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

Lourdes Pla,)	
Employee/Claimant,)	
)	
vs.)	
)	OJCC Case No. 06-028920GBH
Point Blank/MDC Products, Inc.,)	
Employer,)	Accident date: 8/21/2006
)	
and)	
)	
Sentry Claims Center,)	
Carrier/Servicing Agent.)	
_____)	

FINAL COMPENSATION ORDER

After due and proper notice to the parties, the above entitled cause came on to be heard before the undersigned Judge of Compensation Claims on October 23, 2008. This order resolves the Petition for Benefits filed with Division of Administrative Hearings (DOAH) on March 27, 2008.

A. Stipulations:

The parties stipulated to the following:

1. The undersigned has jurisdiction over the parties and subject matter.
2. The accident is accepted as compensable.
3. That venue of the claim is in Broward County.
4. There was an employer/employee relationship on the date of accident.
5. Workers' compensation insurance coverage was in effect on the date of accident.

B. Claims and Defenses:

1. Pursuant to the Petition for Benefits (PFB) and the Pretrial Stipulation, claims were made for the following benefits:
 - a. Provision of a follow-up appointment with Dr. Roberts;
 - b. Attorney's fees and costs.

2. The Employer/Carrier asserted the following defenses:

- a. Dr. Roberts retired and an alternative primary care provider, U.S. Healthworks Medical Group of Florida, has been authorized by the carrier;
- b. No fees or costs due;
- c. E/C seeks costs.

C. **Documentary Evidence:** The following documentary matters were offered into evidence as exhibits by the Claimant (C), Employer/Carrier (E/C) or Jointly by the Claimant and Employer/Carrier (J).

Exhibit #

1. Pretrial Stipulation – Judge
2. Trial Memorandum – (C) Identification
3. Petition for Benefits – (C)
4. Response to Petition for Benefits – (C)
5. Deposition Transcript of Lourdes Pla – (C)
6. Letter to Claimant from Ana Vargas – (C)
7. Supplemental Pretrial-Stipulation – (E/C)
8. Deposition Transcript of Ana Vargas – (E/C)
9. Deposition Transcript of Jessie M. Wright – (E/C)
10. Employer/Carrier’s Hearing Information Sheet – (E/C) – Identification

D. **Findings of Fact and Conclusions of Law:**

While I have not detailed a complete resume of all the facts and evidence presented before me, I have carefully considered it in making my findings of fact and conclusions of law, resolving all conflicts where they may exist. I have carefully evaluated the medical records and the deposition testimony submitted. Upon consideration of the evidence presented, the argument of counsel and the stipulations of the parties all of which I have carefully reviewed, the undersigned finds as follows:

1. Pursuant to the Petition for Benefits (PFB) dated March 19, 2008 and filed with the DOAH on March 27, 2008 and the Pretrial Stipulation Claimant requested “Provision of a follow-up appointment with Dr. Alan K. Roberts” and provided the phone number for that physician.
2. In the response to the PFB, prepared on April 7, 2008, the adjuster stated that the follow-up appointment with Dr. Roberts was authorized, but advised that Dr. Roberts was no longer in practice at Concentra Occupational Clinic. The Carrier stated that the Claimant was authorized to seek medical treatment at the same clinic and could call to schedule an appointment at her convenience. According to Exhibit 6, the carrier advised the Claimant that US Healthworks Medical Group of Florida was the new medical provider authorized to evaluate and treat her for her work related injury.

She was also instructed in this correspondence to call to make an appointment at her convenience or that she could walk in Monday to Friday between 8a.m. and 6p.m.

3. Counsel for Claimant asserted at the time of the final hearing that the Claimant was seeking an alternate medical provider and further stated that because the adjuster did not provide an alternate provider within 5 days from the date the carrier received notice that Dr. Roberts retired the Claimant is entitled to select a physician.
4. The Claimant's deposition was taken on September 17, 2008. She could not recall the last time she received medical treatment at Concentra Medical Center. According to the Claimant's deposition testimony she continues to have pain in her back as a result of the work related accident. Other complaints included leg cramps, loss of balance and some difficulties standing.
5. The deposition of Ana Vargas was taken on September 17, 2008. Ms. Vargas testified that she is the workers' compensation claims adjuster responsible for the file of Lourdes Pla. On March 27, 2008 she received a PFB dated March 19, 2008. The benefits requested and the carriers' response are consistent with Exhibits 3 and 4.
6. Ms. Vargas testified that she sent a letter by fax to the Claimant's attorney on April 7, 2008 advising that Dr. Roberts was no longer in practice at the Concentra Occupational Clinic; however, the Claimant was still authorized to seek medical treatment at this facility.
7. The adjuster sent a correspondence to Concentra Occupational Clinic informing this medical facility that the Claimant, who was a patient of Dr. Alan K. Roberts for contusion to the back, face, scalp and neck due to a fall sustained at work on 8/21/2006, was authorized to return for treatment at this clinic.
8. According to the adjuster's testimony, in July of 2008 the carrier authorized alternate primary care providers at U.S. Healthworks. The adjuster sent a letter to the Claimant advising her that this facility was authorized to evaluate and treat her for her work related injury. A copy of this correspondence was sent to her attorney as well.
9. The adjuster testified that according to the information contained in the carrier's file the Claimant's last visit with Dr. Roberts was June 11, 2007. The carrier authorized a MRI on June 14, 2007. She stated that Dr. Roberts saw the Claimant at Concentra Medical Care and they remained authorized. Concentra continued to be authorized until the carrier authorized U.S. Healthworks.
10. The adjuster further testified that at mediation the carrier agreed to an alternate provider because Dr. Roberts sold his practice to Concentra. She went on to say that

Dr. Roberts was a one time change from Dr. Green. According to her testimony Dr. Green was also with Concentra. The Claimant refused to return to Concentra Medical and the carrier authorized another provider.

11. The deposition of Jessie Wright was taken on September 29, 2008. Ms. Wright testified that she is the office administrator for Concentra Medical Centers. According to the medical records from this facility the Claimant saw Dr. Reilton Green on 8/21/2006 and 8/23/2006. The Claimant saw Bobotis, a physician's assistant, on June 15, 2007. According to the records Dr. K. Reese was the physician on the MRI prescription. There were handwritten medical notes from Dr. Alan K. Roberts. According to Ms. Wright's testimony, Concentra Medical Center, the location where she worked, was never a part of Sunshine Medical Center.
12. According to Ms. Wright's testimony and the medial records attached to Exhibit 9, the Claimant received medical treatment at Concentra Medical Centers shortly after the work related accident. The initial provider was Dr. Railton Green. The Claimant subsequently treated with Dr. Roberts who later sold his practice to Concentra Medical Centers, the facility at which the Claimant initially treated.

RULE OF LAW AND APPLICATION

13. Claimant asserts that on April 7, 2008 the E/C issued a response to Claimant's request for a follow up appointment with Dr. Roberts by stating that Dr. Roberts was no longer in practice and allowing Claimant to continue treating at the new clinic that took over Dr. Roberts' practice. The Claimant's position is that she is entitled to now choose her physician under the Wilson case and by operation of law based on the E/C's failure to set up alternate care within five days of realizing Dr. Roberts was no longer in practice. Claimant's counsel argued that it was the duty of the E/C to authorize an alternate provider within 5 days after the carrier knew Dr. Roberts retired. To support this argument, Claimant's counsel cited Providence Property and Casualty v. Wilson.
14. In Providence Property and Casualty v. Wilson, 33 F.L.W. 2251 (Fla. 1st DCA September 23, 2008) the Claimant requested a one time change in physician approximately one year after the treating physician discharged and released the claimant to work full duty with no restrictions. The E/C denied the request for two reasons. First they asserted that the accident was no longer the major contributing cause of the claimant's need for treatment. Additionally, they asserted that the claimant was no longer "in the course of treatment" at the time the request was made. The First District, in affirming the JCC's award of a one-time change in physician,

agreed that sec. 440.13(2)(f) Fla. Stat.¹ permitted a claimant an absolute right to a one-time change in treating physician, if the claimant's written request was made during the course of treatment.

15. The claimant in Wilson requested a one time change in physician. The issue in Wilson was whether the claimant remained in the course of treatment after she was released by the treating physician and returned to work full duty. In the case before the undersigned JCC the Claimant did not request a one time change in physician prior submitting a trial memorandum two days prior to the final hearing. Additionally, the Claimant already exercised her right to a one time change from Dr. Green to Dr. Roberts. Furthermore, the E/C has not asserted that the work related accident is no longer the major contributing cause of the Claimant's need for medical treatment. Moreover, according to the adjuster's testimony, the carrier agreed at mediation to authorize U.S. Healthworks.
16. Sec. 440.13(2)(f) Fla. Stat. (2005) provides that the carrier shall give the claimant one change of physician during the course of treatment for any one accident upon a written request. The carrier shall authorize an alternative physician within five days after receipt of the request. There was no competent substantial evidence presented at trial that the Claimant provided a written request for an alternate physician prior to submitting the trial memorandum. Additionally, Claimant received a one time change in providers from Dr. Green to Dr. Roberts.
17. Sec. 440.13(2)(a) Fla. Stat. (2005) states in part that the employer shall furnish to the employee such medically necessary remedial treatment, care, and attendance for such period as the nature of the injury or the process of recovery may require. The Claimant requested provision of a follow-up appointment with Dr. Roberts. The carrier authorized Concentra because Dr. Roberts was no longer in practice. The carrier later authorized U.S. Healthworks.
18. Although sec. 440.13(2)(f) Fla. Stat. (2005) provides that if the carrier fails to provide an alternate physician an employee may select a physician and such physician shall be considered authorized if the treatment is compensable and medically necessary, there was no evidence presented at trial that Claimant selected a physician

¹ 440 13 (2)(f) Fla. Stat. states: Upon the written request of the employee, the carrier shall give the employee the opportunity for one change of physician during the course of treatment for any one accident. Upon the granting of a change of physician, the originally authorized physician in the same specialty as the changed physician shall become deauthorized upon written notification by the employer or carrier. The carrier shall authorize an alternative physician who shall not be professionally affiliated with the previous physician within 5 days after receipt of the request. If the carrier fails to provide a change of physician as requested by the employee, the employee may select the physician and such physician shall be considered authorized if the treatment being provided is compensable and medically necessary.

or that any physician other than the authorized providers evaluated and treated the Claimant.

CONCLUSION

19. Pursuant to the PFB and the pretrial stipulation the Claimant requested provision of a follow-up appointment with Dr. Roberts. Dr. Roberts is no longer in practice and the carrier authorized Concentra and U.S. Healthworks. Although counsel for Claimant argued at the final hearing that the Claimant is entitled to select a doctor of her choice because the carrier did not authorize an alternate doctor within five days after the carrier knew Dr. Roberts was no longer in practice, the undersigned finds no legal basis to support this contention.

WHEREFORE, IT IS ORDERED and ADJUDGED that:

1. The claim for provision of a follow-up appointment with Dr. Roberts is DENIED.
2. The claim for attorney's fees and costs is DENIED.
3. Request for an alternate physician is DENIED.
4. E/C's request for cost is granted. Jurisdiction is reserved to determine the amount.
5. Any objections not ruled upon are deemed overruled.
6. Any issues not addressed herein are deemed denied.

DONE AND ORDERED this 12th day of November, 2008, in Lauderdale Lakes, Broward County, Florida.



Geraldine B. Hogan

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been mailed to all parties on this 12th day of November, 2008.

Patricia Dixon

Assistant to the Judge of Compensation Claims

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