

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

MIGUEL GONZALEZ, *Applicant*

vs.

**NASCIMENTO FERNANDO;
ZENITH FRESNO,
*Defendants***

**Adjudication Number: ADJ10740002, ADJ10760095
Oakland 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 and Opinion on Decision, which we adopt and incorporate, we will deny reconsideration.

For the foregoing reasons,

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

WORKERS' COMPENSATION APPEALS BOARD

/s/ JOSÉ H. RAZO, COMMISSIONER

I CONCUR,

/s/ CRAIG SNELLINGS, COMMISSIONER

/s/ KATHERINE A. ZALEWSKI, CHAIR



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

July 23, 2024

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

**CALIFORNIA CERTIFIED INTERPRETERS
CHERNOW, PINE AND WILLIAMS**

LN/md

*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**

1. Identity of Petitioner: Lien Claimant
Timeliness: Yes
Verification: Yes
- [2]. Date of Findings and Orders: April 29, 2024
- [3]. Lien claimant's Contentions: The Findings that defendant's Medical Provider Network (MPN) contained service providers for ancillary services, including interpreters and that defendant provided adequate notice of the existence of its MPN, including the ancillary service providers must be set aside. In support, lien claimant argues that there was not adequate notice, that defendant's MPN only included services for translation, and that interpreting is distinct from translation.

**II.
STATEMENT OF THE CASE AND FACTS**

Applicant sustained two injuries to multiple body parts while working for defendant as a dairy worker. The first injury occurred on September 9, 2015 (ADJ10760095), and the second occurred on September 27, 2016 (ADJ10740002). Both of these claims resolved in a single Compromise and Release. In the Compromise and Release, the parties stipulated that defendant would pay, adjust or litigate any liens and that "defendant complied with all rules and regulations regarding medical network control and at all times had the right to control applicant's medical treatment per Labor Code sections 4616 and 4616.7." (Compromise and Release, pp. 6-7.)

On May 24, 2021, before the cases settled, defendant notified Dr. Toufan Razi, M.D., that applicant was authorized to attend a one-time evaluation for a functional restoration program. (Exhibit C at p. 1.) As relevant herein, defendant's authorization letter further stated that, Zenith provides treatment through the Zenith Medical Provider Network (ZMPN). Injured workers are required to obtain care through the ZMPN unless authorization has been given to treat with a provider outside of the network. Referrals for treatment should be made to ZMPN providers. A listing of ZMPN providers is available at: <http://www.thezenith.com>. On the home page select Medical Providers, then

under Medical Networks and Panels select Find a Provider. Zenith provides certain services through ancillary service providers. A copy of the Zenith Contact List is enclosed for your convenience. Providers that participate in the ZMPN through a Zenith approved ancillary vendor ("Ancillary Vendor") must comply with the Ancillary Vendor's procedures including but not limited to referral/coordination of care and billing. Any treatment rendered outside of the Ancillary Vendor's procedures is subject to denial as out of network treatment.

(Id. at p. 2.)

The notice further stated in relevant part that "translation services" could be obtained through OneCall Language or Access on Time. *(Id. at p. 3.)*

On July 7, 2021, defendant sent a letter to Dr. Razi stating that applicant was authorized to participate in 80 hours of a Functional Restoration Program at 4 hours per day. (Exhibit B at p. 1.) Defendant further stated that:

Zenith provides treatment through the Zenith Medical Provider Network (**ZMPN**). Injured workers are required to obtain care through the **ZMPN** unless authorization has been given to treat with a provider outside of the network. Referrals for treatment should be made to **ZMPN** providers. Providers are included in the ZMPN only for the locations listed in Zenith's online directory. Services provided at other locations are subject to denial as out of network. A listing of ZMPN providers is available at: <http://www.thezenith.com> (under the "Injured Employees" tab select "Locating a Medical Provider", then select "Zenith Medical Provider Network (ZMPN) Medical Provider search").

A contact list for service providers is also available at <http://www.thezenith.com> (under the "Medical Providers" tab select "Information for Providers", then select "Find an Ancillary Service Vendor", and then "Zenith Service Vendor List"). Providers that participate in the **ZMPN** through a Zenith approved ancillary vendor ("Ancillary Vendor") must comply with the Ancillary Vendor's procedures including but not limited to referral/coordination of care and

billing. Any treatment rendered outside of the Ancillary Vendor's procedures is subject to denial as out of network treatment.

(Id. at pp. 5-6.)

On November 23, 2021 and on December 13, 2021, Zenith issued explanations of Review stating that it would not pay for the series that California Certified Interpreters provided because the provider was not a member of the Zenith Medical Provider Network, the services were not authorized, and the services were not pre-authorized. (Exhibit E; Exhibit D.)

On August 2, 2022, CA Certified Interpreters (lien claimant) filed a lien in the amount of \$21,956.25 for interpreter services. (Lien, August 2, 2022.)

On October 18, 2023, applicant resolved his claims via Compromise and Release as described above.

On April 17, 2024, the matter progressed to trial on the issue of the lien filed by lien claimant. Defendant contended that lien claimant's services were outside of its MPN, and that therefore lien claimant was not entitled to reimbursement. The parties were given until 5:00 pm on April 24, 2024 to file their trial briefs, and the matter was submitted on the record.

On April 24, 2024 defendant filed its post-trial brief. On that same date, lien claimant filed its post-trial brief.

On April 29, 2024, the Findings and Orders issued, and as relevant herein, it was determined that Defendant's MPN contained service providers for interpreting, that defendant issued notice of its MPN, that lien claimant was not part of defendant's MPN, and that defendant was not obligated to provide payment to lien claimant.

On May 24, 2024, lien claimant filed its Petition for Reconsideration.

III. **DISCUSSION**

It is well established that if an applicant impermissibly seeks treatment outside of a valid medical provider network (MPN), defendant is not liable for that treatment. (Lab. Code § 4603.2(a)(3).) Further, section 4616(a)(4)(1) provides that,

...every medical provider network shall post on its internet website a roster of all participating providers, which includes all physicians and *ancillary service providers in the medical provider network*, and shall update the roster at least quarterly. Every network shall provide to the administrative director the internet website address of the network and of its roster of participating providers. The roster of participating providers shall include, at a minimum, the name of each individual provider and their office address and office telephone number. If the ancillary service is provided by an entity rather than an individual, then that entity's name, address, and telephone number shall be listed.
(Lab. Code, § 4616, emphasis added.)

“Ancillary services” are defined as the “provision of medical services or goods as allowed in Labor Code section 4600 by a non-physician, including, but not limited to, interpreter services.” (Tit 8, Cal. Code Regs, § 9767.1(a)(1).) Therefore, defendants are entitled to include interpreters related to medical treatment in their MPNs, and that defendants will not be liable for the costs of those interpreters if an applicant impermissibly obtains interpreting services outside of that MPN.

Here, as explained in the Opinion on Decision, applicant stipulated that, “defendant complied with all rules and regulations regarding medical network control and at all times had the right to control applicant’s medical treatment per Labor Code sections 4616 and 4616.7.” (Compromise and Release, pp. 6-7.) Further, defendant provided notice that its MPN provided ancillary services, including interpreters, and lien claimant did not provide any evidence reflecting that it was part of defendant’s MPN. (Exhibit 2 at pp. 2-3, and Exhibit B at pp. 5-6.)

Next, lien claimant has not presented any evidence in support of its contention that translation services are distinct from interpreting services. (*Hamilton v. Lockheed Corporation (Hamilton)* (2001) 66 Cal.Comp.Cases 473, 478 (Appeals Board en banc) [Decisions “must be based on admitted evidence in the record”].) Rather, the plain usage of the word “translation” demonstrates that “translation” refers to both the act of interpreting one language to another and the result of performing the act of interpreting. As relevant herein, the dictionary defines “translation” as both “an act, process, or instance of translating: such as a rendering from one language into another *also* : the product of such a rendering.” (Merriam-Webster Online Dict. www.merriam-webster.com/dictionary/translation [as of May 28, 2024]; see also Cambridge Online Dict.<dictionary.cambridge.org/dictionary/English/translation [as of May 28, 2024] [“something that is translated or the process of translating something, from one language to another”].)

Based upon the above, I recommend that lien claimant’s Petition for Reconsideration be denied.

Date: May 29, 2024

Alison Howell
WORKERS' COMPENSATION
ADMINISTRATIVE LAW JUDGE