel, no longer serves on the Workers' Compensation Appeals Board. Another panelist has been appointed in her place.

We have considered the Petition for Reconsideration, and the contents of the Report, and we have reviewed the record in this matter. For the reasons discussed below, we will rescind the F&O and return this matter to the trial level for further proceedings.

FACTS

Applicant sustained injury to her right knee while employed as a receiving clerk by defendant City of Los Angeles on December 29, 1994. Applicant's case-in-chief resolved by way of Award issued on May 29, 1997, with provision for future medical care.

On September 28, 2021, the parties proceeded to lien trial and placed in issue the liens of Prescription Center and Siena Management Group. The WCJ's minutes observe that Siena Management Group "has not entered an appearance at either the lien conference or today's trial." (Minutes of Hearing, dated September 28, 2021, at p. 2:15.) Among the issues submitted for decision pertaining to the lien of Prescription Center were "whether services were reasonably, actually and necessarily provided," whether defendant "complied with the UR requirement," and the reasonable value of the services. (*Id.* at p. 2:18.) Neither party offered witness testimony, and the WCJ ordered the matter submitted for decision on the documentary record.

On October 25, 2021, the WCJ issued his decision, allowing Prescription Center's lien in the amount of $50,871.51, and further awarding statutory increase of 10 percent and statutory interest. The WCJ's Opinion on Decision notes that Prescription Center provided applicant with topical creams and lidocaine patches as prescribed by treating physician Dr. Metcalf.

> Defendant objects to the reasonableness and necessity of the services provided by this lien claimant. This appears to be based on the content of their UR reports from Dr. Claudio A. Palma in which he indicates that Lidocaine is usually only prescribed only when other options, including use of Gabapentin fail. Here, the applicant received both Gabapentin and Lidocaine at the same time. By contrast, the treating physician has prescribed both, but does not explain why, which is not required. However, the trier of fact is left to choose between an unverified opinion of a UR reviewing doctor and a verified PR-2 from the primary treating physician.

(Opinion on Decision, at p. 2.)

The WCJ noted lien claimant's assertion that defendant's UR determinations were late and therefore invalid, but also that lien claimant continued to provide the prescription medications despite multiple UR non-certifications issued between 2011 and 2014. The WCJ ultimately

concluded that "[b]ased on the fact that Dr. Metcalf actually saw the patient, and states the facts contained in the PR-2's under penalty of perjury, the undersigned finds that the medication was reasonable and necessary." (*Id.* at p. 2.) With respect to the issue of the timeliness of defendant's UR determination, the WCJ observed that "[t]he lien claimant began providing and billing for these medications in September 2011. However, the earliest UR report appears to date from 17 February 2012. This is much too late." (*Ibid*.) Having determined that defendant's UR determinations were invalid and that the medications were medically necessary, the WCJ allowed the lien and statutory increase in an amount derived using the Division of Workers' Compensation (DWC) website calculator. (*Id.* at pp. 2-4.)

Defendant's Petition challenges the WCJ's admission of lien claimant's billing statement and further contends the F&O fails to address the lien of Siena Management. (Petition, at p. 3:14.) Defendant asserts that its UR determinations reflect requests for additional information within five days of receipt, and because no response was forthcoming from Dr. Metcalf, the subsequent UR non-certification decisions were timely. (*Id.* at p. 7:12.) Moreover, insofar as the UR decisions were valid, each non-certification would invoke the proscription of Labor Code[2] section 4610(k), which relieves defendant of the obligation to submit repeat treatment requests within 12 months of a UR decision to deny or modify a requested treatment modality. (*Id.* at p. 8:25.) For requests for treatment submitted after January 1, 2013, defendant also contends the some of the requests were not submitted on the required Request for Authorization Form required under Cal. Code Regs., tit. 8, § 9792.6. (*Id.* at p. 10:6.) Accordingly, defendant concludes that all of the requests for treatment submitted by Prescription Center were either denied by UR or fell within 12 months of a prior UR denial for the same treatment under section 4610(k). Accordingly, "all dates of service billed by the provider would be non-certified and non-payable." (*Id.* at p. 12:12.) Defendant further contends that even if the UR decision were untimely in the first instance, lien claimant did not carry its burden of establishing that its services were medically necessary. (*Id.* at p. 12:18.)

The WCJ's Report acknowledges that the lien of Siena Management Group was not addressed in the F&O and recommends that we grant reconsideration for the purposes of returning this matter to the trial level for further proceedings responsive to the issue. (Report, at p. 3.) With respect to the lien of Prescription Center, the WCJ asserts that defendant's UR process was dilatory, and in any event, that lien claimant met its burden of establishing that the prescription

[2] All further references are to the Labor Code unless otherwise noted.

medications were medically reasonable and necessary. Accordingly, the WCJ recommends we deny reconsideration as it relates to the lien of Prescription Center.

DISCUSSION

The parties have placed in issue the liens of Siena Management and Prescription Center. Insofar as the F&O does not address the lien of Siena Management, we concur with the WCJ's recommendation as set forth in the Report that we grant reconsideration for the purposes of returning the matter to the trial level for determination of the lien in the first instance.

Turning to the lien of Prescription Center, lien claimant seeks reimbursement for prescription compounded medication and Lidoderm/lidocaine patches provided to applicant between September 29, 2011 and January 23, 2014. (Ex. 1, Itemized Statement, dated July 21, 2020.) Defendant's Petition challenges the WCJ's allowance of the lien, asserting that some of the charges are not supported by a valid Request for Authorization (RFA), while defendant's adverse UR determinations were timely and found the medications were not medically necessary.

Section 4600 requires the employer to provide reasonable medical treatment to cure or relieve from the effects of an industrial injury. (Lab. Code, § 4600(a).) Employers are required to establish a UR process for treatment requests received from physicians. (Lab. Code, § 4610; *State Comp. Ins. Fund v. Workers' Comp. Appeals Bd.* (*Sandhagen*) (2008) 44 Cal.4th 230, 236 [73 Cal.Comp.Cases 981].)

Section 4610(a) provides as follows:

> 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.

(Lab. Code, § 4610(a).)

Administrative Director (AD) Rule 9792.6 as it existed in 2011 defined prospective, concurrent, and retrospective review as follows:

> (d) "Concurrent review" means utilization review conducted during an inpatient stay.
> …

> (n) "Prospective review" means any utilization review conducted, except for utilization review conducted during an inpatient stay, prior to the delivery of the requested medical services.
> …
> (p) "Retrospective review" means utilization review conducted after medical services have been provided and for which approval has not already been given.

(Cal. Code Regs. (2011), tit. 8, § 9792.6.)

The UR process is initiated by the submission of an RFA. AD Rule 9792.6(o) as it existed in 2011 provides:

> "Request for authorization" means a written confirmation of an oral request for a specific course of proposed medical treatment pursuant to Labor Code section 4610(h) or a written request for a specific course of proposed medical treatment. An oral request for authorization must be followed by a written confirmation of the request within seventy-two (72) hours. Both the written confirmation of an oral request and the written request must be set forth on the "Doctor's First Report of Occupational Injury or Illness," Form DLSR 5021, section 14006, or on the Primary Treating Physician Progress Report, DWC Form PR-2, as contained in section 9785.2, or in narrative form containing the same information required in the PR-2 form. If a narrative format is used, the document shall be clearly marked at the top that it is a request for authorization.

(Cal. Code Regs. (2011), tit. 8, § 9792.6(o) (renumbered 9792.6(q) eff. Jan. 1, 2013.)

In addition, for "any request for authorization of medical treatment…on or after July 1, 2013," an RFA "must be in written form set forth on the "Request for Authorization (DWC Form RFA)," as contained in California Code of Regulations, title 8, section 9785.5." (Cal. Code Regs., tit. 8, § 9792.9.1(a).) Here, the record reflects that prescribing physician Dr. Metcalf submitted both PR-2 Reports as well as DWC RFA forms requesting the medications provided by Prescription Center. (Exs. 2-4.)

Accordingly, once an RFA was received the claims administrator was required to conduct UR that was either concurrent, prospective, or retrospective in nature. (Lab. Code, § 4610; see also *Leonard v. Santa Maria Bonita School Dist.* (January 27, 2010, ADJ726676 (SBA 0072094)) 2010 Cal. Wrk. Comp. P.D. LEXIS 13).)

Following a determination of the appropriate type of review, section 4610 as it existed in 2011 provided the following timelines for the UR process:

> Prospective or concurrent decisions shall be made in a timely fashion that is appropriate for the nature of the employee's condition, not to exceed five

> working days from the receipt of the information reasonably necessary to make the determination, but in no event more than 14 days from the date of the medical treatment recommendation by the physician. In cases where the review is retrospective, the decision shall be communicated to the individual who received services, or to the individual's designee, within 30 days of receipt of information that is reasonably necessary to make this determination.

(Lab. Code (2011), § 4610(g)(1).)

The WCJ's Opinion on Decision asserts that "lien claimant began providing and billing for these medications in September 2011," but that "the earliest UR report appears to date from 17 February 2012. This is much too late." (Opinion on Decision, at p. 2.) The WCJ further explains his reasoning in the Report as follows:

> Here, however, UR in this case was tardy. Defendant argues in its Petition that there were three separate requests for more information from their UR reviewer, on 14, 16 & 18 November 2011 before finally denying the request on 02 December 2011. Since more than two weeks elapsed between the first request for information and the denial, it is clear that more than 14 days elapsed after the request. Thus, defendant was not in compliance with the deadlines for utilization review contained in 4610(i.)
>
> Furthermore, Labor Code § 4610(c)(1) provides that pharmaceuticals are subject to prospective review, not retrospective review. That means defendant cannot use the 30-day deadline contained in section 4610 (c) (2.) Thus, compliance was required in 5 days unless further information is requested. If information is requested, then compliance is required within 14 days per Labor Code § 4610 (h.)
>
> Lastly, defendant cannot rely on the multiple subsequent utilization reviews in this case as the RFA's in this case were for the same two medications. Applicant's medication did not change for years and something would have to change in the applicant's condition to support the denials. See Patterson vs. The Oaks Farm (Significant Panel, 2014) 79 CCC 910.

(Report, at pp. 3-4.)

Defendant's Petition responds that its December 2, 2011 UR determination addressed lien claimant's initial date of service of September 29, 2011 and met the timeframes applicable to "retrospective review" (Cal. Code Regs (2011), tit. 8, § 9792.6(p)) as timely rendered within 30 days from receipt of billing. (Petition, at p. 6:26.) Defendant further contends that the record does not reflect a valid underlying RFA for the medications provided by lien claimant on September 29, 2011. (Petition, at p. 6:19.)

The WCJ's analysis appears to apply a 14-day timeframe corresponding to prospective review as described in former section 4610(g)(1), reasoning in part that current section 4610(c)(1) "provides that pharmaceuticals are subject to prospective review, not retrospective review. That means defendant cannot use the 30-day deadline contained in section 4610(c)(2.)" (Report, at p. 3.) However, we observe that *current* section 4610, subdivision (c)(1) only became effective as of January 1, 2017 following the amendments of SB1160 in 2016. (Stats 2016, ch. 868 § 4.5 (SB 1160), effective January 1, 2017). Thus, the statute would not be applicable to defendant's UR determinations for the various dates of service herein ending in 2014. (Ex. 1, Itemized Statement, dated January 8, 2021.)

Nor are we persuaded that our analysis in *Patterson v. The Oaks Farm* (2014) 79 Cal.Comp.Cases 910 [2014 Cal. Wrk. Comp. P.D. LEXIS 98] (*Patterson*) (significant panel[3] decision) would preclude defendant's submission of the medical dispute to UR in this matter. In *Patterson*, the Appeals Board held that an employer may not unilaterally cease to provide treatment authorized as reasonably required to cure or relieve the effects of industrial injury upon an employee without substantial medical evidence of a change in the employee's circumstances or condition. The panel reasoned:

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

(*Id.* at p. 918.)

Here, however, the record reflects no competent evidence that defendant had previously authorized the medications provided by lien claimant on an ongoing basis or that the medications were determined to be medically necessary by a valid UR process in the first instance. Accordingly, the analysis in *Patterson* would not be applicable to the present facts.

[3] A significant panel decision is a decision of the Appeals Board that has been designated by all members of the Appeals Board as of significant interest and importance to the workers' compensation community. Although not binding precedent, significant panel decisions are intended to augment the body of binding appellate and en banc decisions by providing further guidance to the workers' compensation community. (Cal. Code Regs., tit. 8, § 10305(u).)

Based on the foregoing, we conclude the present record does not adequately address whether defendant's UR determinations were valid or timely. Pursuant to our rescission of the F&O, we will return this matter this matter to the trial level at which time we recommend the WCJ analyze the questions of (1) whether the UR process was appropriately invoked by the submission of a valid RFA, (2) the nature of the review available to the parties (i.e., retrospective, concurrent, or prospective), and (3) whether defendant's UR was valid and timely for each claimed date of service.

In addition to the question of the validity of the UR determinations in evidence, we also note that depending on the dates of service, the question of medical necessity may be within WCAB jurisdiction. For dates of service prior to January 1, 2013, the UR certification process is a *factor* in the determination of medical necessity, but it is not dispositive of the issue. Prior to 2013, an employee wishing to challenge an adverse UR determination could invoke the agreed or qualified medical evaluator (AME/QME) dispute resolution process of section 4062 et seq. to resolve the issue and the WCAB ultimately retained the jurisdiction to decide medical necessity. (Lab. Code, §§ 4062, 4062.2.) As we held in *Willette v. Au Electric Corp.* (2004) 69 Cal.Comp.Cases 1298 [Appeals Board en banc], "[w]hen a WCJ or the Appeals Board issues a decision on a post-utilization review medical treatment dispute, the reports of the panel QME, the treating physician, and the utilization review physician will all be considered, but none of them is necessarily determinative." (*Id.* at p. 1308.)

However, in 2012, "the Legislature amended sections 4062 and 4610 so that an injured employee could no longer use the AME/QME process to dispute a UR decision. Instead, sections 4610.5 and 4610.6 were adopted, introducing a new procedure whereby an injured worker who disputes a UR decision may request IMR. Under sections 4610.5 and 4610.6, an IMR physician evaluates the 'medical necessity' of the proposed treatment." (*Dubon v. World Restoration* (2014) 79 Cal.Comp.Cases 1298, 1305 [2014 Cal. Wrk. Comp. LEXIS 131] (Appeals Board en banc).) The legislature further specified that IMR "shall be resolved only in accordance with this section." (Lab. Code, § 4610.5, subd. (b) & (e).) The only circumstance in which the WCAB may exercise jurisdiction over medical necessity disputes for dates of medical care provided after January 1, 2013 is instances where UR is either not performed or is untimely. This is because "[a]n untimely UR decision is the same as no UR." (*Dubon*, *supra*, at p. 1311.) In those instances, the Appeals Board retains jurisdiction over the medical dispute pursuant to section 4604. (*Id.* at p. 1309.)

However, even then, "the injured employee is nevertheless entitled only to 'reasonably required' medical treatment (§ 4600(a)) and it is the employee's burden to establish his or her entitlement to any particular treatment (§§ 3202.5, 5705), including showing either that the treatment falls within the presumptively correct MTUS or that this presumption has been rebutted. (§ 4604.5; see also § 5307.27.) Moreover, to carry this burden, the employee must present substantial medical evidence." (*Id.* at p. 1312.)

Where a lien claimant, rather than the injured worker, litigates the issue of entitlement to payment for industrially-related medical treatment, the lien claimant stands in the shoes of the injured worker and it has the burden of proving all the elements necessary to establish the validity of its lien by a preponderance of evidence. (*Kaiser Foundation Hospitals v. Workers' Comp. Appeals Bd.* (*Martin*) (1985) 39 Cal.3d 57, 67 [50 Cal.Comp.Cases 411].) This includes the burden of showing that the treatment it provided applicant was "reasonably required to cure or relieve" him from the effects of his injury as required by section 4600 (Lab. Code, § 5705 ("[t]he burden of proof rests upon the party or lien claimant holding the affirmative of this issue;" Lab. Code, § 3202.5 ("[a]ll parties and lien claimants shall meet the evidentiary burden of proof on all issues by a preponderance of the evidence"); *Zenith Insurance Company v. Workers' Comp. Appeals Bd.* (*Capi*) (2006) 138 Cal.App.4th 373 [71 Cal.Comp.Cases 374].) This also includes the burden of establishing the reasonableness of their medical charges. (*Tapia v. Skill Master Staffing* (2008) 73 Cal.Comp.Cases 1338 (Appeals Board en banc).)

Section 4600(b) provides that "medical treatment that is reasonably required to cure or relieve the injured worker from the effects of the worker's injury means treatment that is based upon the guidelines adopted by the administrative director pursuant to Section 5307.27." (Lab. Code, § 4600(b); see also Lab. Code, § 4610.5(c)(2) [defining "medically necessary" and "medical necessity" as treatment based on certain standards].) Section 5307.27 specifies that these guidelines refer to the medical treatment utilization schedule ("MTUS"). (Lab. Code, § 5307.27(a); see also Cal. Code Regs., tit. 8, § 9792.20 et seq.) The MTUS is presumptively correct on the extent and scope of treatment and is the primary source of guidance for physicians. (Lab. Code, § 4604.5(a); Cal. Code Regs., tit. 8, § 9792.21(c).) The MTUS, however, may be rebutted, and treatment may be warranted based on recommendations outside the MTUS in limited situations. (Cal. Code Regs., tit. 8, § 9792.21(d); see also Lab. Code, § 4604.5(d).)

Here, the WCJ must determine in the first instance whether the prescribed treatment in the form of compounded medications and topical patches is consistent with the presumptively correct MTUS. (Lab. Code, § 4604.5; Cal. Code Regs., tit. 8, § 9792.21(c).) In this regard, we observe that the burden of establishing medical necessity rests with lien claimant and must be carried by a preponderance of the evidence. (Lab. Code, § 5705; *Kunz v. Patterson Floor Coverings* (2002) 67 Cal.Comp.Cases 1588, 1592 (Appeals Board en banc).)

The burden of establishing medical necessity requires more than passing reference to the MTUS, or an assertion that the treatment is "per MTUS." (See, e.g., *Frontline Medical Assoc. v. Workers' Comp. Appeals Bd.* (*Lopez*) (2015) 80 Cal.Comp.Cases 380 (writ den.).) Rather, the party with the affirmative of the issue must establish *how* the requested treatment modality or medication is supported by the MTUS, including reference to appropriate guidelines within the MTUS as applicable. (See, e.g., "Chronic Pain Guidelines," Cal. Code Regs., tit. 8, § 9792.24.2). To the extent that a specified treatment modality is not addressed in the MTUS, medical necessity may nonetheless be established "with other medical treatment guidelines or peer-reviewed studies found by applying the Medical Evidence Search Sequence set forth in section 9792.21.1." (See generally, Cal. Code Regs., tit. 8, § 9792.21(d).)

Following our review of the evidentiary record occasioned by defendant's Petition, we conclude that the F&O does not adequately address the issue of medical necessity of the medications prescribed by Dr. Metcalf and supplied by lien claimant Prescription Center. To the contrary, the UR determination of December 4, 2012 raises specific issues regarding whether Lidoderm patches are warranted under the MTUS without an initial showing of a "failed trial of first-line therapy." (Ex. Q, UR Determination (Non-Certification), dated December 4, 2012, pp. 2-3.) The UR determination further raises questions regarding the whether use of lidocaine is warranted in the absence of documentation of "significant functional improvement" with use. (*Ibid*.) Moreover, the UR determination observes that "Lidoderm patches are only FDA approved for post-herpetic neuralgia and there is no documentation that the patient suffers from this condition." (*Ibid*.) The UR determination of February 25, 2014, similarly raises issues of whether the requested medications conform to MTUS Guidelines. (Ex. G, UR Determination (Non-Certification), dated February 25, 2014, pp. 1-2.) Thus, and irrespective of whether the UR determinations are *controlling* as to the issue of medical necessity, the medical rationale for non-certification of the requested treatment is germane to the determination of medical necessity. Nor

are we persuaded that an underlying prescription, standing alone, is sufficient to establish that the requested treatment comports with the MTUS, or in the alternative, that the MTUS has been successfully rebutted. (*Sandhagen*, *supra*, 44 Cal.4th at p. 242 ["[N]otwithstanding whatever an employer does (or does not do), an injured employee must still prove that the sought treatment is medically reasonable and necessary. That means demonstrating that the treatment request is consistent with the uniform guidelines (§ 4600, subd. (b)) or, alternatively, rebutting the application of the guidelines with a preponderance of scientific medical evidence. (§ 4604.5.)"].)

Upon return of this matter to the trial level, the parties and the WCJ must determine in the first instance whether the requested medical treatment was supported by a valid RFA submitted to defendant, and whether defendant accomplished a valid and timely UR of the request. For dates of service prior to January 1, 2013, and for dates of service after January 1, 2013 not addressed by a valid and timely UR determination, the WCAB retains the authority to determine the medical necessity of the requested treatment. The determination should be based on specific reference to, and discussion of, the presumptively correct MTUS, or in the event that the treatment is not addressed by the MTUS, collateral evidence-based medical treatment guidelines. (Lab. Code, § 4604.5(d); Cal. Code Regs., tit. 8, § 9792.21(d).) To the extent that dates of service after January 1, 2013, are addressed by timely, valid UR, unless a party appealed the determination to IMR, the UR decision is binding on the parties.

For the foregoing reasons,

IT IS ORDERED, as the Decision After Reconsideration of the Workers' Compensation Appeals Board, that the Findings and Orders issued on October 25, 2021, is **RESCINDED** and that this matter is **RETURNED** to the trial level for such further proceedings and decisions by the WCJ as may be required, consistent with this opinion.

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE A. ZALEWSKI, CHAIR

I CONCUR,

/s/ JOSEPH V. CAPURRO, COMMISSIONER

/s/ JOSÉ H. RAZO, COMMISSIONER

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

January 27, 2026

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

SIENA MANAGEMENT GROUP
COLLECTIVE RESOURCES
AM LIEN SOLUTIONS

SAR/abs

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