

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

Erasmo Torres
Claimant,

D/A: 4/9/99
JCC: Sylvia Medina-Shore
OJCC Case No.:99-008828SMS

v.

YRC/ROADWAY EXPRESS INC.
AND GALLAGHER BASSETT
SERVICES,
Employer/Servicing Agent.

EVIDENTIARY HEARING ORDER GRANTING E/C'S MOTION FOR EMA

THIS CAUSE came before the undersigned Judge of Compensation Claims for an evidentiary hearing on 11/6/13 E/C's Motion for EMA filed 11/1/13.

Documentary Exhibits-

E/C-

1. Medical reports of Dr. Moya dated 4/13/13 and 5/15/13 filed 11/6/13.
2. Deposition of Dr. Moya taken 10/31/13 and filed 11/5/13 with attachments.

Claimant-

1. 9/4/13 IME Report of Dr. Wachsman filed 11/5/13 as an attachment to his deposition.

Findings of Fact and Conclusion of Law-

1. E/C is seeking an EMA based on a medical conflict between the opinions of Drs. Moya and Wachsman as to the medical necessity of facet ablations. E/C argue that, while a dispute existed between the claimant

and E/C regarding authorization of same, a medical conflict did not exist until 10/31/13, the deposition date of Dr. Moya.

2. Claimant objects to the request for the EMA as untimely. Claimant argues that the dispute existed as of E/C's lack of certification of the facet ablation on or about June of 2013. In the alternative, claimant argues that the medical disagreement between Dr. Moya and Dr. Wachsman existed as of 9/4/13, the date of Dr. Wachsman's IME report. E/C's filing of the EMA motion 6 days prior to the final hearing, and two months Dr. Wachsman's IME report is untimely. This will, in turn, cause a continuance of the final hearing and prejudice the claimant.
3. In reviewing the evidence, it is apparent that on 4/17/13, Dr. Moya recommended therapeutic/diagnostic lumbar facet joint nerve blocks and facet ablation at L2-L3, L3-L4 and L4-L5. E/C received said recommendation on 5/21/13 and referred it for utilization review. It appears that the facet ablation recommendation was declined by said review. In the meantime, claimant returned to Dr. Moya on 5/15/13 when the doctor continued to recommend the lumbar facet joint nerve blocks and now, surgical intervention in the form of an endoscopic discectomy. Dr. Moya does not include the facet ablations in his recommendation on 5/15/13.
4. The parties submitted a pre-trial stipulation wherein the claimant claimed the facet ablation and E/C denied same as not medically necessary.

5. E/C secured their IME with Dr. Wachsman on 9/4/13 that opined that the facet ablation was not medically necessary or in the alternative, the facet blocks should be implemented prior to consideration of the facet ablation.
6. On 10/31/13, Dr. Moya opined in his deposition that claimant still needs both, the facet blocks and ablation (Pg. 11).
7. While a dispute existed as claimant's request and E/C denial of the facet ablation, I find that the existence of a **medical disagreement** between the physicians did not become apparent to the parties until 10/31/13. Dr. Moya clarified in his 10/31/13 deposition that although he did not include facet ablation as a recommendation on 5/15/13, he still opined that the facet ablation were medically necessary consistent with his 4/13/13 report.
8. As such, I find that E/C's request for an EMA is timely and appropriate.

WHEREFORE, IT IS ORDERED:

1. E/C's Motion for an EMA is granted.
2. The final hearing scheduled for 11/7/13 is continued to allow sufficient time for the claimant to attend the EMA and discovery regarding same, if desired by the parties.
3. If there are any issues regarding the EMA, the undersigned is available to hear same on 11/7/13 at 1:30 p.m. The attorneys may appear via phone if they so desire.



Sylvia Medina-Shore
Judge of Compensation Claims

CERTIFICATE OF SERVICE

THIS IS TO CERTIFY that a copy of the instant final evidentiary hearing order was provided to the attorneys of record via e-mail this 6th day of November of 2013. The attorneys shall provide a copy of the instant order to their respective clients upon receipt of same.



Secretary to Judge of Compensation Claims