

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

REYNA CASTILLO, *Applicant*

vs.

**MIDNIGHT IMPRESSIONS; SECURITY NATIONAL INSURANCE,
c/o AMTRUST AMERICA, *Defendants***

**Adjudication Number: ADJ11092501
Van Nuys District Office**

**OPINION AND DECISION
AFTER RECONSIDERATION**

We granted reconsideration to further study the factual and legal issues in this case. This is our Opinion and Decision After Reconsideration. Defendant sought reconsideration of the Findings and Award issued by a workers' compensation administrative law judge (WCJ) on December 30, 2019. The WCJ found that applicant, while employed on October 13, 2017, as a production line worker, sustained an admitted industrial injury to her head and brain. The WCJ also found that defendant's improper service of the Utilization Review (UR) determination renders it invalid, and the determination of medical necessity for the treatment may be made by the Appeals Board. The WCJ found defendant is liable for continuing applicant's outpatient physical rehabilitation, consisting of transitional living center day treatment, transportation, and interpreter services, until they are no longer reasonably required pursuant to Labor Code section 4600.¹

Defendant contended that the evidence does not justify the award continuing applicant's outpatient rehabilitation, transportation, and interpreter services, arguing the WCJ exceeded his jurisdiction by primarily relying on *Patterson v. The Oaks Farm*, 79 Cal. Comp. Cases 910, 2014 LEXIS 98 (*Patterson*). Defendant argued that the WCJ's reliance on *Patterson* denied it the right to engage in the UR/Independent Medical Review (IMR) process. Defendant did not contest the finding that its UR decision was untimely. Applicant filed an Answer.

¹ All further statutory references are to the Labor Code unless otherwise stated.

We received a Report and Recommendation on Petition for Reconsideration (Report) from the WCJ in response to defendant's Petition for Reconsideration, which recommended that the petition be denied.

We have reviewed the record and 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, for the reasons discussed below, and for the reasons stated in the Report, we affirm the December 30, 2019 decision.

FACTS

Applicant, while employed on October 13, 2017, as a production line worker, sustained an industrial injury to her head and brain. Applicant was taken to Glendora Community Hospital where a CT scan of her head revealed a diffuse soft tissue injury. She was diagnosed with post-concussion syndrome and received stitches for her forehead laceration, before she was discharged home. Upon returning home, applicant experienced severe headaches, photophobia, nausea, and vomiting.

Applicant's primary treating physician is David Patterson, M.D., who specializes in physical medicine and neuro-rehabilitation. He is the medical director at Casa Colina Hospital Transitional Living Center (Casa Colina).

Beginning December 11, 2018, applicant was admitted for outpatient care at Casa Colina, pursuant to the recommendations of Dr. Patterson and defendant's UR determinations.

In December 2018, Dr. Patterson submitted an RFA requesting outpatient physical rehabilitation, five hours a day for four weeks. Defendant's UR approved the request for 30 days of outpatient physical rehabilitation, including the transitional living center day treatment program, physical, occupational, and neuro psychology treatment, with an interpreter and transportation services.

On January 4, 2019, Dr. Patterson submitted another RFA for another 20 sessions, i.e., one month, of outpatient services. Although no new medical reports were submitted with the RFA, defendant's UR approved the services through July 1, 2019 (six months).

On July 9, 2019, Dr. Patterson again submitted an RFA for continuation of the outpatient services at Casa Colina. Defendant continued to provide outpatient care to applicant until July 16,

2019, when defendant's UR denied the request based on the Medical Treatment Utilization Schedule (MTUS) guidelines for traumatic brain injury. (Defendant's Exhibit A.)

Defendant attempted to serve the July 16, 2019 UR determination on applicant's attorney. However, it was served to an incorrect suite number and was not received at applicant's attorney's office. (8 Cal. Code Regs. § 9792.9.1; Cal. Code Civ. Pro. § 1013(a).²)

On August 29, 2019, applicant filed a Declaration of Readiness to Proceed to an expedited hearing. On September 18, 2019, defendant filed an Objection.

Trial in the matter was held on November 20, 2019, and December 30, 2019. Karla Markarian, case manager at Casa Colina, testified on behalf of applicant. The relevant documentary evidence included Dr. Patterson's July 7, 2019 RFA (Applicant's Exhibit 8); his medical reports dated 3/29/19 (Applicant's Exhibit 6); 7/10/19 (Applicant's Exhibit 3); 7/24/19 (Applicant's Exhibit 2); and 8/30/19 (Applicant's Exhibit 1). Applicant submitted team conference notes from Casa Colina dated 6/3/19 (Applicant's Exhibit 5) and 7/1/19 (Applicant's Exhibit 4). Defendant submitted its UR denial (Defendant's Exhibit A.)

On December 30, 2019, the WCJ issued his Findings and Award. As relevant here, the WCJ found the UR denial untimely as it was not served on the correct suite number for applicant's counsel. The WCJ also found that defendant was liable for applicant's continued outpatient rehabilitation services, until the services are no longer reasonably required to cure or relieve the effects of the industrial injury. (Lab. Code § 4600.)

On January 15, 2020, applicant received approval for the treatment that had been requested in the July 7, 2019 RFA. According to applicant's verified Answer, the approval dated January 13, 2020, was addressed to Dr. Patterson and stated, "After careful consideration, we are extending approval as follows: Outpatient physical rehabilitation transitional living center day treatment program, with interpreter and transportation to include up to 5 hours of therapy per day, physical, occupational, speech, and neuropsychology." (Answer, p. 4.) After authorization, applicant resumed rehabilitation day treatment at Casa Colina.

On January 23, 2020, defendant filed its Petition for Reconsideration.

² All further regulatory references are to the California Code of Regulations unless otherwise stated.

DISCUSSION

A. The WCJ Properly Exercised His Jurisdiction Because Defendant Did Not Timely Serve the UR Determination

In the Petition for Reconsideration, defendant does not contend that it properly served the UR determination or that it was timely. Defendant contends that the WCJ exceeded his jurisdiction by improperly relying on *Patterson* to extend the provision of applicant's outpatient physical rehabilitation "in perpetuity" circumventing its right to request an RFA. (Petition for Reconsideration, 4: 9.) We disagree. The record reflects that the WCJ properly exercised his jurisdiction and relied on a range of evidence to determine that defendant was liable for continuing applicant's outpatient physical rehabilitation until these services are no longer reasonably required to cure or relieve the effects of the injury. (Lab. Code § 4600.)

As a preliminary matter, we note that jurisdiction arose from defendant's failure to serve its UR determination properly on applicant's attorney. The parties do not dispute that the UR determination was served to applicant's attorney's street address, but to an incorrect suite number. Thus, the UR determination was untimely as applicant's attorney did not receive it until the expedited hearing on November 21, 2019.

In *Dubon v. World Restoration, Inc.* (2014) 79 Cal.Comp.Cases 1298, 1299 (Appeals Board en banc) (*Dubon II*), the Appeals Board held that if a UR decision is untimely, the UR decision is invalid and not subject to independent medical review (IMR). The *Dubon II* decision further held that the Appeals Board has jurisdiction to determine whether a UR decision is timely. (*Id.*) If a UR decision is untimely, the determination of medical necessity for the treatment requested may be made by the Appeals Board. (*Id.* at p. 1300.) Subsequent to *Dubon II*, in a significant panel decision, the Appeals Board held that a UR decision that is timely made, but is not timely communicated, is untimely. (*Bodam v. San Bernardino County/Dept. of Social Services* (2014) 79 Cal.Comp.Cases 1519.)³ In this case, the WCJ correctly determined that the UR was

³ Significant panel decisions are not binding precedent in workers' compensation proceedings; however, they are intended to augment the body of binding appellate court and en banc decisions and, therefore, a panel decision is not deemed "significant" unless, among other things: (1) it involves an issue of general interest to the workers' compensation community, especially a new or recurring issue about which there is little or no published case law; and (2) all Appeals Board members have reviewed the decision and agree that it is significant. (See *Elliott v. Workers' Comp. Appeals Bd.* (2010) 182 Cal.App.4th 355, 361, fn. 3 [75 Cal.Comp.Cases 81]; *Larch v. Workers' Comp. Appeals Bd.* (1999) 64 Cal.Comp.Cases 1098, 1099-1100 (writ den.); see also Cal. Code Regs., tit. 8, §§ 10305(r), 10325(b).)

invalid and that applicant should continue to receive treatment at Casa Colina because the need for continued treatment is supported by substantial medical evidence.

B. Substantial Evidence Supports the WCJ's Award of Outpatient Rehabilitation Services as Reasonable and Necessary Medical Treatment Required to Cure or Relieve Applicant From the Effects of her Injury.

The WCJ properly exercised his jurisdiction over this matter, yet applicant is not automatically entitled to the requested treatment. Applicant must still meet her burden to prove the treatment she requested is medically necessary. (Lab. Code § 5705, 3202.5.) “[A]ll parties, including injured workers, must meet their burden of proof on all issues by a preponderance of the evidence.” (*Sandhagen v. Workers' Comp. Appeals Bd.* (2008) 73 Cal. Comp. Cases 981, 990.) To carry this burden, the injured worker must present substantial medical evidence. (*Dubon II*, 79 Cal. Comp. Cases at 1312.) Section 4600 requires a defendant to provide medical treatment “reasonably required to cure or relieve the injured worker from the effects of his or her injury” if there is a medical recommendation or prescription that there is a “demonstrated medical need” for such services.” (*Smyers. V. Workers' Comp. Appeals Bd.* (1984) 49 Cal. Comp. Cases 454, 458.)

In this case, as discussed by the WCJ in his Report, there is substantial medical evidence in the record to support a finding that applicant's continuing treatment at Casa Colina is reasonable medical treatment. In addition to Dr. Patterson's reporting, he team conference notes demonstrate the medical need for applicant's continued treatment in the outpatient rehabilitation program at Casa Colina. (Applicant's Exhibits 4 and 5.) We note that when continuing medical treatment is provided by a treating physician, a progress report shall be made no later than forty-five days from the last report. (Cal. Code Regs., tit. 8, § 9785(f)(8).)

On January 4, 2019, Dr. Patterson submitted an RFA for an additional 20 sessions, or approximately one month, of outpatient services. Defendant's UR approved the services through July 1, 2019, thereby acknowledging that applicant needed a significant period of outpatient treatment for her traumatic brain injury. Defendant's approval of the requested treatment for approximately six months, even though the January 4, 2019 RFA requested only 20 visits, demonstrates defendant's awareness of applicant's continuous and ongoing need for these services. The continued periods of care provided by defendant, from December 11, 2018 to

July 16, 2019, also supports that applicant needs an extended period of care in the multidisciplinary rehabilitation program.

In Dr. Patterson's report dated July 10, 2019, he recommends that applicant continue her day treatment program five days a week. He notes she is improving and benefiting from psychological treatment. During the 135 days that applicant received outpatient multi-disciplinary treatment, improvements noted by the care team included gait velocity, better immediate recall, improved simple and divided attention, ability to participate in larger group size, and improved level of complexity. She made improvements in balance, coordination and speech. The team notes indicate that despite these improvements, her participation has been interrupted by UR denials.

In his July 24, 2019 report, Dr. Patterson notes that applicant requires ongoing outpatient multi-disciplinary treatment as she continues to suffer from severe headaches, dizziness, diplopia, blurred vision, tinnitus, photophobia, nausea, vomiting, pain and weakness in extremities, impaired sleep and appetite, and stiffness in her extremities. She experiences confusion, cognitive impairment, and an impaired sense of safety including balance issues and vertigo. Dr. Patterson states that applicant's other doctors have repeatedly documented her noteworthy gains made during her participation in the outpatient multi-disciplinary program at Casa Colina. He recommends treatment with Dr. Levine (TMJ), Dr. Wise (audiologist), and Dr. Wogensen (neurologist). (Applicant's Exhibit 3.)

Dr. Patterson also noted that applicant's gains include improvements in her strength, balance, vestibular, coordination, and speech. Nonetheless, Dr. Patterson opines that applicant requires continued participation in the multi-disciplinary neuro-rehabilitation program so that she is able to make further improvements and sustain the progress she has made. (Applicant's Ex. 2.)

The team conference notes indicate that applicant has continuing cognitive, visual and emotional deficits that represent potential risks to her ability to function safely in the home and community exposing her to grievous bodily harm. (Applicant's Exhibit 4.) Additionally, applicant's poor memory makes it difficult to care for her children safely. She reported to Dr. Patterson that she had forgotten one of the children in her car one time. After her program was denied, the progress she had made in communication skills regressed, and she became more isolated. Applicant has not yet had sufficient cognitive rehabilitation and requires continued participation to address these cognitive deficits. (Applicant's Exhibit 4.)

These team conference notes, summarized by the case manager, include reporting by treating physician, Dr. Patterson, a neuropsychologist, a physical therapist, an occupational therapist, and a speech therapist. The opinions are based on a correct medical history and the examinations of applicant in their observations and opinions. As such, the opinions are substantial medical evidence in support of the WCJ's award of continued treatment at Casa Colina. (*Hegglin v. Workmen's Comp. Appeals Bd.* (1971) 4 Cal.3d 162 [36 Cal.Comp.Cases 93]; *Place v. Workmen's Comp. Appeals Bd.* (1970) 3 Cal.3d 372 [35 Cal.Comp.Cases 525].) In this matter, the WCJ's decision is based on objective, evidence-based ODG Head Guidelines, which contain length of stay recommendations for multidisciplinary brain injury transitional rehabilitation programs. Factors that impact length of stay include the type of injury, severity of injury, physical and psychiatric co-morbidities, provider expertise, patient genome, medical complications during rehab, and social factors. These factors are included in Dr. Patterson's medical reporting that accompany the RFAs.

In traumatic brain injury cases, the duration of treatment needed is highly variable, depending on clinical status, such as symptoms, functional deficits, rate of progress, and the need for individualized care. On this record, we are persuaded that applicant requires continued participation in the multi-disciplinary neuro-rehabilitation treatment program in order for her to make further improvements and sustain the progress she has made. Cessation of the interdisciplinary rehabilitation program must be dependent upon demonstrated progress in these areas.

C. The WCJ Correctly Applied the Holding in *Patterson* and Found Applicant Requires Continued Participation in the Multi-Disciplinary Neuro-Rehabilitation Program, Unless the Treatment is No Longer Reasonably Required.

In addition to the substantial medical evidence supporting an ongoing need for applicant's continued rehabilitation program, we are persuaded that *Patterson* also supports the Award of medical treatment in this case. The evidence does not indicate that applicant has improved sufficiently in her cognitive abilities and emotional state so that she no longer requires the outpatient rehabilitation program. (Defendant's Exhibit A.) The outpatient treatment requested for this catastrophically injured applicant is medically necessary, absent a change in circumstances.

In *Patterson, supra*, we held in pertinent part that:

An employer may not unilaterally cease to provide approved nurse case manager services when there is no evidence of a change in the employee's circumstances or condition showing that the services are no longer reasonably required to cure or relieve the injured worker from the effects of the industrial injury. . . .

[And] It is not necessary for an injured worker to obtain a Request for Authorization to challenge the unilateral termination of the services of a nurse case manager. (79 Cal. Comp. Cases at p. 917.)

We concluded that:

Unilaterally terminating medical treatment that was earlier authorized as reasonably required to cure or relieve the injured worker from the effects of the industrial injury is contrary to section 4600(a) unless supported by substantial medical evidence. (Ibid.)

In a recent case, the Second District Court of Appeal denied a defendant's Petition for Writ of Review, wherein the defendant asserted that the WCAB erred in relying on *Patterson* to award an applicant continued inpatient care at Casa Colina. (*Nat'l Cement Co., Inc. v Workers' Comp. Appeals Bd. (Rivota)* (2021) 86 Cal. Comp. Cases 595, 2021 Cal. Wrk. Comp. LEXIS 21.) In affirming the WCAB's decision, the Court of Appeal stated that the applicant was not required to provide ongoing requests for authorization for his ongoing inpatient stay at Casa Colina, that defendant could not force applicant to be discharged from the facility by obtaining utilization review without showing a change in applicant's condition or circumstance, and that applicant's continued stay at Casa Colina absent a change in circumstances was required to prevent disruption of his medical care and promote continuity in his living situation.

In *Rivota*, the WCJ found that defendant improperly discontinued the applicant's inpatient care, and awarded applicant further medical treatment in the form of continued interdisciplinary, post-acute residential rehabilitation at Casa Colina in accordance with *Patterson*, without need for ongoing RFAs, until such time as defendant established a change in applicant's condition or circumstance justifying termination of inpatient care at the center.

Additionally, in *Ferrona v. Warner Brothers* (2015) 2015 Cal. Wrk. Comp. LEXIS P.D. 220, the WCAB, citing *Patterson*, upheld the WCJ's decision and found that defendant was not entitled to unilaterally terminate applicant's home health care services because there was no evidence of change in applicant's condition or circumstances to indicate that home care services were no longer reasonably required to cure or relieve from effects of industrial injury.

Notwithstanding defendant's contention that *Patterson* should not apply to the present case, the WCAB has not limited the holding of *Patterson* only to “nurse case managers” and “home health care” services. In fact, the WCAB has affirmed its application to various other medical treatment modalities. Subsequent to *Patterson*, multiple noteworthy panel decisions have clarified the types of medical treatment to which *Patterson* applies: (*Kumar v. Sears Holding Corp.*, 2014 Cal. Wrk. Comp. P.D. LEXIS 502, [no good cause to reduce or eliminate home health care services because the defendant had not made a showing that the applicant's condition or circumstances had changed]; (*Gunn v. San Diego v. San Diego Dept. of Social Services*, 2015 Cal. Wrk. Comp. P.D. LEXIS 414, [medical transportation services]; (*Rabenau v. San Diego Imperial Counties Development Services Incorporated*, 2018 Cal. Wrk. Comp. P.D. LEXIS [non-medical transportation services]; (*Ramirez v. Kuehne and Nagel, Inc.*, 2014 Cal. Wrk. Comp. P.D. LEXIS 537 [non-medical transportation services]; (*Duncan v. County of Ventura*, 2017 Cal. Wrk. Comp. P.D. LEXIS 131 [medical treatment in the form of board and care facility/assisted living]; (*Tinsley v. Vertis Communications*, 2015 Cal. Wrk. Comp. P.D. LEXIS 575 [no valid UR, WCJ correctly found continued inpatient care at Casa Colina was supported by substantial evidence]; and (*White v. Department of Social Services*, 2015 Cal. Wrk. Comp. P.D. LEXIS 454 [payment of assisted living expenses to avoid an applicant's eviction].)

As the foregoing cases instruct, a request for an RFA must be based on a change in applicant’s condition or circumstances sufficient to show that the treatment is no longer reasonably required to cure or relieve the effects of the industrial injury. “[I]t is defendant's burden to show that the continued provision of the services 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.” (*Patterson, supra*, at p. 918.) Here, we find that that applicant's condition and circumstances have not changed in a way that made the further provision of the multi-disciplinary neuro-rehabilitation treatment program no longer reasonable medical treatment in this case.

Accordingly, we affirm the December 30, 2019 Findings and Award.

For the foregoing reasons,

IT IS ORDERED as the Decision After Reconsideration of the Workers' Compensation Appeals Board that the Findings and Award issued by the WCJ on December 30, 2019, is **AFFIRMED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ MARGUERITE SWEENEY, COMMISSIONER

I CONCUR,

/s/ CRAIG SNELLINGS, COMMISSIONER



JOSÉ H. RAZO, COMMISSIONER
PARTICIPATING NOT SIGNING

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

March 22, 2022

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

**REYNA CASTILLO
HALLETT, EMERICK, WELLS & SAREEN
ODJAGHIAN LAW GROUP**

MG/abs

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