

Alexander Mena vs. Royal Coach Auto Body, Virginia Surety .

Decision issued: 9/17/07

Issues:

Labor Code Section 5307.1 (e), reasonable reimbursement of re-packed pharmaceuticals versus the applicability of Red Book as argued by California Pharmacy Management.

Findings:

CFC expert witness testified that the maximum allowable for “drugs” is based on 100% of Medi-Cal per L.C. 5307.1 (e) and not Red Book as argued by the California Pharmacy Management. (CPM). CPM’s argument was based on the fact that the NDC numbers for the dispensed medication do not appear on the Medi-Cal website and therefore cannot be applied. CFC expert witness testified that a “drug” is a “drug” regardless of the NDC numbers utilized by the provider—and while the NDC number is not found on the Medi-Cal website the actual drug and dosage are found. The Judge agreed with the CFC expert witness testimony and also found that based on the testimony the provider was adequately compensated. Consequently, the lien was denied in its entirety.

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STATE OF CALIFORNIA
DIVISION OF WORKERS' COMPENSATION

ALEXANDER MENA,

Applicant

v.

ROYAL COACH AUTO BODY;
VIRGINIA SURETY COMPANY c/o
APPLIED RISK SERVICES,

Defendants.

Case No. LBO 365339

FINDINGS & ORDER

Law Offices of Zgrablich, Sheppard & Woolley
by Scott Woolley, attorney for defendants.
A.R. Juriedini, hearing representative for
lien claimant, California Pharmacy Management.

An application having been filed herein; all parties having appeared, and the matter having been regularly submitted, the Honorable Cynthia A. Quiel, Workers' Compensation Administrative Law Judge, finds and orders as follows:

FINDINGS OF FACT

1. Alexander Mena, born March 11, 1961, did at Baldwin Park, California, on October 29, 2003, sustain an injury to his low back arising out of and occurring in the course of his employment as a tow truck driver by Royal Coach Auto Body, whose compensation insurance carrier was Virginia Surety Company administered by Applied Risk Management.
2. Alexander Mena did not sustain injury to his upper extremities arising out of and occurring in the course of his employment on October 29, 2003.

3. Defendants have paid the reasonable charges owed to California Pharmacy Management.

ORDER

IT IS ORDERED as follows:

(a) That the balance of the lien of California Pharmacy Management be and the same is hereby disallowed in accordance with Finding No. 3, above.



CYNTIA A. QUIEL

WORKERS' COMPENSATION ADMINISTRATIVE LAW JUDGE

Filed and Served by mail on: 09-17-07
On all parties on the
Official Address Record.
By: Agatha Magaña

CASE NO. LBO 365339

ALEXANDER MENA

v.

ROYAL COACH AUTO
BODY; VIRGINIA SURETY
COMPANY

WORKERS' COMPENSATION
JUDGE: CYNTHIA A. QUIEL

INJURY:
10/29/03

OPINION ON DECISION

PARTS OF BODY INJURED:

Pursuant to the panel QME, Dr. Feliciano, whose findings are controlling in this case, it is found that the applicant did not sustain injury to his upper extremities.

LIEN OF CAL PHARMACY:

I disagree with defendants' argument that the lien claimant has the burden to show that each medication was prescribed for the back in this case and not for the upper extremities. The medications in question were for musculoskeletal pain and related problems, and it is reasonable to assume, based on medical reports, that medication that would be beneficial for the back would also be beneficial for the upper extremities. Absent some language in the medical reports that indicates a certain medication was specifically being prescribed for the upper extremities, it is safe to assume that these medications were prescribed for the back pain.

The applicant was found to be permanent and stationary by the panel QME Dr. Feliciano on August 25, 2004. At that time Dr. Feliciano found applicant would need future medical care upon *future reoccurrences of increased pain and dysfunction*. In reviewing the only pertinent evidence submitted, on November 23, 2004, Dr. Lavi treated the applicant for bilateral hand pain and low back pain. There is no indication that the applicant's low back condition had worsened in any way since Dr. Feliciano's permanent and stationary report. Dr. Lavi's February 8, 2005, report is a permanent and stationary report, and it would not be controlling in this case as the parties would necessarily have to return to the panel QME. It further would not support that the applicant had a reoccurrence at that time as described by Dr. Feliciano. It is therefore found that lien claimant had not met its burden of proof that the prescription medications it dispensed after the applicant was found permanent and stationary on August 25, 2004, were reasonable or necessary to cure or relieve from the effects of this injury.

As to the reasonable value of the medication prescribed prior to August 25, 2004, defendants assert the amount is \$737.40. I agree. Lien claimant argues that it is not subject to the Fee Schedule in place in 2004, because the re-packaged drugs have NDC numbers which are

not found in the Medi-Cal database. I, however, found the testimony on this point by Elizabeth Howard Stalker to be most persuasive and convincing. I agree with her interpretation that since the drug itself, i.e. "Tramadol" is on the Medi-Cal database, the Fee Schedule applies.

It is found that the defendants have paid the reasonable charges owed to California Pharmacy Management, and the balance of the lien is disallowed.



CYNTHIA A. QUIEL
WORKERS' COMPENSATION
ADMINISTRATIVE LAW JUDGE