

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

FILIBERTO HERNANDEZ,

Applicant,

vs.

**GONZALEZ FOOD ENTERPRISES INC;
CNA, administered by SEDGWICK;**

Defendants.

Case No. ADJ6844784 (MF) &
ADJ7938832

**JOINT FINDINGS, AWARD, AND
ORDERS**

The above entitled matter having been heard and regularly submitted, the Honorable Peter M. Christiano, Workers' Compensation Administrative Law Judge, now decides as follows:

FINDINGS OF FACT

1. Filiberto Hernandez, born _____, while employed on 5/6/2009 (ADJ6844784) and during the period 12/7/2007 through 8/17/2011 as a produce clerk, at Sylmar, California, by Gonzalez Food Enterprises, insured by CNA and administered by Sedgwick CMS, sustained injury arising out of and in the course of said employment to his right chest wall, and claims to have sustained injury arising out of and in the course of said employment to his arm, neck, back, spine, psyche, sleep disorder, and bilateral upper and lower extremities.

2. None of the services provided by Prime Medical Resources were reasonable or necessary to cure or relieve from the effects of the industrial injury herein. Some of the services provided by Bell Community Medical Group were reasonable or necessary to cure or relieve from the effects of the industrial injury herein.

3. The services provided by Prime Medical Resources are considered self-procured medical treatment, and lien claimant is not entitled to any reimbursement for the lien claim filed herein.

4. Lien claimant Bell Community Medical Group is entitled to reimbursement in the amount of \$91.01 for the lien claim filed herein, plus penalties and interest as found below.

5. The 24 visit cap on treatment is no longer applicable.

6. There was no evidence submitted establishing when the request for authorization for treatment was submitted to Defendant, and thus the utilization review procedure was not triggered.

7. There was no evidence submitted establishing when lien claimant's submitted their billing to Defendant, thus triggering Defendant's duty to object.

8. Lien claimant Bell Community Medical Group is entitled to a 15% penalty on the delayed amount as found above, plus interest of 10% per annum.

AWARD

AWARD IS MADE in favor of Filiberto Hernandez against Gonzalez Food Enterprises, insured by CNA and administered by Sedgwick CMS of:

- a. Reimbursement for medical expenses payable to the lien claimant in accordance with Finding 4 above; and
- b. Penalties and interest payable to the lien claimant in accordance with Finding 8 above, resulting in a total owed to Bell Community Medical Group of \$150.17.

ORDERS

IT IS HEREBY ORDERED that:

- A. Defendant's objections to *Lien Claimant's Exhibits 1-C*, and 2-A through 2-O is overruled, and the documents will be admitted in the evidentiary record; and
- B. The lien claim of Prime Medical Resources is hereby disallowed, and lien claimant shall take nothing further from the claims filed herein.

Date: December 23, 2014



Peter M. Christiano
WORKERS' COMPENSATION
ADMINISTRATIVE LAW JUDGE

Served on all parties on the
Official Address Record
12/23/14 *Vanessa Campos*

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FILIBERTO HERNANDEZ

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WORKERS' COMPENSATION
ADMINISTRATIVE LAW JUDGE: Peter M. Christiano

DATE: December 23, 2014

JOINT OPINION ON DECISION

ADMISSIBILITY OF EVIDENCE:

Defendant makes various, overlapping objections to virtually all of lien claimant's exhibits. Each shall be discussed in turn.

Defendant objects to *Lien Claimant's Exhibit 1-C* based upon the document being unsigned, unauthenticated, and lacking foundation. All of defendant's objections go to weight of the evidence, and not necessarily admissibility. Also, based upon the below findings, this issue is moot. Defendant's objection is overruled, and the document will be admitted into the record.

Defendant objects to all of the evidence being offered by lien claimant Bell Community Medical Group based upon the lien claimant's alleged failure to comply with a notice to produce, subpoena, and order to produce. Lien claimant's offer a proof of service indicating the documents they are offering were served prior to the order to produce. There was no need to produce the documents again. Also, if lien claimant did not comply with certain parts of the order to produce, that does not necessitate that all of lien claimant's evidence that was actually produced must be excluded. There was no evidence submitted to rebut the proof of service provided by lien claimant. Defendant's objection is overruled, and the documents will be admitted into the record.

If that weren't sufficient objections, Defendant goes on to object to *Lien Claimant's Exhibits 2-A, 2-D, 2-F, 2-G, 2-H, 2-I, 2-J, 2-K, and 2-L* for failure to comply with the provisions of Labor Code §5703. As to the comprehensive reports and PR2 reports, the reports do have the required declarations and comply with that provision. Defendant's objection to these reports is baseless. As to the objections to the electrodiagnostic reports, there is no need for such declarations on these types of reports. As to the *Exhibit 2-A*, that is an account ledger and not an actual bill. Although lien claimant may have had the actual bills showing compliance with Labor Code §5703, they were not provided to this court, only the ledger was provided. Defendant's objection is overruled, and the documents will be admitted into the record.

Finally, Defendant objects to *Lien Claimant's Exhibit 2-B* for failure to list it on the pretrial conference statement, failure to have it signed, and failure to have it authenticated. Lien claimant

did list the bill review on the pretrial conference statement, but it just has a different date. This is excusable error. Also, Defendant's other two objections, again, go to weight of the evidence and not admissibility. Defendant's objection is overruled, and the document will be admitted into the record.

REASONABLENESS AND NECESSITY OF TREATMENT:

Based upon the medical opinion of the AME Dr. Mark Mandel dated 1/21/2014 (*Defense Exhibit A*), there was no need for an IF unit to treat this Applicant. The serviced provided by Prime Medical Resources are not reasonable or necessary to cure or relieve from the effects of the industrial injury herein.

Based upon the medical opinion of the AME Dr. Mark Mandel dated 9/1/2011 (*Defense Exhibit B*), the vast majority of the services of provided at Bell Community Medical Group were not needed. The doctor indicates that:

"The patient has had a lot of treatment, and I must respectfully disagree with the treatment provided by Dr. Bazel. It appears that none of [it] is, other than perhaps some limited therapy for the first weeks, was [sic] indicated or necessary to cure or relieve Mr. Hernandez of the effects of his industrial injury." (*Defense Exhibit B*, p. 5)

The doctor previously stated, in that same report, that the patient required approximately 4 weeks of therapy. Based upon the doctor's opinion, it is found that there was no sufficient justification for such extensive treatment for this patient beyond that first four weeks of treatment. None of the treatment provided after those first four weeks is reasonable or necessary to cure or relieve from the effects of the industrial injury herein.

LIENS/LIABILITY FOR SELF PROCURED MEDICAL TREATMENT:

Based upon the above finding, the lien of Prime Medical Resources is considered self-procured medical treatment that Defendant is not liable for. The entirety of the lien of Prime Medical Resources is disallowed.

Based upon the above finding, it is found that Bell Community Medical Group is entitled to reimbursement for their initial report and subsequent treatment rendered in the first four weeks of treatment rendered to Applicant. Pursuant to *Lien Claimant's Exhibit 2-B*, the initial report and the treatment during that first four weeks has an OMFS value of \$1,171.97. Pursuant to *Defense Exhibit JJ*, defendant has already paid \$1,080.96 to Bell Community Medical Group. This leaves a balance owing to Bell Community Medical Group of \$91.01. The remaining balance claimed by Bell Community Medical Group beyond that amount is disallowed.

24 VISIT CAP ON TREATMENT:

Based upon the above findings, this issue is moot.

TIMELINESS OF UR PROCEDURE:

In order to trigger the utilization review procedure, lien claimant must establish service by the provider of a proper request for authorization on Defendant. Here, lien claimants have failed to meet this requirement. Also, even if Defendant failed to properly or to timely conduct a utilization review, the burden is still on lien claimants to prove that the services were reasonable and necessary based upon substantial evidence. As indicated above, lien claimants have not met that burden.

TIMELINESS OF OBJECTIONS:

In order to trigger Defendant's time period within which to issue proper payment or issue a timely denial, lien claimants must establish when they served Defendant with their billing. There was no evidence submitted of when lien claimants served Defendant with their billing. Also, even if Defendant failed to timely object to the billing, the burden is still on lien claimants to prove that the services were reasonable and necessary based upon substantial evidence. As indicated above, lien claimants have not met that burden.

PENALTIES AND INTEREST:

In order to establish that lien claimant Prime Medical Resources is entitled to claim penalties and interest, they must first establish entitlement to reimbursement for their charges. As indicated above, there is no basis to award Prime Medical Resources any amounts on the lien claimed. As a result, no penalties or interest is owed to Prime Medical Resources.

Based upon the above finding that \$91.01 is owed to Bell Community Medical Group based upon the treatment recommendation by the AME, it is found that a statutory 15% penalty is owed on this delayed amount plus interest of 10% per annum. The penalty owed equals \$13.65 and the interest owed equals \$45.51. The total amount owed to Bell Community Medical Group, after adding penalties and interest, is \$150.17.

Date: December 23, 2014



Peter M. Christiano
WORKERS' COMPENSATION
ADMINISTRATIVE LAW JUDGE

STATE OF CALIFORNIA
DEPARTMENT OF INDUSTRIAL RELATIONS
DIVISION OF WORKERS' COMPENSATION

12-23-2014

OFFICIAL ADDRESS RECORD

PROOF OF SERVICE-JOINT FINDINGS, AWARD AND ORDERS

Case Number: ADJ6844784, ADJ7938832

ADVANCED PROFESSIONAL IMAGING	Lien Claimant - Other, 6800 LINCOLN AVENUE SUITE 100 BUENA PARK CA 90620
BELL COMMUNITY MEDICAL GROUP BELL	Lien Claimant - Other, 4001 E FLORENCE AVE BELL CA 90201, APB1001@AOL.COM
CENTRIC MED MGT PALMDALE	Law Firm, PO BOX 3600 PALMDALE CA 93590, marybasa@primemedicalresources.com
DMG ENTERPRETING LLC	Lien Claimant - Other, PO BOX 4548 GLENDORA CA 91222
FILIBERTO HERNANDEZ	Injured Worker, 6957 YARMOUTH AVE RESEDA CA 91335
GONZALEZ FOOD ENTERPRISES INC	Employer, 12881 BRADLEY AVE SYLMAR CA 91342
GREENUP TURCHIN SHERMAN OAKS	Law Firm, 15060 VENTURA BLVD STE 100 SHERMAN OAKS CA 91403
PRIME MEDICAL RESOURCES SANTA CLARITA	Lien Claimant - Other, PO BOX 801090 SANTA CLARITA CA 91380, PRIMEM530@YAHOO.COM
SEDGWICK VAN NUYS	Insurance Company, PO BOX 1027 VAN NUYS CA 91408
STATE OF CALIFORNIA EMPLOYMENT DEVELOPMENT DEPARTMENT	Lien Claimant - Other, PO BOX 781 SAN BERNARDINO CA 94202
THE NIELSEN FIRM LOS ANGELES	Law Firm, 3250 WILSHIRE BLVD STE 1510 LOS ANGELES CA 90010
UNITED SERVICES DBA RONCO DRUG	Lien Claimant - Other, 18607 VENTURA BLVD 109 TARZANA CA 91356

Served on all parties on the
Official Address Record
12/23/14 *Vanessa Campos*