

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS
OFFICE OF THE JUDGES OF COMPENSATION CLAIMS
WEST PALM BEACH DISTRICT OFFICE

Mariline Geffrard,
Employee/Claimant,

OJCC Case No. 12-026964SHP

vs.

Accident date: 10/21/2012

Columbia JFK Hospital/Broadspire,
Employer/Carrier/Servicing Agent.

Judge: Shelley H. Punancy

MERIT ORDER

AFTER DUE AND PROPER NOTICE, this cause came on to be heard on 11/3/14, in Palm Beach County, Florida. The Claimant appeared pro se. The Employer/Carrier was represented by Paul L. Luger, Esquire. This order resolves the issues raised in the Petition for Benefits filed 4/7/14.

A. Claims:

1. Authorization, provision and payment for a follow up appointment with Dr. Parsol.
2. Compensability of the industrial accident and all resulting injuries.
3. Costs and attorney's fees payable by the Employer/Carrier under section 440.34 (3) (a) – (d), Fla. Stats.

B. Defenses:

1. All medically necessary and causally related medical care has been timely provided.
2. Dr. Pasol is not an authorized provider, IME, or EMA.
3. Employer/Carrier paid attorney's fees and costs are not due or owing.
4. Employer/Carrier seeks costs pursuant to section 440.34 (3), Fla. Stats.

C. Documentary Exhibits:

Court:

1. Petition for Benefits filed 4/7/14.

Claimant:

1. Pretrial Stipulation filed 8/12/14 with attachments. Employer/Carrier objections - See: Response to Claimant's Pretrial Stipulation filed 8/26/14 - Sustained.

Employer/Carrier (E/C):

1. Pretrial Stipulation filed 8/5/14/Order 8/12/14/Response to Claimant's Pretrial Stipulation filed 8/26/14.
2. Response to Petition for Benefits dated 4/9/14.
3. Deposition - Ms. Tallent - adjuster with Broadspire - 10/15/14.

D. Stipulations:

1. The undersigned has jurisdiction of the parties and subject matter of the claim.

E. Testifying before me was the Claimant, Ms. Geffrard, with the assistance of Mr. Freynel Jean Baptiste, a Creole language interpreter, at times during her testimony.

I have carefully considered and weighed all evidence presented. I observed the candor and demeanor of the witness who testified before me. I have resolved all conflicts in the evidence. I have considered the argument of the Claimant and counsel for the Employer/Carrier, statutory, and case law authority. I now make the following findings of fact and conclusions of law:

Findings of Fact:

1. Except as otherwise indicated, I accept and adopt the pretrial Stipulation of the parties.

2. The Claimant testified that on 10/21/12 as she was attending to a patient in her job as a health aide, the patient punched her in her left eye. The accident and injury was accepted as compensable.
3. Claimant was initially treated in the emergency room at JFK Medical Center and was provided medication for pain. Subsequently, she was seen at an authorized medical clinic from which she was recommended to be seen by an eye specialist.
4. The Carrier authorized treatment with Dr. Barish, an ophthalmologist. Dr. Barish examined Claimant's eye and referred her to Dr. Simons, a neuro - ophthalmologist. Claimant testified that the treatment provided by Dr. Simons did not help the symptoms in her left eye: redness, swelling, discharge, and sensitivity to light. She testified that she treated with Dr. Simons from October, 2012 to May, 2013. Dr. Bezner, neurologist, was authorized to treat Claimant's complaint of headaches associated with the injury to her left eye. Claimant's request for a one-time change in medical provider from Dr. Simons was approved and she was authorized to treat with Dr. Leder, neuro-ophthalmologist. According to the Claimant, she saw Dr. Leder on two occasions. She testified that he prescribed over-the-counter eye drops for her left eye.
5. Ms. Tallent, adjuster with Broadspire, testified that Claimant's last visit to Dr. Leder was on 9/24/13, after he had placed Claimant a maximum medical improvement. There have been no requests by Claimant for follow up with Dr. Leder since 9/24/13, according to Ms. Tallent.
6. Claimant testified that when she last saw Dr. Leder, he indicated he had no further treatment to offer her. Upon learning for the first time at trial (15 months post - 9/24/13)

from counsel for the Employer/Carrier that she may return to Dr. Leder and, an appointment has been made for her with him, Claimant questioned why she would want to return to him when he has no treatment to offer her. She testified that since 9/24/13, all claims for treatment for her left eye were denied by the Carrier. Therefore, she began unauthorized treatment with Dr. Pasol, a neuro-ophthalmologist at Bascom Palmer Eye Institute, who she last saw on 10/9/14.

7. Ms. Tallent acknowledged Claimant's request for treatment with Dr. Pasol (Petition for Benefits filed 4/9/14) and Carrier's denial of same (Response to Petition for Benefits filed 4/9/14).
8. Claimant testified that her left eye is now improved after the unauthorized treatment she has obtained. However, she testified that the eye still waters at times, the pressure in the eye is elevated at times, her vision is impaired (reading glasses have been prescribed), and she has to use eye drops nightly. She seeks reimbursement for monies she has paid to Dr. Pasol.
9. Claimant testified that she worked the night shift at JFK Medical Center and the lights were very bright. She was not allowed to work with dark eye shades, and the employment ended, according to the Claimant. Her initial request for unemployment compensation benefits was denied. Ultimately, the benefits were awarded. Currently, Claimant is working four (4) hours a day with a home health care company.

Conclusions of Law:

1. Claimant seeks compensability of the 10/21/12 accident with injury to her left eye, and authorization, provision and payment of a follow up visit with Dr. Pasol.

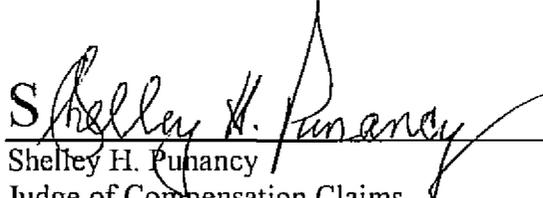
2. Subject to the limitations specified elsewhere in this chapter, the employer shall furnish the employee such medically necessary remedial treatment, care, and attendance for such period as the nature of the injury or the process of recovery may require... See Section 440.13 (2) (a) (emphasis added). 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. 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. See 440.13 (2) (f) (emphasis added).
3. As previously indicated, the compensability of Claimant's 10/21/12 accident with injury to her left eye was never contested. She was timely provided medically necessary and causally related medical care and treatment. Due to dissatisfaction with her change in treating provider, Dr. Leder, Claimant underwent unauthorized treatment with Dr. Pasol.
4. Claimant had been represented by an attorney on three occasions during the prosecution of her case. Each attorney ultimately withdrew from her case, the last one by order of 4/11/14. The only discovery conducted in the case was the deposition of the Claimant and the adjuster, both taken by defense counsel on 10/24/14.
5. Claimant presented no admissible evidence at trial in support of her claim. Ms. Tallent's testimony that none of the authorized medical providers referred Claimant to Dr. Pasol or requested any additional care for Claimant's injury with a physician in the same specialty area of medicine as Dr. Pasol, is unrefuted. As such, Claimant's claim cannot be legally sustained. I am without authority to retroactively authorize the care and treatment

Claimant received with Dr. Pasol and accordingly, I have no authority to grant the claim for payment of medical bills incurred by Claimant with Dr. Pasol. It is therefore.

ORDERED AND ADJUDGED:

1. The claim for authorization, provision and payment for a follow up visit with Dr. Pasol is Denied.
2. The claim for Employer/Carrier paid costs and attorney's fees is Denied.
3. The Employer/Carrier claim for Claimant paid costs pursuant to section 440.34 (3), Fla. Stats. is Granted. Jurisdiction is reserved for determination of the reasonable and necessary quantum of same.

DONE AND ORDERED this 12th day of November, 2014, in West Palm Beach, Palm Beach County, Florida.


Shelley H. Punancy
Judge of Compensation Claims
Division of Administrative Hearings
Office of the Judges of Compensation Claims
West Palm Beach District Office
One Clearlake Centre, 250 S. Australian Avenue, Suite 200
West Palm Beach, Florida 33401
(561)650-1040
www.fljcc.org

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Order was E- mailed to counsel, U.S. Mail to Claimant on this 12th day of November, 2014 to:

Mariline Geffrard
309 NE 20th Avenue
Boynton Beach, FL 33435

Thomas A. Hedler, Esquire
Wender, Hedler & Hessen, P.A.
2001 Palm Beach Lakes Blvd., Suite 204
West Palm Beach, FL 33409
tom@injuredworkersonly.com, Tania@InjuredWorkersOnly.com

Andrew S. Neuwelt
Law Offices of Franks & Koenig
8371 N. Military Trail, Suite #101
Palm Beach Gardens, FL 33410
aneuwelt@franksandkoenig.com, nblanco@franksandkoenig.com

Linette Waterman
Waterman and Wolfe, P.A.
Concourse Tower Tower II, 2090 Palm Beach Lakes Blvd., Suite 205
West Palm Beach, FL 33409
heather@watermanandwolfe.com, waterman@watermanandwolfe.com

Paul L. Luger
Hurley Rogner Miller Cox Waranch & Westcott P.A.
603 N Indian River Drive Suite 102
Fort Pierce, FL 34950
pluger@hrmcw.com, ahathcock@hrmcw.com


Assistant to Judge Parancy