

Osmin Melendez vs. Exquisite Surfaces FirstComp

Decision issued: 5/20/11

Issues:

Proper documentation of interpreting services, as well as the reasonable reimbursement thereof for the liens filed by E/M Interpreting Services and Healthcare Interpreting Services.

Findings:

CFC expert witness testified that there was lack of documentation in the medical record to justify reimbursement for interpretation services rendered. CFC expert witness also testified that time of interpretation is not noted throughout the record in order to establish a value for reimbursement. Judge agreed with the testimony of CFC expert testimony and both liens were denied in their entirety.

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

AS

Case No. ADJ935889

OSMIN MELENDEZ,

Applicant,

vs.

**FINDINGS AND ORDERS
AFTER REMAND**

EXQUISITE SURFACES;
VIRGINA SURETY C/O FIRSTCOMP
OMAHA;

Defendants.

PRIORITY

The above entitled matter having been heard after remand, the Honorable Lynn Devine, Workers' Compensation Administrative Law Judge, now decides as follows:

FINDINGS OF FACT

1. After a review of the evidence and testimony in this matter it is found that Health Care Interpreting did not meet its burden of proof on the issues identified on remand.
2. After a review of the evidence and testimony in this matter it is found that E&M Interpreting did not meet its burden of proof on the issues identified on remand.

ORDERS

- a. The lien of Health Care Interpreting is disallowed.
- b. The lien of E&M Interpreting is disallowed.

DATE: 05/20/2011

Lynn A. Devine

Lynn Devine
WORKERS' COMPENSATION JUDGE

Served on interested parties
as shown on the Official Address Record

By: *LH* ON: 05/20/2011
Lydia Hunter

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

CASE NUMBER: ADJ935889

OSMIN MELENDEZ

-vs.-

EXQUISITE SURFACES,
VIRGINIA SURETY C/O
FIRSTCOMP,

WORKERS' COMPENSATION

ADMINISTRATIVE LAW JUDGE: Lynn Devine

DATE: 05/20/2011

OPINION ON DECISION

Lien claimants E&M Interpreting and Health Care Interpreting were jointly represented by Diego Plascencia, Hearing Representative, after remand by the Appeals Board dated 10/18/2010. Defendant retained new counsel, Goldman Magdalin & Krikes, Aaron Turchin appearing.

Parties had a status conference after remand and two days of trial to address each of the questions outlined by the Appeals Board in their Decision and Remand of 10/18/2010.

After review of the evidence presented by all parties in response to the questions asked by the Appeals Board these are the factual Findings:

1) The lien claimants have the burden of proving their services were necessary.
The necessity was established by the applicant testifying that he did not speak, read or understand English.¹

2) The lien claimants have the burden of proving their charges for these services were reasonable.

This was not established, in fact after review of all the evidence submitted, the charges are deemed excessive for a Spanish interpreter when compared to the statutory fee for certified Spanish interpreters at court appearances.

It is determined that the appropriate fee for a certified Spanish interpreter in connection with medical treatment is the \$90 minimum for the first 2 hours and thereafter \$11.25 per 15 minutes in accord with CCR9798.31. This does not mean a certified interpreter for a 10 minute appointment is to be paid \$90 for that ten minute increment.

¹ Supplemental Minutes of Hearing 01/12/2011, page 4 line 11- page 5 line 8.

In the case at bar only three of the dates of service asserted a period of time, of 0-2 hours for psychotherapy by the interpreter.² There was no other evidence of time spent by any of the other interpreters.

3) The lien claimants were to present evidence of market rate or rates charged by other interpreters in the area for the same of similar services.

The lien claimants presented Exhibit 9 (Marked for identification only) as their market rate evidence. It was an Excel spreadsheet alleging various checks from different insurers consisting of 24 payments. It purports to be a market rate exhibits booklet covering the period from 2004 to 2010. It purports to establish two different market rates during this time as the market rate increases due to the need to absorb the expenses of lien litigation costs of operation. The signatory to this document a Michelle Vishinskiy who did not appear to testify to authenticate the document. It appears that page 12 of the document covers 2007, the year that most of the services were rendered. The court notes that many of the entries cover multiple dates of service and did not describe the services performed. Further, it is open to question as to what if any of these charges pertain to treatment or medical legal evaluations or whether they were negotiated settlements at trial or hearing. This document is nonresponsive to the prove up required on the market rate issue. There was no evidence presented to show any pre service agreement of the market rate with the claims examiner. This is not competent evidence on market rate and is not relied upon by this judge. It is not a geographic survey of other rates charged or accepted by other interpreters in the same geographic area as described in *Guitron*.

4) The amount of time involved in each appointment is relevant and should be included in determining the reasonableness of the fee.

No evidence was presented on time frames of the services claimed except for the HCI interpreting by Lizette Vazquez at 3 visits for group therapy on 03/02/2007, 03/09/07 and 03/16/07 with Dr. Rozemblat. (Exhibit 4 and Exhibit7). The itemized statement from HCI shows 5 dates of psychotherapy and two for consults for a total of seven dates of service which is in conflict with the interpreter sign in sheets for only 3 days of group therapy are signed by Lizette Vazquez indicating the times spent was "0-2 hours".

5) Petitioners did not offer evidence of certification or qualification for any of the interpreters at the time the interpreters were performing services for HCI or E&M Interpreting.

Rosie Cepeda, E&M Interpreting, claims certification #300941 in a document submitted post trial attached to a brief showing Judicial Council certification for Ms. Cepeda as of 12/31/2009; this is 2 years after the services in dispute were rendered and is not part of the evidence submitted for trial.³ Defendant's F is an email dated 01/28/2011 from State Personnel Board Interpreter Certification program regarding the certification of Rosie I. Cepeda and verification of certification number 300941. The response states that Rosie Cepeda is not currently certified.

6) Petitioners did not offer evidence of qualification or provisional certification of the interpreters performing services for HCI and E&M Interpreting at the time the services were rendered.

² Exhibit 7, pages 1-3.

³ Documentary evidence attached to a post trial brief is not in evidence; there is no showing by lien claimant's hearing representative that this document was unavailable prior to the day of trial.

Evidence offered was qualification testing administered in 2011 (Exhibit 10 marked for identification only) for Isabel Romero, Claudia Samayoa and Sonia Diaz. There was no evidence submitted on the others interpreters: Carlos Arevalo, M.H, Cendi Zelaya, Karina Alarcon, Richard Granados, Karla M., Gonzalo Gonzales or Lizette Vasquez.

7) Petitioners did not offer evidence of any efforts made to obtain a certified interpreter pursuant to ADR 9795.3 (e).

No documentation, medical reports or testimony is given to identify any efforts on the part of the physician to obtain a certified interpreter or denote same in the medical reporting.⁴

8) Defendant confirmed service on both the lien claimants with all medical reports in its possession prior to trial.

9) Defendant's bill review witness again testified at trial to her review of all of the medical reports outlined in defendant's Exhibit G and did not recommend any payment as there was no certified or qualified interpreters performing any of the services billed by either HCI or E&M.⁵

The reviewer testified that there were two dates of service⁶ where the report indicated that if an interpreter was used, it was from Health Care Interpreting. These were the two reports of Dr. Dusovich.⁷ This is irresponsible practice for a treating or evaluating physician not to use a certified interpreter wherein a discussion of causation, disability and treatment is required to support an applicant's claim.

Exhibit G also identified other deficiencies existing in the evidence of HCI: no medical reports to confirm services of a named interpreter from HCI were used at the visits; the interpreter's qualifications are not set forth in the evidence submitted by HCI.

Exhibit G identified deficiencies existing in the evidence of E & M Interpreting: The only visit declaring the use of an interpreter was the 11/06/06 visit with Dr. Geyber wherein "Rosie C." was identified. The rest of the visits have nothing to support the actual presence of the interpreter claiming services on a super bill, no medical report, no physician signing that the interpreter was present, even absent a report identifying an interpreter was present and utilized at the visit, conflict with the applicant's testimony at trial claiming an interpreter, identity unknown, was there with Dr. Dusovich when he received therapy for his back, his hand and foot.⁸ The applicant's testimony was not helpful and the truth of it is doubted by this judge based on the review of the documentary evidence submitted in this proceeding.

This judge questioned the applicant while off the record to insure he had received his witness fee and mileage advance so reimbursement could be ordered. The witness informed the court that the lien claimant had paid him \$200.00, his daily wage, to appear and testify. The witness did not return for the next trial date and parties stipulated that his testimony would be the same with regard to the services of E&M Interpreting.

⁴ Government Code §11435.35.

⁵ Supplemental Minutes of Hearing 02/22/2011 page 4 line 18 to page 6 line 6.

⁶ Dates were 02/05/2007 and 03/21/2007.

⁷ These two reports by Dr. Dusovich of the Sleep Insomnia Center were the admitted part of Exhibit 7 that was otherwise marked for identification.

⁸ Supplemental Minutes of Hearing 01/12/2011, page 4 lines 17-18.

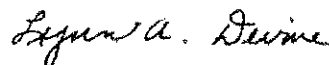
10) Defendant provided a benefit printout of benefits paid for the dates of doctor visits to counsel for both lien claimants.

The standard expressed in *Guitron v. Santa Fe Extruders* (2011) En Banc 76 CCC 228, also an E&M Interpreting case, provided these benchmarks under the lien claimant's burden of proof by a preponderance of the evidence:

- 1) That the services were reasonably required.
- 2) That the services were actually provided.
- 3) That the interpreter was qualified to perform the services.
- 4) That the fee charged were reasonable.
- 5) Finally, "If the lien claimant has not proved its fee was reasonable, but has otherwise proved its right to recover, the trier of fact must determine and award a reasonable fee."⁹

After a review of the evidence and testimony in this matter it is found that Health Care Interpreting did not meet it's burden of proof on the issues by a preponderance of the evidence identified on remand, in accord with *Guitron* and should take nothing further.

After a review of the evidence and testimony in this matter it is found that E&M Interpreting did not meet it's burden of proof on the issues by a preponderance of the evidence identified on remand, in accord with *Guitron* and should take nothing further.



DATE: 05/20/2011

Lynn Devine

WORKERS' COMPENSATION
ADMINISTRATIVE LAW JUDGE

Served on interested parties
as shown on the Official Address Record

By:  ON: 05/20/2011
Lydia Hunter

⁹ *Guitron v. Santa Fe Extruders* (2011) En Banc 76 CCC 228