

Rogelio Delgado vs. Anabella Hotel/Carousel Inn Cypress Ins.

Decision issued: 4/7/11

Issues:

Labor Code Section 4600: Medical necessity of DME services provided by Aspen Medical Resources.

Findings:

CFC expert witness testified that based on review of the medical record there was no indication that the DME services provided by Aspen Medical Resources were incorporated in the record; and therefore, these services do not warrant reimbursement. The Judge agreed with the testimony of CFC expert witness and the lien was consequently denied in its entirety

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

ROGELIO GUERRERO,  
*Applicant*

vs.

ANABELLA HOTEL/CAROUSEL INN; CYPRESS  
INSURANCE COMPANY administered by  
BERKSHIRE HATHAWAY,  
*Defendants.*

Case No. : ADJ563802 (AHM0132831)  
ANAHEIM DISTRICT OFFICE

FINDINGS & ORDER

PROPERTY

COUNSEL-

GOLDMAN, MAGDALIN & KRIKES  
By: Jabiz Zolfaghari, Esq.  
Attorney for Defendants

LEE R. MATHIS & ASSOCIATES  
By: Peter Busciglio, Esq.  
Attorney for Lien Claimant Aspen Medical Resources

The above-entitled matter, having been set for Trial and the above-entitled matter having been submitted for decision, the **HONORABLE TIEN S. NGUYEN**, Workers' Compensation Administrative Law Judge, now finds and awards as follows:

**FINDINGS OF FACT**

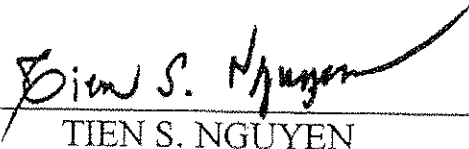
1. ROGELIO GUERRERO, applicant, sustained injury arising out of and in the course of employment to the right shoulder and arm on 09/06/05 while employed as a carpet cleaner by ANABELLA HOTEL/CAROUSEL INN. At the time of the injury, the employer's workers compensation insurance carrier was CYPRESS INSURANCE COMPANY administered by BERKSHIRE HATHAWAY. The case-in-chief was settled by way of a compromise and release on 07/21/08. The issue for trial was the lien of Aspen Medical Resources in the amount \$25,465 excluding penalties and interest. The issue of Labor Code §5813 attorney fee and sanction was deferred.

ORDER

**IT IS HEREBY ORDERED THAT:**

Aspen Medical Resources failed the burden of proof in establishing that its medical services were necessary and reasonable. The lien is disallowed in its entirety.

Date: 04/07/2011  
TSN/lh



TIEN S. NGUYEN

Workers Compensation Administrative Law Judge

Served by mail on all parties listed on the  
Official Address record on the above date.

BY: 

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

CASE NUMBER: ADJ563802

ROGELIO GUERRERO

-vs.-

ANABELLA HOTEL/CAROUSEL INN;  
CYPRESS INSURANCE COMPANY  
administered by BERKSHIRE  
HATHAWAY;

WORKERS' COMPENSATION  
ADMINISTRATIVE LAW JUDGE: Tien Nguyen  
DATE: 04/06/11

COUNSEL-

**GOLDMAN, MAGDALIN & KRIKES**

By: Jabiz Zolfaghari, Esq.  
Attorney for Defendants

**LEE R. MATHIS & ASSOCIATES**

By: Peter Busciglio, Esq.  
Attorney for Lien Claimant Aspen Medical Resources

**OPINION ON DECISION**

**BACKGROUND**

ROGELIO GUERRERO, applicant, sustained injury arising out of and in the course of employment to the right shoulder and arm on 09/06/05 while employed as a carpet cleaner by ANABELLA HOTEL/CAROUSEL INN. At the time of the injury, the employer's workers compensation insurance carrier was CYPRESS INSURANCE COMPANY administered by BERKSHIRE HATHAWAY. The case-in-chief was settled by way of a compromise and release on 07/21/08. The issue for trial was the lien of Aspen Medical Resources in the amount \$25,465 excluding penalties and interest. The issue of Labor Code §5813 attorney fee and sanction was deferred. Defendant essentially contended that 1. The medical treatment services were unreasonable and unnecessary as there was no medical substantiation of the services; and 2. The charges were excessive. Lien claimant contended that 1. Defendant's Utilization Review (UR) denial was untimely and incomplete; 2. Defendant waived any objection to the bills and lien. Following careful review of the admitted evidence and trial testimony, this court comes to the following opinion on decision:

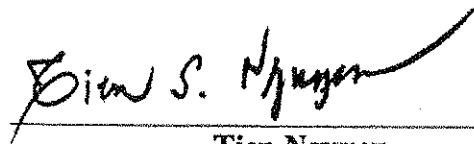
## DISCUSSION

The employer cannot use the utilization review process to deny the particular treatment in dispute when it failed to comply with the UR process, but the employee does not automatically obtain the requested treatment by default. He/she still has the burden of proving that the requested treatment is reasonably required to relieve the employee of the effects of his or her injury under Labor Code §4600(a)-(b) and that the treatment is consistent with the Medical Treatment Utilization Schedule or that a variance from the schedule is reasonably required under Labor Code §4604.5(a), California Workers' Compensation Practice (MyCEB OnLAW ® 2011) §9.37B, citing SCIF v. WCAB (Sandhagen) (2008) 73 CCC 981, see also Scott Kunz vs. Patterson Floor Coverings, Inc., (2002) 67 CCC 1566, Labor Code §3202.5 and Labor Code §5705 ["where a lien claimant (rather than the injured worker) is litigating the issue of entitlement to payment for industrially related medical treatment, the lien claimant stands in the shoes of the injured employee and the lien claimant must prove by preponderance of the evidence all the elements necessary to the establishment of its lien."]. In the instant case, the issue of the timeliness of the defendant's UR could not be determined because there was no evidence on the date of the request for the authorization of the Durable Medical Equipment (DME) services. Even if UR was untimely, lien claimant retains the burden of proof in the showing that its medical services were reasonable and in compliance with the Medical Treatment Utilization Schedule or other evidence based variance. Despite various reports, neither Guy Trimble, DC, the primary treating physician, nor Afshin Mashoof, MD, surgeon, secondary treating physician, discussed the necessity and reasonableness of the DME services. The only evidence on the issue of necessity and reasonableness of the medical services was a one page undated prescription of the DME's apparently signed by Dr. Mashoof for rental of the DME's for a month or less. There was no discussion why the DME services were medically indicated. Applicant indeed had right shoulder surgery on 9/12/06 performed by Dr. Mashoof but the necessity and reasonableness of the DME services could not be established by lay inference.

CONCLUSION

For the above reasons, it was found that Aspen Medical Resources failed the burden of proof in establishing that its medical services were necessary and reasonable. Therefore, the lien is disallowed in its entirety. It is not necessary for this court to discuss other arguments as they are moot.

DATE: 04/07/11



**Tien Nguyen**

WORKERS' COMPENSATION  
ADMINISTRATIVE LAW JUDGE

Service On:

- parties and lien claimants present  
 all parties as shown on Official Address Record

Enclosure: Official Address Record

ON: 04/07/2011

BY:

