

**WORKERS' COMPENSATION APPEALS BOARD
STATE OF CALIFORNIA**

MARIA MORALES, *Applicant*

vs.

**CARE HOMES REGISTRY, INC.; CYPRESS INSURANCE COMPANY;
administered by BERKSHIRE HATHAWAY HOMESTATE COMPANIES, *Defendants***

**Adjudication Number: ADJ9557638
Los Angeles District Office**

**OPINION AND ORDER
DENYING PETITION FOR
RECONSIDERATION**

We have considered the allegations of the Petition for Reconsideration and the contents of the report of the workers' compensation administrative law judge (WCJ) with respect thereto. Based on our review of the record, and for the reasons stated in the WCJ's report, which we adopt and incorporate, we will deny reconsideration.

Former Labor Code section 5909 provided that a petition for reconsideration was deemed denied unless the Appeals Board acted on the petition within 60 days from the date of filing. (Lab. Code, § 5909.) Effective July 2, 2024, Labor Code section 5909 was amended to state in relevant part that:

- (a) A petition for reconsideration is deemed to have been denied by the appeals board unless it is acted upon within 60 days from the date a trial judge transmits a case to the appeals board.
- (b)
 - (1) When a trial judge transmits a case to the appeals board, the trial judge shall provide notice to the parties of the case and the appeals board.
 - (2) For purposes of paragraph (1), service of the accompanying report, pursuant to subdivision (b) of Section 5900, shall constitute providing notice.

Under Section 5909(a), the Appeals Board must act on a petition for reconsideration within 60 days of transmission of the case to the Appeals Board. Transmission is reflected in Events in the Electronic Adjudication Management System (EAMS). Specifically, in Case Events, under

Event Description is the phrase “Sent to Recon” and under Additional Information is the phrase “The case is sent to the Recon board.”

Here, according to Events, the case was transmitted to the Appeals Board on September 25, 2024 and 60 days from the date of transmission is Sunday, November 24, 2024. The next business day that is 60 days from the date of transmission is *Monday, November 25, 2024*. (See Cal. Code Regs., tit. 8, § 10600(b).)¹ This decision is issued by or on Monday, November, 25, 2024, so that we have timely acted on the petition as required by Labor Code section 5909(a).

Section 5909(b)(1) requires that the parties and the Appeals Board be provided with notice of transmission of the case. Transmission of the case to the Appeals Board in EAMS provides notice to the Appeals Board. Thus, the requirement in subdivision (1) ensures that the parties are notified of the accurate date for the commencement of the 60-day period for the Appeals Board to act on a petition. Section 5909(b)(2) provides that service of the Report and Recommendation shall be notice of transmission.

Here, according to the proof of service for the Report and Recommendation by the workers’ compensation administrative law judge, the Report was served on September 25, 2024, and the case was transmitted to the Appeals Board on September 25, 2024. Service of the Report and transmission of the case to the Appeals Board occurred on the same day. Thus, we conclude that the parties were provided with the notice of transmission required by Section 5909(b)(1) because service of the Report in compliance with Section 5909(b)(2) provided them with actual notice as to the commencement of the 60-day period on September 25, 2024.

¹ WCAB Rule 10600(b) (Cal. Code Regs., tit. 8, § 10600(b)) states that:

Unless otherwise provided by law, if the last day for exercising or performing any right or duty to act or respond falls on a weekend, or on a holiday for which the offices of the Workers' Compensation Appeals Board are closed, the act or response may be performed or exercised upon the next business day.

For the foregoing reasons,

IT IS ORDERED that the Petition for Reconsideration is **DENIED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE A. ZALEWSKI, CHAIR

I CONCUR,

/s/ JOSÉ H. RAZO, COMMISSIONER

KATHERINE WILLIAMS DODD, COMMISSIONER
CONCURRING NOT SIGNING



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

November 25, 2024

SERVICE MADE ON THE ABOVE DATE ON THE PERSONS LISTED BELOW AT THEIR ADDRESSES SHOWN ON THE CURRENT OFFICIAL ADDRESS RECORD.

**INNOVATIVE MEDIAL MANAGEMENT
PEATMAN LAW GROUP**

DLM/oo

*I certify that I affixed the official seal of
the Workers' Compensation Appeals
Board to this original decision on this
date. o.o*

REPORT AND RECOMMENDATION ON PETITION FOR RECONSIDERATION

I

INTRODUCTION

Maria Morales, a 53-year-old laborer for Care Homes Registry, filed an Application for Adjudication on 7/29/14 alleging that on 9/6/13, she sustained injury arising out of and occurring on the course of employment to her back, neck, knee, and ankle as a result of a fall. The claim was accepted by the employer.

Defendant (Hereinafter Petitioner) has filed a timely, verified, Petition for Reconsideration of the Findings and Orders dated 8/9/24 without stating any statutory grounds for reconsideration.

Petitioner contends that the Court erred in determining that the reasonable value of the medical treatment services incurred by Lien Claimant Monrovia Memorial Hospital was \$110,973.73. More specifically, Petitioner asserts that:

1. Acceptance rates from a Kunz study are not applicable to a reasonable cost basis analysis, and;
2. The Court erred in opining that the testimony of bill review expert Sue Choi was irrelevant to the cost.

II

FACTS

Lien Claimant Monrovia Memorial Hospital provided inpatient hospital services to Applicant during the period commencing 10/28/14 through 11/1/14 and 1/26/16 through 1/29/16 (Lien Claimant's exhibit 1, 4, and 15).

Lien Claimant also provided inpatient hospital services to Applicant on 10/7/15 (Lien Claimant's exhibit 10). A bill review conducted by QMBR on 6/18/19 determined the reasonable value of those services based on comparable facilities to be \$1,372.31 (Defense exhibit F). A bill review conducted by Lien Claimant sometime in 2022 determined the reasonable value of those to be \$1,368.34 (Lien Claimant's exhibit 30).

The parties, unable to come to an agreement regarding the value of the services, proceeded to trial on the issue on 6/17/22. The parties stipulated that the charges of Monrovia Memorial Hospital were not subject to the fee schedule (MOH 6/17/22). The primary issue in the case was value of the

charges. In support of their charges, Lien Claimant submitted a Kunz Study totaling 1035 pages reflecting payments accepted by Lien Claimant for services billed under DRG codes 455 and 460 (Lien Claimant's 19). The study included documentation of the payments accepted by way of check. Lien Claimant also submitted a bill review declaration and analysis from Alex Kauffman (Lien Claimant's 22) wherein a number of methodologies were discussed including cost to charge ratio. Defendant submitted bill reviews from QMBR regarding the hospital stays in 2014 and 2016 (Defense exhibit C). Those bill reviews based provided two different values for each stay. One figure was based on Kunz type comparable acceptance rates equal to the respective sums of \$43,702.16 and \$73,392.45 totaling \$117,094.61, and the other one was listed under the acronym of SSPPS for a total sum of \$22,987.17.

At trial, Petitioner offered the testimony of Sue Choi, the bill reviewer from QMBR. The Court denied the testimony as cumulative as her bill review was already in evidence. Lien Claimant's offer of the testimony of their bill reviewer was likewise denied (MOH, page 6).

The Court issued Findings and Orders on 8/1/22 wherein it was found that the record was lacking substantial evidence regarding Lien Claimant's charges because there was no stipulation or bill review of the 10/7/15 date of service. The matter was once again submitted on 4/19/23 with two bill reviews of the 10/7/15 date of service admitted into evidence.

The Court issued Findings and Orders on 5/26/23 wherein it was found that the reasonable value of all of lien Claimant's services was equal to \$124,412.08. The decision was grounded on a split between the acceptance rates gleaned from Lien Claimant's Kunz Study and the QMBR acceptance rates, in addition to Petitioner's bill review figure from the 10/7/15 date of service. Petitioner filed a Petition for Reconsideration of that decision on 6/26/23 with arguments made that Defendant was denied due process when his witness was not permitted to testify, and that the Court did not make a determination on a reasonable cost basis. The Court rescinded the Findings and Orders on 7/3/23. At the subsequent conference, Petitioner was permitted obtain testimony of his witness by way of deposition.

The deposition of defense witness Sue Choi took place on 9/1/23 (Defense exhibit G). At that deposition, Ms. Choi testified that the factors she considered when determining the reasonable cost basis for Lien Claimant included: the acceptance rates from "acute facilities" in the same geographic area; the acceptance rates from long term care hospitals; and what Medicare pays long term care hospitals for short term stays (Defense G, page 16, lines 9-25, page 17 lines 1-4). Based on those factors, she determined that the values for the respective hospital stays were equal to \$43,702.16 and \$73,392.45

(page 14, lines 19-25, and page 15, lines 1-8). Ms. Choi also testified that she looked at the price transparency of what Monrovia would accept for the services in 2021. The witness explained that Medicare implemented what's called a price transparency for the patient to know what the cost would be for services provided by the facility (Defense G, page 15, lines 9-20). Per the witness, information was taken by her from the Medicare website in 2021 which reflected that the gross price (for the 2014 dates of service) of \$37,080.57 and a cash price of \$9,270.14. For the 2016 dates of service, the figures were \$24,727.24 and \$6,181.81 (Defense G, page 15 lines 21-25 and page 16, lines 1-6). The witness also testified that the value of each hospital stay pursuant to the Sierra system, which measures net inpatient revenue per day, was \$10,002.00 (page 17, lines 3-25, and page 18, line 1).

The matter was submitted for decision once again on 6/7/24 with the Sue Choi deposition transcript taken into evidence.

The Court issued Findings and Orders on 8/9/24 wherein Lien Claimant's services were newly found to be worth \$110,973.73. This decision utilized the same figures from the previous decision, but also factored in the cost to charge ratio figures included in the analysis by Alex Kauffman. The figures cited by Sue Choi at her deposition relative to price transparency or the Sierra system were not factored into the final determination.

III

DISCUSSION

BASIS FOR DETERMINATION OF REASONABLE COST

It has been stipulated that the charges of Monrovia Memorial Hospital are exempt from the fee schedule since it is a long-term care hospital. Thus the hospital gets reimbursed on a reasonable cost basis pursuant to Title VIII CCR section 9789.22(k)(5). Since the term "reasonable cost basis" is not defined in the rules, it has been held that long term care hospitals bear the same burden of proof as other lien claimants that are exempt from the fee schedule. In other words, it must be shown that the charges are reasonable (*Collazo v. Meco-Nag Corp.* (2017) (82 CCC 623)). As such, like other cases where the fee schedule does not apply, the factors set forth in *Kunz v. Patterson Floor Coverings* (2002) 678 CCC 1588 (Appeals Board en banc) are relevant. Thus, the reasonableness of a fee is determined by considering the medical provider's usual fee, the usual fee of other medical providers in the geographical area in which the services were rendered, other aspects of the economics of the medical provider's

practice that are relevant, and any unusual circumstances in the case. Another factor that may be relevant to determining a reasonable fee is evidence from bill review expert regarding cost incurred by facility for particular procedure may be considered (*Cardenas v. Costa View Farms*, 2019 Cal. Wrk. Comp. P.D. LEXIS 323).

In this case, using a range of the evidence approach, the Court considered Lien Claimant's evidence of what it usually accepts for same or similar services, Petitioner's evidence of what other medical providers in the geographical area in which the services were rendered accept, as well as Lien Claimant's evidence of cost pursuant to the cost to charge ratio. Thus all factors covered by Kunz and Cardenas were accounted for except economics of the medical provider's practice for which no evidence was presented.

Petitioner cites Cardenas to support his assertion that it was error to consider Kunz type evidence in determining the reasonable value of Lien Claimant's services. However, Cardenas does not stand for that proposition at all. In fact, the discussion in Cardenas specifically stated: "In determining the amount due to a lien claimant who is exempt from the OMFS, Kunz and Tapia provide guidance regarding the parties' burdens and the calculation of a reasonable fee." In Cardenas, the trial judge's ruling, which was only based on cost to charge ratio figures, was upheld by the WCAB. However, the WCAB did now disavow utilization of Kunz type data even though the trial judge opted against it in that case. As such, the Court did not err in choosing to consider the Kunz figures submitted by Lien Claimant and Defendant.

TESTIMONY OF BILL REVIEW EXPERT

The Court concedes that the testimony of Sue Choi regarding the Medicare price transparency figures may be relevant. The court focused more on her earlier testimony on pages 16-17 of her deposition where she initially outlined what how she considered acceptance rates relative to her bill review. That being said, the testimony regarding her consideration of the Medicare price transparency figures is not persuasive. It appears that Petitioner would have the Court rely on the cash price Medicare price transparency figures of the two stays totaling \$15,451.95. However, nowhere in the bill review from Ms. Choi is that figure cited. The two figures arrived at in the bill review were \$22,587.17 and 117,094.61. Thus the testimony in that regard does not align with the actual bill review. Additionally, there was no documentary evidence presented to corroborate Ms. Choi's testimony as to what was delineated on the Medicare website. As such, the testimony in that regard is not reliable.

Petitioner also cites Ms. Choi's testimony regarding Lien Claimant's Sierra System figures

which is based on revenue as opposed to cost. Additionally the testimony regarding the Sierra value totaling \$20,004.00 is based on the inaccurate assumption that Applicant's hospital stays were only three days each, when the billing reflects stays of five and four days respectively. Again, this figure was not part of the bill review conducted by Sue Choi. The discrepancy between these new figures and the bill review were not explained. However Ms. Choi's testimony regarding her Kunz evidence did match the bill review figure of \$117,094.61 (which is more than what was ordered) and was thus reliable in that regard only. Considering that the sum awarded to Lien Claimant for all three dates of service is less than the sum of the QMBR bill reviews, the determination of the fee made by the court is reasonable.

IV.

RECOMMENDATION

For the foregoing reasons, the undersigned WCALJ recommends that the Petition for Reconsideration be **DENIED**.

DATE: 9/24/24

Jeffrey Morgan

WORKERS' COMPENSATION
JUDGE