

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

**FERNANDO MUNIZ VILLALPANDO,**

*Applicant,*

vs.

**DOHERTY BROTHERS; MARTIN DUSTERS;  
STATE COMPENSATION INSURANCE  
FUND,**

*Defendants.*

Case Nos.     **ADJ599176 (SAC 0333692)  
ADJ2396484 (RDG 0122019)  
ADJ7950339  
(Redding District Office)**

**OPINION AND ORDER  
GRANTING PETITION FOR  
RECONSIDERATION AND  
DECISION AFTER  
RECONSIDERATION**

Applicant, Fernando Muniz Villalpando, appearing *in propria persona*, seeks reconsideration of the Joint Findings and Order, issued January 9, 2017, in which a workers' compensation administrative law judge (WCJ) denied his request to transfer the administration of his Medical Set-Aside Account (MSA) from Bridge Pointe/NuQuest to himself, based upon the finding that applicant has not established that the MSA has been administered inappropriately.

Applicant contends that he has presented sufficient evidence, and has additional evidence available, to show that the MSA has not been properly administered, including that Bridge Pointe set up an online account of the Medicare website without his permission, and that two expensive medications are not included in the MSA. He further asserts that due to the effects of his medications he was not fully aware of the terms of the MSA when it was initially prepared. Applicant requests the opportunity to present evidence, including recordings of conversations on his cell phone, to establish his entitlement to administer his own MSA.

Defendant has filed an Answer to applicant's Petition for Reconsideration and the WCJ has prepared a Report and Recommendation on Petition for Reconsideration, recommending that the Petition be denied.

For the reasons set forth below, we will grant applicant's Petition for Reconsideration, rescind the

1 Joint Findings and Order and return this matter to the trial level to allow the WCJ the opportunity to  
2 review the formal agreement setting up applicant's MSA between State Compensation Insurance Fund,  
3 Bridge Pointe/NuQuest to determine whether there is any provision for, or basis for, change of  
4 administration.

5 I.

6 Applicant filed multiple claims for industrial injuries on September 24, 2002, October 20, 2002  
7 and over the period ending August 8, 2003, while employed as a laborer by two different employers,  
8 Martin Dusters and Doherty Brothers. He claimed injury to his lumbar spine at both employers and,  
9 additionally, to his cervical spine and bilateral shoulders at Doherty Brothers.

10 Applicant's three claims were settled by Compromise and Release Agreement, approved by Order  
11 Approving Compromise and Release on August 24, 2011. The parties' settlement included an MSA  
12 Agreement, through which defendant would fund applicant's future medical treatment. The initial MSA  
13 proposal sent by Bridge Pointe to the Centers for Medicare and Medicaid Services (CMS) provided that  
14 applicant would self-administer the MSA. CMA revised the proposal by conditioning its approval on an  
15 increase in funding to \$519,390.00, to cover future medical treatment and future prescription drug costs  
16 to adequately consider Medicare's interests.

17 In an Addendum to the Compromise and Release Agreement, applicant agreed that Bridge Pointe  
18 would administer the MSA, with State Compensation Insurance Fund to establish the account with an  
19 initial payment to Bridge Pointe of \$57,084.00, and \$15,941.00 annually thereafter for 29 additional  
20 years. The Addendum also provided that State Compensation Insurance Fund would pay Bridge Pointe  
21 \$3,555.00 as a fee to establish the MSA and for the initial year's cost of administration. Thereafter,  
22 Bridge Pointe would receive an administrative fee of \$1,800.00.

23 Applicant agreed to release defendant from further liability for "his/her failure to create a  
24 Medicare Set-Aside, correctly administer a Set-Aside account and/or obtain Medicare's approval of any  
25 allocation or set-aside arrangement."

26 The agreement between applicant and State Compensation Insurance Fund does not contain any  
27 language pertaining to any future contingency involving the administration of his MSA by Bridge Pointe.

1 There is no reference to a potential change of administration to another third party administrator, or to  
2 applicant as a self-administrator, in the event Bridge Pointe fails to provide services as a third party  
3 administrator of applicant's MSA.

4 II.

5 Applicant wishes to replace Bridge Pointe and self-administer his MSA, based upon his claims  
6 that he has had problems obtaining medical services through the current arrangement. Applicant's  
7 request was considered at hearings on December 5, and December 14, 2016. The WCJ identified the  
8 issues as whether Bridge Pointe has appropriately administered the MSA, and if so, whether the  
9 Workers' Compensation Appeals Board has jurisdiction to set aside the MSA and allow applicant to self-  
10 administer the account.

11 We believe it is premature to consider applicant's request to modify the terms of the Compromise  
12 and Release Agreement, as finalized in the Order Approving Compromise and Release. While it is true  
13 that an Order Approving Compromise and Release, when it has become final, may only be modified  
14 upon the filing of a timely petition to reopen and a showing of "good cause," (Lab. Code, §§ 5803, 5804)  
15 there has not been adequate consideration of the full nature of the agreement that led to the appointment  
16 of Bridge Pointe as the administrator of applicant's MSA. State Compensation Insurance Fund contracted  
17 with Bridge Pointe to create the MSA proposal and to administer it on applicant's behalf. The agreement  
18 is necessarily a part of the overall settlement between applicant and State Compensation Insurance Fund,  
19 yet its terms with regard to future contingencies are unknown.

20 The issue as framed by the WCJ does not address whether the terms of the parties' agreement to  
21 utilize a professional administrator included any provision for a change of administration in the event  
22 Bridge Pointe ceases to operate or withdraws from providing the contracted services any time over the 30  
23 year life of the agreement. There is no record as to the specific rights, duties and indemnifications as  
24 between the parties enumerated in the Compromise and Release Agreement. Such terms would  
25 reasonably be found in the contractual agreement that led to the MSA being administered by Bridge  
26 Pointe.

27 The WCJ should, therefore, be provided the opportunity to consider the nature of the agreement

1 between State Compensation Insurance Fund, applicant and Bridge Pointe, and to determine whether  
2 there is any provision for a change of administration, based upon a request or a finding of good cause. In  
3 the unlikely event there is no such agreement, or such provision in the agreement, a determination of  
4 applicant's contractual rights would be necessary. But such a determination would not necessitate the  
5 rescission or modification of the underlying Compromise and Release Agreement, since this contingency  
6 must necessarily be read into the parties' agreement.

7 In order for applicant to be allowed to self-administer his MSA, he should establish his  
8 competency to manage his affairs and comply with the CMS requirements for self-administration. If  
9 State Compensation Insurance Fund still opposes applicant's administration of his own MSA, it would  
10 then have to show good cause why the change should not be permitted.

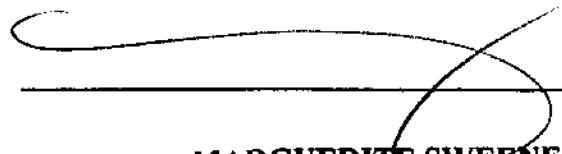
11 Accordingly, we will grant applicant's Petition for Reconsideration, rescind the Joint Findings  
12 and Order and return this matter to the trial level for further proceedings as indicated herein. Further, we  
13 will serve this opinion on applicant's prior attorney. Applicant would benefit from legal assistance in  
14 determining whether the terms of the agreement setting up the third party administration of his MSA  
15 provides for the contingency of a change in administration, and if not, the nature of applicant's  
16 contractual remedies.

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1 For the foregoing reasons,

2 **IT IS ORDERED** that the January 23, 2017 Petition for Reconsideration be, and hereby is,  
3 **GRANTED**, and as our Decision After Reconsideration, the Joint Findings and Order, issued January 9,  
4 2017, is **RESCINDED**, and the matter shall be **RETURNED** to the trial level for further proceedings  
5 consistent with this opinion and for a new final decision.

6 **WORKERS' COMPENSATION APPEALS BOARD**

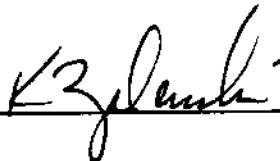
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8   
9 **MARGUERITE SWEENEY**

10 **I CONCUR,**

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13 **FRANK M. BRASS**

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15 **I DISSENT (See Dissenting Opinion),**

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18 **KATHERINE ZALEWSKI**



19  
20  
21 **DATED AND FILED AT SAN FRANCISCO, CALIFORNIA**

22 **MAR 21 2017**

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

25 **FERNANDO MUNIZ VILLALPANDO**  
26 **STATE COMPENSATION INSURANCE FUND**  
27 **COOK GUSHI**

*SV/pc*

**MUNIZ VILLALPANDO, Fernando**

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**DISSENTING OPINION**

I dissent. I would affirm the Joint Findings and Order for the reasons stated in the Workers' Compensation Administrative Law Judge's Report and Recommendation on Petition for Reconsideration dated February 3, 2017. Applicant's evidence of his dissatisfaction with the agreed upon administrator is not sufficient to establish good cause to set aside the parties' agreement, reflected in the Compromise and Release regarding the administration of the Medical Set-Aside Account.



**WORKERS' COMPENSATION APPEALS BOARD**

  
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**KATHERINE A. ZALEWSKI, COMMISSIONER**

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

**MAR 21 2017**

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

**FERNANDO MUNIZ VILLALPANDO  
STATE COMPENSATION INSURANCE FUND  
COOK GUSHI**

*SV/pc*



STATE OF CALIFORNIA  
Division of Workers' Compensation  
Workers' Compensation Appeals Board

CASE NUMBER: ADJ599176 (MF); ADJ 2396484; ADJ7950339

FERNANDO MUNIZ  
VILLALPANDO

-vs.-

DOHERTY BROTHERS;  
MARTIN DUSTERS; STATE  
COMPENSATION  
INSURANCE FUND,

WORKERS' COMPENSATION  
ADMINISTRATIVE LAW JUDGE:

KATHLEEN M. ORTEGA

DATE: 02/03/2017

**JOINT REPORT AND RECOMMENDATION**  
**ON PETITION FOR RECONSIDERATION**

**I. INTRODUCTION**

- a. Occupation: Laborer (Group No. 491)  
Date of Birth: 12/15/1965  
Dates of Injury: 9/24/2002 (ADJ7950339);  
10/20/2002 (ADJ599176);  
CT 08/08/2002 to 08/08/2003 (ADJ2396484)  
Parts of Body Injured: lumbar/cervical spine/shoulders
- b. Identity of Petitioner: Applicant  
Timeliness: Yes  
Verification: Yes
- c. Date of Findings and Order: 01/09/2017
- d. Petitioner's Contentions: Unable to completely determine but Applicant In Pro Per is unhappy about some evidence that was not presented at trial.
- e. Recommendation: Deny

## II. FACTS

Applicant, Fernando Muniz Villalpando, while employed on 09/24/2002 in ADJ7950339, on 10/20/2002 in ADJ599176 and during the period of CT 08/08/2002 to 08/08/2003 in ADJ2396484, as a laborer, Occupational Group No. 491, at Sutter and Colusa Counties, by Martin Dusters and Doherty Brothers, sustained injury arising out of and in the course of his employment to his lumbar spine at both employers and to his cervical spine and bilateral shoulders at Doherty Brothers. All cases were settled on 08/24/2011 by a Compromise and Release and an Order Approving the Structured Settlement Compromise was issued on the same date. Within the Compromise and Release there was a Medicare Set-Aside (MSA) structured amount that was to be administered by Bridgepointe/NuQuest.

Applicant felt that NuQuest did not appropriately administer his MSA and he requested that he be able to self-administer his account. He filed a Declaration of Readiness to Proceed and eventually his case was set for Trial on 12/5/2016 and the Trial was completed on 12/14/2016. A Findings and Order issued finding that Bridgepointe/NuQuest did not inappropriately manage their custodial obligations within the Compromise and Release of 08/24/2011. That the issue of whether Applicant could administer his own MSA funds was moot based on the Finding that Bridgepointe/NuQuest did not inappropriately manage his MSA account. An Order issued setting a status conference on the Petition for Costs of Interpreter David Shafer to further develop the medical record on interpreter's fees only. It is from that Findings and Order that applicant has filed his timely Petition for Reconsideration.

## III. DISCUSSION

Generally, a Compromise and Release Agreement (C&R) cannot be set aside over five years later unless there is a showing of fraud (Smith v. WCAB (1985) 50 CCC 311). Applicant agreed at Trial that he did not want to set the entire C&R aside because he realized he would potentially have to reimburse the Defendant for all that was paid on his entire settlement including the structured permanent disability amount. He was mainly concerned that his MSA was not being appropriately managed by Bridgepointe/NuQuest and he wanted to set aside the MSA portion of his settlement and administer the funds himself. As indicated in the Opinion on Decision, defense witness Rasa Fumagalli was very credible in her testimony that any amount paid from the MSA must be both industrially related based on the diagnosis codes pertaining to the applicant and that the charges needed to be Medicare eligible. Applicant did not produce sufficient evidence that Bridgepointe/NuQuest denied any charges that were presented which met the two part criteria necessary for payment. The majority of



evidence applicant presented was to show that the NuQuest ID cards looked like insurance cards and multiple providers would not accept their insurance, although NuQuest is not an insurance company. There did appear to be confusion but there was nothing in evidence to support that NuQuest breached their obligations.

Petitioner contends that he was not allowed to offer voice mail recordings from Anita and Hortensia from NuQuest to support his claim that NuQuest did not administer his funds adequately. At the Mandatory Settlement Conference (MSC) on 11/07/2016 applicant listed his evidence on the Pre-Trial Conference Statement. These voice-mail recordings were not listed. He tried to offer them at trial, he did not have copies of them and wanted the Court to listen to them. They had not been served on defendant. He was told they would not be admissible since they were not listed at the MSC. Petitioner has not produced them at this time to show their relevance.

Petitioner also wants now to offer the testimony of a new witness Thomas Bosserman. He has not shown why this is relevant, whether the witness was unavailable at trial and the witness was not listed on the Pre-Trial Conference Statement as required by Labor Code Section 5502. This is new issue that is being raised on Reconsideration, which cannot be considered.

Applicant also wants to offer voice mail recordings of providers that would not accept NuQuest, which as discussed above were not provided to the defendant or listed as evidence at the MSC.

The undersigned is uncertain as to what evidence received on 12/13/16, applicant is discussing. He does not support that it would be new evidence sufficient to reopen the record.

Applicant is concerned that Miguel Reyes did not testify. He did not subpoena this witness. He was concerned some witnesses were not available on 12/14/2016, but he did not provide any evidence as to why their testimony would have been relevant to the issues at trial. Lilia Garcia is a new witness apparently he wants to have testify but the time for testimony is over and he has given no information as to why she could not have been produced at trial.

Item 7 listed by Petitioner as to NuQuest opening an on-line account for him in 2010. was never raised at trial and would be waived on Reconsideration. Also, he cannot now ask for medications that were not listed on the Medicare Set Aside Analysis. He has the availability to have Medicare pay for them on a non-industrial basis.

Petitioner is raising his mental status in items 7 and 8. He originally argued before trial that he was mentally unable to understand what he was signing at the time of his Compromise and Release. He agreed on the record at trial that he would not pursue this issue as he did not want all of his C&R set aside, he only wanted to pursue the issues of whether NuQuest had inappropriately managed his MSA and that he wanted to set aside that portion of his C&R so he could self-administer his MSA. He has waived the competency issue.

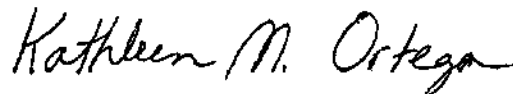
The evidence Petitioner attaches as exhibits to his Petition is for the most part in evidence except the first page, which is only another document that shows confusion by a provider that does not understand NuQuest is not insurance. Bridgepointe/NuQuest now is attempting to better explain to applicant and providers that they are administering the MSA. They have no obligation up and above attempting to correct this with the providers. What the providers agree to after the explanation is a problem with the providers and not with NuQuest.

Therefore, Petitioner has presented no new evidence on Reconsideration, nor has he proven fraud sufficient to set aside any portion of his Compromise and Release.

#### **IV. RECOMMENDATION**

Based on the foregoing it is recommended that the Petition for Reconsideration be denied.

DATE: 02/03/2017



**Kathleen M. Ortega**  
WORKERS' COMPENSATION  
ADMINISTRATIVE LAW JUDGE

COOK GUSHI MARYSVILLE, US Mail  
DFS INTERPRETING REDDING, Email  
FERNANDO MUNIZ VILLALPANDO, US Mail  
SCIF INSURED SACRAMENTO, US Mail  
TRUE MRI MEDICAL CENTER, US Mail

Served by Charlotte Pacheco on 2/6/17