James Ortolani vs. Jess Ranch Development

Decision issued: 7/24/08

Issues:

Labor Code Section 5307.1, reasonable reimbursement of professional reimbursement Access Health Group and excessive treatment pursuant to *Labor Code Section 4604.5*, as well as DMEPOS per *California Code Of Regulations Section 9789.60* for RS Medical.

Findings:

CFC expert witness testified that the Access Health Group was properly compensated pursuant to the fee schedule and chiropractic services were beyond the provisional cap in LC 4604.5. Judge agreed and Ordered that the provider take nothing further based on CFC expert witness testimony. Furthermore, CFC expert testified that DME services are bound AD Rule 9789.60 (DMEPOS). Judge agreed and Ordered amounts calculated by CFC expert based on DMEPOS to be accurate and reasonable reimbursement for the same

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

James Ortolani, *Applicant*, vs. Jess Ranch Development; Virginia Surety Company c/o Applied Risk Services, *Defendant(s).*	Case No. SBR 0322098 San Bernardino District Office **Findings, Award and Orders Re: Liens of RS Medical and Access Health Medical Group, Inc.**

The above-entitled matter having been heard at Lien Trial and regularly submitted, Myrle R. Petty, Workers' Compensation Administrative Law Judge, now makes her decision as follows:

FINDINGS OF FACT

(1) James Ortolani, born September 22, 1981, while employed as a development and hatch worker, at Apple Valley, California, by Jess Ranch Development, insured by Virginia Surety Company and administered by Applied Risk Services, sustained injury arising out of and in the course of said employment to the back and spine.

(2) There was need for durable medical equipment to cure or relieve from the effects of said injury, to include the durable medical equipment provided by RS Medical.

(3) Defendant owes an additional $162.94 to RS Medical, plus a 15% increase per Labor Code Section 4603.2(b) [total $187.38], together with interest at the same rate at judgments in civil actions retroactive to the date of receipt of the itemization.

(4) There was need for medical treatment to cure or relieve from the effects of said injury, to include up to 24 chiropractic visits provided by Access Health Medical Group, Inc.

(5) Defendant has already paid lien claimant Access Health Medical Group, Inc. an amount that adequately compensates them for the reasonable services provided to applicant by this lien claimant.

AWARD

AWARD IS MADE in favor of RS Medical and against Virginia Surety Company administered by Applied Risk Services as follows:

(a) The lien of RS Medical is allowed in the additional amount of $187.38, which amount includes a 15% increase per LC 4603.2(b), plus interest at the same rate as judgments in civil actions retroactive to the date of receipt of the itemization, per LC 4603.2(b).

ORDERS

IT IS HEREBY **ORDERED** that lien claimant, Access Health Medical Group, Inc., shall take nothing further by reason of its lien filed herein.

NOTICE: Pursuant to Board Rule 10840 (Cal. Code Reg., title 8, subsection 10840), as amended effective February 1, 1993, any Petition for Reconsideration from this decision, order, or award shall be filed ***only*** at the San Bernardino District Office of the Workers' Compensation Appeals Board, and ***not*** with any other Board Office. Petitions for Reconsideration received in any Board Office other than the San Bernardino District Office will neither be accepted for filing nor deemed filed for any purpose.

Dated at San Bernardino, California 7/24/08

MYRLE R. PETTY
WORKERS' COMPENSATION
ADMINISTRATIVE LAW JUDGE

Filed and Served by mail on: JUL 25 2008
On all parties on the
Official Address Record.
By: J Shehee

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

CASE NO. SBR 0322098
San Bernardino District Office

James Ortolani v. Jess Ranch Development;
Virginia Surety Company c/o Applied Risk Services

JUDGE: MYRLE R. PETTY

HEARING DATES: March 12, 2008 and April 22, 2008

SUBMISSION DATE: May 7, 2008

OPINION ON DECISION
LIEN TRIAL
Re: Liens of RS Medical and Access Health

This is the claim of an employee of Jess Ranch Development in Apple Valley, California, who sustained injury to his back and spine arising out of and in the course of employment on approximately March 1, 2004. The case-in-chief resolved by way of a Compromise and Release, with Order Approving Compromise and Release issuing on October 11, 2005. There was no *Thomas* finding contemplated in the settlement.

Issues raised at the lien trial included the following:

- Liability, reasonableness and necessity for self-procured medical treatment;
- Lien of RS Medical for durable medical equipment;
- Lien of Access Health for medical treatment and medical-legal;
- Defendant asserts the treatment in issue in these liens was not authorized;
- Defendant asserts that these lien claimants have been paid per the OMFS;
- Defendant asserts that the treatment was inappropriate;
- Defendant asserts that the treatment liens were objected to and lien claimant did not appeal the defense objections;
- Defendant asserts the treatment was unnecessary and excessive;
- Lien claimant asserts that defendant failed to pay per the OMFS; and
- Lien claimant raises LC 4603.2(b)

This matter was heard over two days of trial and submission was delayed to afford defendant and lien claimant RS Medical to file post-trial briefs. No such briefs were filed and the matter stood submitted as of May 7, 2008.

Lien of RS Medical

Lien claimant, RS Medical, has filed a lien for durable medical equipment and there remains a balance of $2,794.59 after payments by defendant of $1,243.42 have been made. Lien claimant provided an interferential unit (and associated supplies) during the period 10/18/04 through 9/16/05. This unit was apparently prescribed by applicant's treating doctor, John C. Larson, D.C. of Access Health Medical Group.

I am persuaded that the two accompanying prescriptions, contained within Lien Claimant RS Medical Exhibit #1, are sufficient to meet the test set forth in the writ denied case of *Vision Quest v. WCAB (Mejia)* 68 CCC 363. Namely, the prescriptions, while cursory, do set forth information as to what kind of unit was indicated, how often it was to be used, what treatment result was anticipated and why it was likely to benefit applicant. Thus, lien claimant has met an initial burden of proving the necessity for the durable medical equipment.

In regard to the reasonableness of the amounts charged ($4,038.01), I am persuaded by the credible testimony of defense witness, Elizabeth Howard, that the reasonable value for the durable medical equipment in issue was $1,406.36. Since defendant has already paid $1,243.42 to this lien claimant, I find that defendant owes an additional $162.94 to this lien claimant.

Since no evidence was provided as to timeliness of payments made by defendant to this lien claimant and no objection letters to remaining balances were provided to the court, I find it reasonable to impose a 15% increase on the remaining balance per Labor Code Section 4603.2(b) [total owed by defendant - $187.38], plus interest at the same rate as judgments in civil actions retroactive to the date of receipt of the itemization, also per Labor Code Section 4603.2(b).

Lien of Access Health Medical Group, Inc.

Lien claimant, Access Health Medical Group, has filed a lien allegedly for treatment and medical-legal services by their physicians in the alleged remaining balance of $16,558.77, after payments of $4,374.48 had been made. While this $16,558.77 balance was alleged at trial, lien claimant did not provide substantiation in the form of billings or itemized statements to justify this claimed balance. The lien, which is part of Lien Claimant Access Health Exhibit #2, is noted to be dated 10/10/05 and is in the amount of $11,830.88. This dollar figure is noted to be the remaining balance in a letter to defendant from lien claimant dated January 14, 2008 (also contained within Exhibit 2).

Also contained in Lien Claimant's Exhibit 2 are the following medical reports:

- 11/4/04 narrative permanent and stationary report of John D. Larson, D.C.;
- 9/14/04 PR-2 report of John D. Larson, D.C.;
- 8/10/04 report of ultrasound of lower thoracic and lumbar paraspinal muscles and sacroiliac joints, interpreted by Roxanne Chan, M.D.;
- 7/16/04 PR-2 report of Michael A. Onandia, D.C.; and
- 4/27/04 Doctor's First Report of Justin Long, D.C.

There is a 4/19/04 Notice of Change of Physician, signed by the applicant, electing Dr. Justin Long as his primary treating physician pursuant to Labor Code Section 4601. There is a 4/27/04 notice to defendant notifying the insurance carrier that "Access Health Medical Group and it's [sic] Doctor's [sic], has been selected as the PRIMARY TREATING PHYSICIAN by either the patient directly or the Applicant's Attorney..." The box by the name of Dr. John C. Larson, D.C. was checked. This notice is not signed by anyone, was not accompanied by a proof of service showing on whom it was served. I do not construe this notice to be a valid election of treating physician. Title 8, California Code of Regulations, Section 9785, states unequivocably that an employee shall have no more than one primary treating physician at a time and that the primary treating physician shall render opinions on all medical issues necessary to determine the employee's eligibility for compensation, that secondary physicians shall report to the primary treating

physician, and that the primary treating physician shall be responsible for obtaining all the reports of secondary physicians and incorporate or comment upon the findings of the other physicians in the primary treating physician's report. There is nothing that permits an entire medical group and all of the doctors therein to be the primary treating physician.

The detailed ledger report, provided by lien claimant as part of Exhibit #2, is virtually illegible. It is such a poor copy as to be useless as evidence. In any event, apparently witness for defense, Elizabeth Howard, had a more legible copy for her review purposes. I found the testimony of Ms. Howard to be particularly credible and persuasive on the issue of reasonableness of charges of Access Health.

I concur with defense witness that work hardening and work conditioning must be pre-authorized before they can be reimbursed. The Official Medical Fee Schedule specifically states (at page 503 and 504):

> "2. Work Hardening (97545) is a highly structured, goal-oriented, individualized treatment program designed to return the person to work. Work Hardening programs, which are interdisciplinary in nature, use real or simulated work activities designed to restore physical, behavioral, and vocational functions. Work Hardening addresses the issues of productivity, safety, physical tolerances, and worker behaviors. Prior authorization is required. ¶ 3. ...Work Conditioning (97545) is a work related, intensive, goal oriented treatment program specifically designed to restore an individual's systemic, neuromusculoskeletal (strength, endurance, movement, flexibility, and motor control) and cardiopulmonary functions. The objective of the Work Conditioning program is to restore the client's physical capacity and function so the injured worker can return to work. Prior authorization is required."

Not only is there no evidence of prior authorization for the work conditioning charges, there is no information whatsoever of the type of work conditioning program involved, who supervised it, or what it consisted of. While lien claimant, in the addendum to the Doctor's First Report indicated that a complete request for work conditioning accompanied the report or would be submitted at a later date, there is no such evidence that such complete request was ever sent to defendant. It certainly is not a part of lien

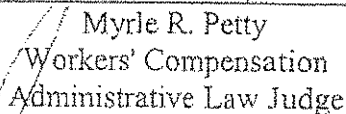
claimant's Exhibit 2. Since lien claimant did not have the requisite prior authorization, all charges for the work conditioning are disallowed.

In regard to the charges for Temperature Gradient Studies (93740), this procedure is listed in the "Medicine" portion of the Official Medical Fee Schedule, with both a technical and professional component to the service. Lien claimant provided no evidence as to whom performed the testing and whether or not that person was equipped or qualified to perform the testing. There is no reporting of the results of the testing, so the testing cannot even be confirmed as having occurred. There is no medical reporting from the primary treating doctor justifying the need for such testing. For all these reasons, all charges relating to the temperature gradient studies are disallowed.

In regard to the remainder of the charges of Access Health, I agree with defense witness, Elizabeth Howard, that Labor Code Section 4604.5 limits chiropractic visits to 24 per industrial injury and that lien claimant has exceeded that cap. I further agree with defense witness that the amounts charged for chiropractic visits within the cap are excessive. Insofar as the defense witness credibly testified that the maximum allowable for treatment and reporting of Access Health was $2,946.29 and that defendant had already paid $4,328.92 to this lien claimant, I find that lien claimant has already been adequately compensated for the reasonable services provided to this applicant. Lien claimant, Access Health Medical Group, shall take nothing further by reason of its lien filed herein.

Dated at San Bernardino, California

July 24, 2008



Myrle R. Petty
Workers' Compensation
Administrative Law Judge