

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

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JCC: Sylvia Medina-Shore
OJCC NO.: 07-014861SMS
D/A: 4/12/2007

ORDER GRANTING E/C'S MOTION FOR SUMMARY FINAL ORDER

THIS CAUSE came before the undersigned Judge of Compensation Claims on 4/4/14 upon Claimant's Motion for Summary Final Order filed 2/5/14 and on E/C's Motion for Summary Final Order filed 2/11/14. The parties agree that the legal issue, namely the claimant's right to select the location of her "change of physician" is appropriate for adjudication under 60Q-6.120 of the procedural rules governing workers' compensation adjudications.

Documentary Exhibits:

Claimant-

1. Claimant's motion for summary final order with attachments filed 2/5/14.
2. Claimant's response to E/C's motion to take judicial notice filed 2/21/14.

E/C-

1. E/C's objection to claimant's motion for summary final order and E/C's motion for summary final order filed 2/11/14.
2. Motion to take judicial notice filed 2/11/14.
3. Response to PFB filed 10/21/13.
4. Claimant's deposition taken 1/22/14 filed 4/3/14.
5. Adjuster's deposition taken 1/22/12 filed 3/31/14.
6. Memorandum of Law for I.D. purposes filed 4/2/14.

Conclusions of Law:

1. The facts surrounding the legal issue are not in dispute. The claimant currently resides in Naples, Florida. She requested authorization of a one-time change to Dr. Kagan, an orthopedic physician in Ft. Myers and Cape Coral. The carrier received this request on October 4, 2013.
2. The claimant then filed a petition for benefits seeking authorization of Dr. Kagan, which PFB the carrier received on 10/21/13.
3. E/C agreed to authorized Dr. Kagan, advised Dr. Kagan's office of the authorization, and filed a response to the PFB on 10/21/13.
4. Dr. Kagan declined to accept the claimant as a patient on 10/28/13.
5. E/C offered Dr. Edward Gomez, an orthopedic doctor with offices in Ft. Myers and Estero on 10/30/13. The claimant refused the offer of Dr. Gomez.

6. The claimant filed a letter requesting that E/C authorized Dr. Fernandez, whose offices are located in Miami, FL.
7. E/C denied authorization of Dr. Fernandez as his offices are located more than 120 miles and 2 hours from the claimant's residence.
8. E/C agrees that claimant retains the right to select a physician as her one time change per F.S. 440.13(2)(f), and would authorize a board certified orthopedic physician in the general vicinity of claimant's residence. However, claimant will not provide the name of an acceptable physician in the county of her residence. Rather, claimant insists on authorization of Dr. Fernandez in Miami, Florida.
9. While the claimant maintains the right to select the physician of her choice per F.S. 440.13(2)(f), E/C argue however that that right is not without reasonable limitations.
10. Claimant, on the other hand, argues that there is no statutory authority, or judicial holding placing a limitation on the location of a treating physician relative to the location of claimant's residence. Moreover, claimant points out that there is a nexus between the location of Dr. Fernandez and the instant case, that being the venue of the instant case.
11. The venue of the instant case is Miami-Dade County. While the claimant has since moved to Naples, Florida, the venue remains in Miami-Dade County. Nonetheless, the request for change of physician is for authorized treatment, not a one-time evaluation.
12. In considering the legal issue at hand, E/C provided a memorandum of law with cited case law. The cases generally deal with carriers seeking to compel the claimant to treat with a physician far away from the county of the injured workers' residence. The analysis of the case law cited by the E/C is helpful. See, Commercial Carrier Corp. v. Fox, 400 So.2d 154 (Fla. 1st DCA 1981) and Kessler v. Conmi. Blood Bank, 621 So.2d

539 (Fla. 1st DCA 1993). Generally, the "reasonableness" standard has been utilized in determining whether compelling a party to either receive treatment or authorize treatment outside the county of the injured workers' residence is appropriate.

13. In Miller v. Jupiter Medical Center, 928 So.2d 485 (Fla. 1st DCA 2006), the First District Court of Appeals addressed the place of an independent medical examination (one-time exam). In *Miller*, the court noted that there is no limitation in section F.S. 440.13(5) regarding the geographical location of an IME. *Id.* at 486. The court further stated, "this court has repeatedly stated that there is simply a reasonableness requirement in the IME provisions that is subject to a JCC's exercise of discretion". *Id.*, citing to Farm Stores, Inc. v. Fletcher, 621 So.2d 706 (Fla. 1st DCA 1993).

14. In the case at hand, claimant points out that F.S. 440.13(2)(f) likewise has no limitation. However, I am guided by case law indicating that the request must be a "reasonable" request. In the present case, claimant testified that she has no ties to Dade County, does not travel to Miami in her personal life and has not been to Miami in at least a year. Dr. Fernandez' office is approximately 128 miles from claimant's residence, with travel time of two hours.

15. I find that travel to and from Naples and Miami would be quite time intensive and contra-indicated to the delivery of quick and efficient medical benefits to the claimant, as intended by chapter 440.

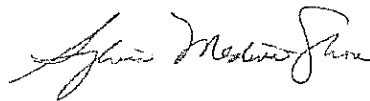
16. Claimant has not provided any compelling reason as to her choice of Dr. Fernandez in Miami or her refusal to select a physician in the Naples/Ft. Myers area. Claimant failed to present evidence that there are no orthopedic physicians available or capable of treating her in Naples/Ft. Myers area. Absent any compelling reason to explain

claimant's choice of her treating doctor being located more than 2 hours away from her residence, I find claimant's choice of Dr. Fernandez unreasonable and inappropriate as her one-time change in physician. Rather, I find that claimant needs to select a physician of her choosing, within the Naples/Ft. Myers area.

WHEREFORE, IT IS ORDERED:

1. Claimant's motion for summary final order is denied.
2. E/C's motion for summary final order is granted. Claimant shall select an orthopedic physician as her one-time change located in the Naples or Ft. Myers area.

THE INSTANT ORDER WAS E-MAILED TO THE ATTORNEYS OF RECORD AND TO THE CARRIER THIS 7th DAY OF APRIL OF 2014. THE ATTORNEY SHALL PROVIDE THE INSTANT ORDER TO THEIR RESPECTIVE CLIENTS UPON RECEIPT OF SAME.



SYLVIA MEDINA-SHORE
Judge of Compensation Claims