

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

Valerie Ellington,  
Employee/Claimant,

OJCC Case No. 17-022985MES

vs.

Accident date: 7/19/2017

Health Services of Ocoee, LLC/Premier  
Group Insurance,  
Employer/Carrier/Service Agent.

Judge: Margaret E. Sojourner

**FINAL COMPENSATION ORDER**

This matter was heard at a Final Hearing before the undersigned in Altamonte Springs, Seminole County, Florida on August 7, 2019. Present at the hearing were Claimant, Valerie Ellington and her attorney, Jason R. Kobal. Also present at the hearing was attorney W. Rogers Turner, Jr. on behalf of the Employer/Carrier (EC).

**Issues:**

1. Continued authorization of medical treatment with the authorized physician.
2. Costs and attorney's fees.

**Defenses:**

1. The industrial accident is no longer the MCC of the claimant's need for future treatment.
2. Claimant at MMI with a 0% PIR, no restrictions and no need for further care per Dr. Riggerbach.
3. No costs or attorney's fees are due.

**Findings of Fact and Conclusions of Law**

In making my findings of fact and conclusions of law in this claim, I have carefully considered and weighed all of the testimony and evidence presented. I have resolved all of the conflicts in the testimony and documentary evidence. Based upon the foregoing, the evidence, and the applicable law, I make the following determinations. I have jurisdiction over the parties and the subject matter of this claim. Venue lies in Orange County, Florida. The stipulations of the parties are accepted and adopted by me as findings of fact.

The claimant seeks a return appointment with the authorized physician, Dr. Riggerbach, for Ellington v. Health Services of Ocoee, LLC.

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treatment of her right upper extremity. The EC has denied the request stating that the compensable accident is not the MCC of the need for future treatment. I find that the EC is correct and no further care and treatment for the left upper extremity is warranted as the accident of July 19, 2017 is not the MCC of the claimant's current need for treatment.

Claimant injured her left upper extremity at work and was initially treated by Dr. Macksoud. She then requested a change in physician and came under the care and treatment of Dr. Riggenschach. She also underwent an IME with Dr. Martinez. Dr. Riggenschach was deposed on two occasions. In the first deposition he testified that when he initially saw the claimant he recommended physical therapy, prescribed a sling and ordered an MRI of the left wrist. The MRI revealed age indeterminate tenosynovitis of the flexor tendons and some soft tissue edema. The claimant underwent the recommended physical therapy and began showing improvement. At that time Dr. Riggenschach advised her to stop using the sling. She was seen again in November of 2017 and was complaining of pain in the left hand. He ordered an EMG study which revealed mild carpal tunnel which did not correlate with her complaints and which was not, in his opinion, related to the compensable accident. He opined that the stiffness in her fingers was from lack of use. He testified that claimant had not told him of any prior MVA. He opined the claimant did not require any further care and treatment as a result of the compensable accident. He believed an evaluation with a spine specialist might be appropriate but not as a result of the compensable injury.

Dr. Riggenschach was provided with the records of claimant's medical care which followed the 2015 MVA. He noted that the major complaints of pain were in the cervical spine and left arm. He reviewed an EMG study which was done after the MVA but before the compensable work accident. He stated that this EMG study did not change his prior opinions and explained that the findings on the EMG done after the compensable work injury were consistent with the progression of the cervical spine complaints caused by the 2015 MVA.

Dr. Martinez performed an IME at the request of the claimant. He did know of a MVA in 2013 which involved the claimant's back, but not the one in 2015 which involved the neck and left arm. He reviewed both EMG studies. He did not have the medical records from the MVA and was not aware of the cervical and left arm complaints or the diagnoses which were made. He opined that the claimant's left arm complaints occurred as a result of the compensable work accident based upon the change from the first to second EMG studies and testified claimant required further care and treatment for the left upper extremity.

I accept the testimony of Dr. Riggenbach over that of Dr. Martinez. Dr. Martinez did not have the medical records from the 2015 motor vehicle accident which revealed the diagnoses and extent of complaints made by claimant regarding her left arm and cervical spine. As his opinion is not supported by a complete factual predicate I reject the same. *O'Dell v. Pan American Airlines/American World Airways*, 690 So.2d 1385 (Fla. 1<sup>st</sup> DCA 1997). Dr. Riggenbach did have the full medical records to review and I accept his opinion that the changes in the second EMG were consistent with progression of the pre-existing cervical injuries.

Wherefore it is ordered and adjudged as follows:

1. The claim for continued authorization of medical care is denied.
2. The claims for costs and attorney fees are denied.

DONE AND SERVED this 26th day of August, 2019, in Altamonte Springs, Seminole County, Florida.



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Margaret E. Sojourner  
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## EXHIBITS

### Judge's Exhibits:

1. Petition for Benefits filed at DN 101.
2. Response to PFB filed at DN 104.
3. Mediation Conference report filed at DN 113.
4. Pretrial Stipulation filed at DN 115.
5. EC's Trial Memorandum filed at DN 117.
6. Claimant's Trial Memorandum filed at DN 123.
7. Final Compensation order and Amended Final Compensation Order filed at DN 88, 96.

### Joint Exhibits:

1. Deposition of Dr. Riggerbach taken September 13, 2018 filed at DN 69.
2. Deposition of Dr. Riggerbach taken March 26, 2018 filed at DN 70.

### Claimant's Exhibits:

1. Deposition of Dr. Robert Martinez filed at DN 77-78.
2. PFB filed at DN 33.
3. Response to PFB filed at DN 40.

### EC Exhibits:

1. Morgan & Morgan records filed at DN 72-73.
2. Affidavit of Ellington for PIP benefits filed at DN 74.
3. Deposition of Jimmy Mohess, records custodian MMI Healthcare, filed at DN 71.
4. Deposition of Valerie Ellington filed at DN 68.
5. Joint Composite of Employer Representative filed at DN 88.