

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

Jorge Lore,
Employee/Claimant,

OJCC Case No. 13-004735MGK

vs.

Accident date: 11/8/2012

Milo Enterprises d/b/a
McDonalds/Amerisure Insurance,
Employer/Carrier/Service Agent.

Judge: Edward R. Almeyda

EVIDENTIARY ORDER ON VERIFIED MOTION FOR ATTORNEY'S FEES

This matter came before me, the undersigned Judge of Compensation Claims, following the filing of a Verified Motion for Attorney's Fees on 8/26/2014. A proper timely response was filed by the E/C on 9/3/2014. The evidentiary hearing took place on 11/4/2014, with the Claimant represented by Rajo Moreno, Esquire, and the E/C by Kate Albin, Esquire.

DOCUMENTARY EVIDENCE:

Claimant:

1. Verified Motion for Attorney's Fees with exhibits (32*).

Employer/Carrier:

- A. Response to Verified Motion for Attorney's Fees (33*).

***DOCKET ID. NUMBER**

FINDINGS OF FACT AND CONCLUSIONS OF LAW:

1. At the time of the proceeding, the Claimant's attorney raised the issue determination of the quantum of the fee, as the amount of benefits allegedly obtained is unascertainable at this time. It appears as if the E/C sent the Claimant a pay history which reflects the value of the medical benefit claimed as of May, 2014, but not a current pay history reflecting this benefit's

present value. Additionally it is noted that yet another petition for benefits was filed on 11/3/2014, which is not subject of consideration herein. The E/C objected to separating entitlement from quantum, but in view of the fact that the value of benefits as still subject to a possible change, and any fee amount would be affected by the current petition for benefits; the matter is bifurcated to determine herein the entitlement to fees only.

2. At the onset of the hearing the Claimant sought to introduce in evidence a time recapitulation filed on 11/3/2014. The E/C's objection to timeliness of this filing was sustained. On the other hand the E/C offered the aforementioned pay history dating to May and the Claimant's objections was sustained as it was not timely raised in the response to the verified motion.

3. No testimony was adduced in this matter, just argument of counsel

4. The petition for benefits triggering this issue is dated 1/27/2014 and claims: "Employee/Claimant requests a follow up appointment with the primary care doctor and/or whoever the employer/carrier is authorization (sic) for continued follow up treatment and care."

5. In response, the adjuster on the thirtieth day responded: "Dr. Hyde remains authorized, an appointment letter will be sent to claimant separately."

6. The Claimant was not notified of the appointment until 3/10/2014, by an email, from Mr. Linder, the E/C counsel, to his attorney, which came after a follow through by the Claimant's attorney on 3/7/2014.

7. Nowhere in the evidence submitted by the Claimant is there any indication that the E/C had prior to the subject PFB denied medical treatment to this Claimant, or that the Claimant had unsuccessfully attempted to receive continued medical attention by either the primary care doctor

or an authorized doctor. The adjuster within the 30 day time frame reaffirmed the continued authorization of Dr. Hyde, and ten days thereafter provided the Claimant with the appointment date.

8. Likewise, there is no showing that ten days in obtaining an appointment date with an otherwise authorized medical provider is an unreasonable delay, or that the Claimant was refused an appointment when the E/C reaffirmed the fact that Dr. Hyde was still authorized.

9. In *Jennings v. National Linen Services*, 995 So2d 1153 (fla. 1st DCA, 2008), the First District Court of Appeals stated: "An E/C is not responsible for paying a claimant's attorney's fees unless a JCC first determines that the E/C wrongfully refuses to furnish benefits to the claimant." (At p. 1156). Subjudice, the undersigned finds that the E/C did not wrongfully refuse to furnish the medical appointment to the Claimant.

WHEREFORE, IT IS ORDERED AND ADJUDGED THAT:

1. The E/C is not responsible for attorney's fees and costs flowing from the petition for benefits dated 1/27/2014, and the Verified Motion for Attorney's Fees and Costs is therefore, DENIED.

DONE AND ORDERED this 4th day of November, 2014, in Miami, Dade County, Florida.



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