WORKERS' COMPENSATION APPEALS BOARD

STATE OF CALIFORNIA

JULIE LOGUDICE, ***Applicant,*** **vs.** **MIMI'S CAFE; CALIFORNIA INDEMNITY INSURANCE COMPANY, administered by GALLAGHER BASSETT SERVICES, INC.,** ***Defendants.***	**Case No. ADJ2667007 (MON 0216181)** **(Marina del Rey District Office)** **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, we will deny reconsideration.

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For the foregoing reasons,

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

WORKERS' COMPENSATION APPEALS BOARD

Cristine E Gondak

DEPUTY **CRISTINE E. GONDAK**

I CONCUR,

F. M. Brass

FRANK M. BRASS

Deidra E Lowe

DEIDRA E. LOWE

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

APR 01 2015

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

ADELSON, TESTAN, BRUNDO, NOVELL & JIMENEZ
GALLAGHER BASSETT SERVICES, INC.
JULIE LOGUDICE
LAW OFFICES OF GARY RODICH
MEDICAL PRACTICE MANAGEMENT
STOCKWELL, HARRIS, WOOLVERTON & MUEHL

gpo

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LOGUDICE, Julie

CASE NUMBER		**ADJ2667007**
JULIE LOGUDICE	**VS.**	**MIMI'S CAFE**
WORKERS COMPENSATION JUDGE		**JEFFREY R. WARD**
DATE OF INJURY		**4/23/96**

REPORT AND RECOMMENDATION ON PETITION FOR RECONSIDERATION

I.

INTRODUCTION

Testimony on the current dispute first began at the Trial held on 5/31/12. Then after multiple continuances and orders taking off calendar, the Trial was finally completed on 10/9/14. After allowing time for post-trial briefs, the judge issued his decision on 1/16/15 relevant to residential relocation, moving costs, rent differential and housekeeping.

On 2/24/15 Defendant filed a timely and verified Petition for Reconsideration. The statutory grounds are not clear but likely Petitioner believes:

1. The evidence does not justify the Findings of Fact, and
2. The Findings of Fact do not support the Order, Decision or Award.

While at first glance it might appear that Defendant's Petition is untimely, the Petition for Reconsideration is legally timely based on the fact that the judge's decision was inadvertently sent to the prior defense law office (Stockwell, Harris, et al) rather than the current representative at Adelson, Testan, et al. The judge takes responsibility for this error. Applicant filed a timely Answer.

II.

STATEMENT OF FACTS

Applicant Julie Logudice, while age 32, sustained an injury on 4/23/96 to her back, knees, migraines, stomach, sleep and left piriformis, while employed as the manager of Mimi's Café in Northridge, CA. On 6/9/10, the undersigned approved a Stipulation with Request for Award that provided for 100% permanent total disability and lifetime medical care. Paragraph 9 of the Stipulation states in relevant portion "*Medical treatment is to be through MPN, as per AME's to body parts stipulated herein. No treatment for psyche, multiple sclerosis, thyroid, stroke or TIA.*"

Soon thereafter, Applicant began filing multiple Declarations of Readiness (DOR) on treatment issues that eventually resulted in a MSC on 3/14/12. On that date the parties completed Stipulations and Issues. The main issues set for Trial was whether Applicant medically needed to relocate from a second story apartment, and if so, whether Defendant is liable for relocation costs and any rent differential. Other issues included penalties, housekeeping and mileage reimbursement. On 5/31/12, the testimony was taken and then the case lingered for a couple years due to multiple continuances and eventually a request to go off calendar while a possible settlement would be investigated. Finally, at Defendant's insistence, the trial was completed on 10/9/14.

The judge then found in favor of the Applicant and awarded her reasonable relocation costs, reasonable rent differential and housekeeping services. The judge also found Defendant did not unreasonably delay any benefits and thus no penalties were awarded. Defendant responded with the instant Petition for Reconsideration.

III.

DISCUSSION

Petitioner specifically claims the judge "*acted in excess of its jurisdiction in relying on AME opinion to award future medical care.*" They claim that "*any and all treatment request post-January 1, 2013 be subject to medical necessity such that QMEs and AMEs can no longer comment on medical treatment recommendations.*" They further argue "*any disputes concerning treatment would be subject to utilization review and any objections or questions or issues regarding utilization review must now go through independent medical review.*" Petitioner then goes on to state "*However, Judge Ward awarded rent differential for change of residence and relocation based on the AMEs opinions.*"

The problem with this argument is that this case does not concern a post 1/1/13 request for medical treatment. For example, the issue of home health care was first listed on the pre-trial conference statement completed at the Conference on 4/13/10. The trial on the current issues first began on 5/31/12, although Stipulations & Issues first raising these disputes occurred at the Conference held on 3/14/12. This timing serves to vitiate Petitioner's arguments concerning Labor Code §4610 as we are not dealing with a post 1/1/13 treatment request.

Then Petitioner argues that the MPN physician "*Dr. Singh has never provided defendants with a request for authorization of treatment in the form of relocation of residence or cost differential.*" However, the agreement for Dr. Singh to be the MPN physician was written in the Minutes at the Hearing on 10/23/12, which is seven months after the date that these issues were first set for Trial at the Hearing on 3/4/12.

More importantly, Petitioner ignores Trial Exhibit 6 which contains a series of PR-2 reports from Dr. Kamyar Assil, the primary treating physician at that time. The judge is specifically referring to the report dated 8/22/11 by Dr. Assil that states "*Mrs. Logudice continues to have debilitating pain problems. She will require housekeeping services once per week to help clean her apartment. She has difficulty living upstairs, and is to move downstairs. For this move, she will require help for packing and unpacking her belongings. She will require transportation to all of life's necessities, as per the assessment establish by the AME.*"

If Dr. Assil's 8/22/11 report is not considered the legal equivalent of a request for authorization in 2011, then Defendant would have had a duty under Title 8, Regulation §10109 to conduct a good faith investigation. The Lexis "noteworthy panel decision" of Acevedo v Del Mar Die Casting (2014 Cal. Wrk. Comp. P.D. LEXIS 701) does a nice job of discussing the relevant case law on Defendant's duty to investigate. It states in relevant part:

> "In *Ramirez v. Workers' Comp. Appeals Bd.* (1970) 10 Cal.App.3d 227, 234 [35 Cal.Comp.Cases 383], the Court said: "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... (Italics added.)" (Accord, *Aliano v. Workers' Comp. Appeals Bd.* (1979) 100 Cal.App.3d 341, 366–367 [44 Cal.Comp.Cases 1156]; *Dorman v. Workers' Comp. Appeals Bd.* (1978) 78 Cal.App.3d 1009, 1020 [43 Cal.Comp.Cases 302].)
>
> Moreover, in *United States Cas. Co. v. Industrial Acc. Com. (Moynahan)* (1954) 122 Cal.App.2d 427, 435 [19 Cal.Comp.Cases 8], the Court said: "Section 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. [Italics added]."

In *Neri Hernandez*, we reiterated that:
"[Under] circumstances when an employer receives other notice that home health care services may be needed or are being provided, an employer has a duty under section 4600 to investigate. (See *Braewood Convalescent Hosp. v. Workers' Comp. Appeals Bd. (Bolton)* (1983) 34 Cal. 3d 159, 165 [48 Cal.Comp.Cases 566].) In addition to the judicially announced obligation to do more than passively sit by, an employer also has a regulatory duty to conduct a reasonable and good faith investigation to determine whether benefits are due. (See Cal. Code Regs., tit. 8, § 10109 .)" (*Id.* at p. 694.)"

Based on the way discovery was performed, the judge believes the parties acted in a way consistent with allowing the AME's to resolve the treatment issues. The judge also reminds Petitioner of prior defense counsel's admissions on page 5, lines 1 to 5 of the 6/18/12 Trial Brief that was originally submitted for the Trial dates in 2012. Counsel at that time wrote "*Defendant contends that applicant's reliance upon the opinion of Dr. Kamyar Assil for housekeeping, transportation, or moving her apartment is misplaced. Reliance should be made upon the opinions of the AME's. This would be in accordance with the Stipulations entered into between the parties.*"

While the judge denied penalties against Defendant based on the uncertainty of exactly when the treatment issue became disputed, it was assumed that at some point there was a medical dispute that the parties then turned to the AMEs to resolve as per the terms of the 2010 Stipulation with Request for Award. If there was no dispute, then why did defense counsel focus so much of the AME deposition testimony on the issues of the stairs, relocation and housekeeping?

If there were any procedural objections to the recommendations contained in Dr. Assil's 8/22/11 report to begin with, the judge feels at this point that Defendant has waived them in favor of simply allowing the AME to decide. The judge did in fact rely on the AME's final conclusions, just as Defendant wanted and insisted, and now they complain that the judge "*acted in excess of his jurisdiction*" by doing so.

The judge would agree with Petitioner that treatment requests after 1/1/13 must go through utilization review (UR), and assuming a timely UR denial, would be decided by the AME's as per the stipulation agreement and as allowed under the Bertrand case the judge cited in his decision.

The AME's agreed at their depositions that Applicant should not be navigating so many stairs just to get into her apartment, which once inside, also has an upstairs area. The judge believes that there was no way to modify the apartment as that was already explored in 2012. Petitioner refers to some type of "*assistive device*" that she could use at home and away. However, the judge is unaware of such a device and there is no evidence that Defendant was seeking to obtain that device for Applicant when she was living for so many years at her upstairs apartment.

Finally, the judge wishes to repeat what he stated in his Opinion on Decision that he "*appreciates that Ms. Logudice continues to seek independent living. Defendant should look on this favorably as the alternative could be a far more costly full time, 24 hour, assisted living center.*"

IV.
CONCLUSION

It is respectfully recommended that Defendant's Petition for Reconsideration be denied.

MARCH 9, 2015

Jeff Ward

Jeffrey Ward
WORKERS' COMPENSATION
ADMINISTRATIVE LAW JUDGE

Served on all parties as shown
on Official Address Record

ON: 3/9/15
BY: Myrna V. Glawe
Myrna V. Glawe