

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS
OFFICE OF THE JUDGES OF COMPENSATION CLAIMS
FORT LAUDERDALE DISTRICT

Anne Marie Limith,
Employee/Claimant,

OJCC Case No.: 11-024253IF

vs.

Accident date: 11/29/2010

Lenox on the Lakes and
Crum & Forster,
Employer/Carrier.

Judge: Iliana Forte

_____/

Kevin R. Gallagher, Esquire, Attorney for the Employee
Andre R. Borah, Esquire, Attorney for the Employer/Carrier

FINAL ORDER ON ATTORNEY'S FEES

This matter came before me, the undersigned Judge of Compensation Claims, on May 13, 2015 for an attorney's fee hearing upon claimant's attorney's verified motion for attorney's fees and costs filed February 20, 2015. The employer/carrier's ("E/C's") verified response thereto was filed on March 5, 2015.

DOCUMENTS RECEIVED

Claimant:

1. Verified Petition for Attorneys Fees and Costs with attachments.

Employer/Carrier:

1. Employer/Carrier's Verified Response to Claimant's Counsel's Verified Petition for Attorney's Fees with attachments.
2. Employer/Carrier's Supplemental Verified Response to Claimant's Verified Petition for Attorney's Fees and Costs.
3. Telephonic Deposition of Arlene Lawson.

Live witness testimony:

1. Kevin R. Gallagher, Esquire

Mr. Gallagher seeks an adjudication of entitlement to Employer/Carrier ("E/C") paid attorney's fees reserving jurisdiction as to amount until final disposition by the Supreme Court of *Castellanos v. Next Door Company*, 124 So. 3d 392 (Fla. 1st DCA 2013).

His claim for entitlement stems from two Petitions for Benefits filed 10/19/2011 and 10/16/2013 both requesting a follow-up appointment with the authorized treating physician.

AFTER DUE CONSIDERATION given to all of the evidence admitted and argument of counsel, I make the following findings of ultimate fact and conclusions of law.

1. The Claimant was injured when a resident punched her in the face causing a headache and pain in the bridge of her nose. The E/C accepted the accident as compensable and authorized U.S. HealthWorks to provide treatment. She was seen at this facility on 11/29/2010 and on 12/2/2010 when she was placed at maximum medical improvement with a 0% impairment.

2. On 10/19/2011 a petition for benefits was filed by Mr. Gallagher requesting compensability of the case and requesting a primary care physician. The E/C filed a response to the petition on 11/3/2011 acknowledging compensability and advising the claimant that she could return to U.S. HealthWorks. On 1/20/2012 Mr. Gallagher filed a Notice of Resolution of Issues except for attorney's fees and costs.

3. On 10/16/2013 another petition for benefits was filed by Mr. Gallagher requesting a follow-up appointment with the authorized treating physician alleging that the claimant had been unable to obtain additional care, as the doctor requires expressed authorization from the insurance carrier. The E/C filed a response to this petition on 11/12/2013 advising the claimant that U.S. HealthWorks continues to be authorized and that the facility is a walk in facility where an appointment is not necessary. However, the unrefuted evidence presented establishes that prior to the filing of this petition, the E/C on 10/12/2013 had sent a facsimile to U.S. HealthWorks providing authorization for treatment for the 11/29/2010 date of accident.

4. The Claimant was ultimately seen at U.S. HealthWorks on 2/7/2014, which coincides with the mediation date of the last petition. At the mediation of 2/7/2014, the E/C reiterated that U.S. HealthWorks remained authorized and a new authorization would be faxed to the facility. Ms. Lawson, the claims adjuster testified that she did not schedule an appointment for the claimant on 2/7/2014, although the evidence reveals that she was in fact seen. Curiously, Mr. Gallagher in his verified petition seemed to have been unaware of this fact and maintained that even after the mediation - "the claimant was still unable to make her own appointment".

5. Mr. Gallagher testified in these proceedings and acknowledged that the Claimant was seen on 2/7/2014, but outside of this acknowledgment, Mr. Gallagher presented no evidence that the Claimant made any attempts prior to 2/7/2014 to return to U.S. HealthWorks and treatment had been denied.

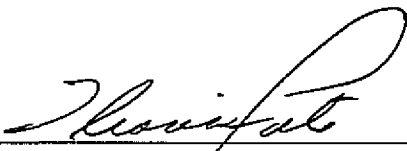
6. The E/C timely responded to both petitions for benefits and unequivocally continued to provide authorization for treatment through U.S. HealthWorks. The only conclusion that I can reach is that she failed to go the facility to receive the care until 2/7/2014.

Thus, I do not find that Mr. Gallagher, outside of filing the petitions, procured this benefit on her behalf.

WHEREFORE, IT IS ORDERED AND ADJUDGED THAT:

1. Entitlement to Attorney's Fees and Costs is DENIED


DONE AND ORDERED in Chambers, on May 15, 2015, at Ft. Lauderdale, Broward County, Florida.



Iliana Forte
Judge of Compensation Claims
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the above Order was entered by the Judge of Compensation Claims and a copy was served by electronic transmission on this 15th day of May, 2015 to the parties counsel or by mail if parties are unrepresented.



Secretary to the Judge of Compensation Claims

COPIES FURNISHED:

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