

**STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS  
OFFICE OF THE JUDGE OF COMPENSATION CLAIMS  
MELBOURNE DISTRICT  
JUDGE: PAUL T. TERLIZZESE**

**EMPLOYEE:**

Linda Hayden  
6434 Cable Avenue  
Port St. John, FL 32927

**EMPLOYER:**

Brevard County Board of Commissioners  
2725 Judge Fran Jamieson Way  
Building B, 2nd Floor  
Viera , FL 32940

**CARRIER:**

Preferred Governmental Claim Solutions  
P.O. Box 958456  
Lake Mary, FL 32795-8456

**ATTORNEY FOR EMPLOYEE:**

Daniel P. Faherty, Esquire  
Cianfroga, Telfer, Reda, Faherty & Anderson  
815 S. Washington Avenue, Suite 201  
Titusville, FL 32782

**ATTORNEY FOR EMPLOYER/CARRIER:**

Derrick E. Cox, Esquire  
Hurley, Rogner, Miller, Cox, Waranch &  
Westcott, P.A.  
1560 Orange Avenue, Suite 500  
Winter Park, FL 32789

**OJCC CASE NO.:** 09-025544PTT

**D/A:** 7/15/2009

**ORDER DENYING REIMBURSEMENT OF MEDICAL CHARGES**

THIS MATTER came on for an Expedited Final Hearing before the undersigned Judge of Compensation Claims on January 12, 2010, for a Petition for Benefits filed on October 5, 2009. At the conclusion of the Expedited Hearing, a verbal ruling was issued with findings of fact and conclusions of law, which are incorporated herein by direct reference. Present and representing the employee, was Daniel P. Faherty, Esquire. Present and representing the employer/carrier, was Derrick E. Cox, Esquire. Also present were the Claimant, Ms. Linda Hayden, insurance adjuster, Ms. Wendy Hall, Supervisor adjuster, Ms. Sheila Braga, and Employer representative, Ms. Linda Allison.

The issues presented for my determination were reimbursement of three co-pays for the claimant's visits with her personal physician, Dr. Shenoy; payment of a \$100.00 co-pay for an MRI occurring on August 7, 2009; attorney's fees; and costs.

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The claim was defended on the grounds that Dr. Shenoy was unauthorized, the MRI was unauthorized, and once the Claimant made a request for treatment via a Petition for Benefits, the Employer/Carrier timely authorized Dr. Homi Cooper. The Employer/Carrier also denied payment of Claimant attorney's fees and costs.

The following exhibits were admitted into evidence:

**Judge's Exhibits:**

- 1.) Orders/Notices of Expedited Final Hearing, dated October 7, 2009; October 14, 2009; October 23, 2009; and December 3, 2009.

**Joint Exhibits:**

- 1.) The Joint Expedited Pretrial Stipulation, including Response to the Petition for Benefits, and composite of exhibits attached to the pretrial stipulation. The records of Dr. Shenoy, the MRI, and EMG testing performed at Dr. Shenoy's request, were included for factual and historical purposes only.

In making my findings of fact and conclusions of law in this claim, I have carefully considered and weighed all of the documentary and testimonial evidence that was presented to me. I have observed the candor and demeanor of the three live witnesses, and have resolved all of the conflicts in the testimony and evidence. In writing this Order, I have attempted to distill the salient issues together with findings of fact, and conclusions of law, necessary to their resolution. Even though I have not attempted to summarize the testimony of each witness, or to state non-essential facts, this does not mean that I have failed to consider all the evidence.

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After careful consideration of all of the evidence presented, and after having resolved any conflicts therein, I hereby make additional findings as follows:

1. The verbal and written stipulations of the parties are factual, and incorporated by reference as if set out at length herein.

2. Based on all of the evidence that has been presented to me, I hereby deny the Claimant's request for reimbursement and payment of the co-pays sought in this case.

3. In reaching my decision, I have considered all of the documentary evidence presented, as well as the testimony of the live witnesses. I find that the Employer/Carrier timely and consistently provided medical treatment for the Claimant in this case. Following the Claimant's accident on July 15, 2009, an appointment was immediately scheduled for the Claimant to be seen at Royal Oaks Medical Center the following day, July 16, 2009. The Claimant followed up with Royal Oaks Medical Center on July 20, 2009. At that time, the Claimant was referred to an orthopedic specialist, Dr. Ziegler. The Claimant saw Dr. Ziegler on August 10, 2009, and again on September 14, 2009. A follow-up appointment was also scheduled, at the July 20, 2009 appointment with Royal Oaks Medical Center, for August 3, 2009, but the Claimant apparently did not attend that appointment. When a Petition for Benefits was filed on October 5, 2009, seeking treatment for the Claimant's low back, the adjuster scheduled an appointment for the Claimant to be seen by Dr. Homi Cooper, an occupational medicine specialist, with an orthopedic group, for her low back complaints three days later. The Claimant subsequently received additional treatment for her low back from Dr. Cooper. Overall, it is clear to me that the Employer/Carrier acted with due diligence in providing medical treatment for the Claimant, with at least three separate medical offices.

4. I had the opportunity to personally observe the testimony of Ms. Wendy Hall, the adjuster at Preferred Governmental Claims Services, who has been handling the Claimant's file throughout all applicable time frames. Ms. Hall testified that she is responsible for scheduling all but the initial medical appointments for the Claimant. Ms. Hall testified that the Claimant never contacted her seeking authorization for treatment of her low back, prior to the date the October 5, 2009 Petition for Benefits was filed. Ms. Hall testified that once she received the Petition for Benefits, she authorized and scheduled treatment with Dr. Homi Cooper, a low back specialist, within three (3) days. Ms. Hall further testified that Royal Oaks Medical Center remained authorized to treat all conditions related to the accident, and that Royal Oaks Medical Center was never de-authorized. Overall, I find Ms. Hall to be a candid, professional and truthful witness, and I accept her testimony in its entirety.

5. I also personally observed the live testimony of Ms. Linda Allison, a Brevard County employee who works in the Workers' Compensation Risk Management Department. Ms. Allison testified that she was responsible for scheduling only the Claimant's initial appointment at Royal Oaks Medical Center, on July 16, 2009. Following that initial appointment, she notified Ms. Wendy Hall of the Claimant's accident, and Ms. Hall then became responsible for coordinating all further medical appointments and authorizations. I find Ms. Allison to be a truthful and candid witness as well, and I accept her testimony.

6. Finally, I had an opportunity to personally observe the Claimant during her live testimony in this case. The Claimant admitted that she was privately treating with Dr. Shenoy prior to the July 15, 2009 accident, for trigeminal neuralgia and other non-accident related conditions. Dr. Shenoy's medical note stated that the Claimant was at his office for her two-

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month follow-up, leading me to believe that this appointment was not scheduled as a result of her industrial accident. Moreover, during the visit with Dr. Shenoy on July 20, 2009, just five days after her accident, the Claimant had no complaints of back pain, the condition for which she was seeking treatment and retroactive authorization, in her October 5, 2009 Petition for Benefits. There was no explanation regarding the fact that Royal Oaks Medical Center allegedly refused to see the Claimant, since the medical records from Royal Oaks Medical Center specifically reference a follow-up appointment, for August 3, 2009. The Claimant also failed to explain why she saw both Dr. Shenoy and the Royal Oaks Medical Center on July 20, 2009. To the extent the Claimant's testimony is inconsistent with the documentary evidence, and the testimony of both Ms. Wendy Hall and Ms. Linda Allison, the Claimant's testimony is rejected.

7. Before the Claimant can utilize the "self help" provisions of Florida Statute §440.13(2)(c), the Claimant is required to make a specific request for treatment, and the Employer/Carrier must be given a reasonable period to provide the treatment. The employee cannot recover any amount personally expended for medical treatment unless the employee has made a specific request, which the Employer/Carrier has failed or refused. In this case, I find that the Claimant did not make a specific request for treatment of her low back injury, until she, through counsel, actually filed the Petition for Benefits on October 5, 2009. I find that the Employer/Carrier immediately provided the treatment requested in the Petition, by additionally authorizing Dr. Homi Cooper. I also find that the Employer/Carrier immediately responded to the Claimant's request for treatment following the July 15, 2009 accident by authorizing Royal Oaks Medical Center to treat all conditions due to the accident, as well as Dr. Ziegler. Overall, I find that the Employer/Carrier never failed, refused, or neglected to timely provide any treatment

requested by the Claimant. Therefore, the Claimant is not entitled to be reimbursed for treating on her own with her personal physician, Dr. Shenoy.

8. I find that the employee did not meet her burden of proof of establishing that the Employer/Carrier failed, refused, or neglected to timely provide medical treatment for her injuries, due to the July 15, 2009 accident. In fact, the Claimant was receiving authorized treatment during the same time she was treating on her own with Dr. Shenoy. As of the Claimant's first post-accident visit with Dr. Shenoy on July 20, 2009, Royal Oaks Medical Center had already been authorized, and the Claimant had an appointment at Royal Oaks Medical Center the same day as her appointment with Dr. Shenoy. At the time of the Claimant's second visit with Dr. Shenoy, August 5, 2009, a follow-up appointment with Royal Oaks Medical Center had been scheduled to occur on August 3, 2009, and the Claimant was scheduled to see Dr. Ziegler, the authorized shoulder orthopedist, on August 10, 2009. On the date of the Claimant's third appointment with Dr. Shenoy, August 20, 2009, the Claimant had already seen Dr. Ziegler, and she had another follow up appointment scheduled with Dr. Ziegler. The Claimant's next appointment with Dr. Shenoy on September 21, 2009, occurred seven days after the Claimant's appointment with Dr. Ziegler on September 14, 2009. The Claimant's October 6, 2009 appointment with Dr. Shenoy occurred the same day the adjuster received the Petition seeking retroactive authorization. Finally, the Claimant's appointment with Dr. Shenoy on October 19, 2009, occurred after Dr. Homi Cooper had been authorized, and only four days prior to the Claimant's initial appointment with Dr. Cooper. Since the Claimant was consistently receiving authorized medical treatment, concurrent with her unauthorized treatment with Dr. Shenoy, it is clear to me that the Employer/Carrier did not fail or refuse to provide medical

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treatment, while the Claimant was treating with Dr. Shenoy. Therefore, the Claimant's request for retroactive authorization of Dr. Shenoy, and reimbursement and payment of co-pays, is hereby denied with prejudice.

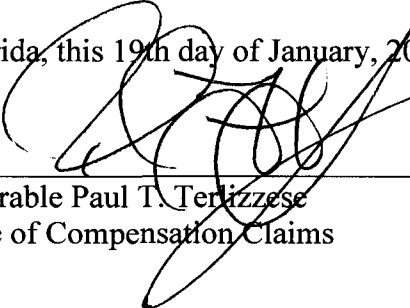
WHEREFORE, for the foregoing reasons, the undersigned hereby finds as follows:

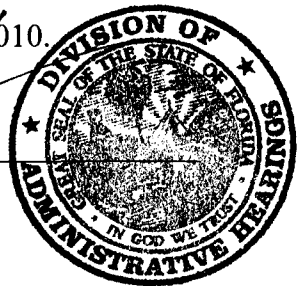
1. The Claimant's claim for reimbursement of co-pays made to Dr. Shenoy, and for payment of the \$100.00 co-pay for the MRI, are denied and dismissed with prejudice.

2. Since the benefits requested in the October 5, 2009 Petition for Benefits have been denied and dismissed, the Claimant's request for payment of attorney's fees and costs are hereby denied.


3. Since the Employer/Carrier prevailed at the January 12, 2010 Expedited Final Hearing, the Employer/Carrier is entitled to reimbursement of related and taxable Court Costs, as the prevailing party. Jurisdiction is reserved to determine the amount of taxable Court Costs, should the Employer/Carrier file a Verified Motion thereon.

DONE and ORDERED in Melbourne, Florida, this 19th day of January, 2010.

  
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Honorable Paul T. Terlizze  
Judge of Compensation Claims



THIS IS TO CERTIFY that the foregoing Order was entered on the 19th day of January, 2010, and that an electronic copy thereof was sent to Counsel for the Claimant and Counsel for the Employer/Carrier.

  
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Judicial Assistant