WORKERS' COMPENSATION APPEALS BOARD
STATE OF CALIFORNIA

SILVIA CORREA, ***Applicant***

vs.

DISPLAY PRODUCTS, INC.;
TRAVELERS PROPERTY CASUALTY COMPANY OF AMERICA, ***Defendants***

Adjudication Number: ADJ9036010
Van Nuys District Office

OPINION AND ORDER DENYING PETITION FOR RECONSIDERATION

Defendant Travelers Property Casualty Company of America seeks reconsideration of the April 3, 2024 Findings and Award, wherein the workers' compensation administrative law judge (WCJ) found that treating physician Dr. Shamie submitted a Request for Authorization (RFA) on February 16, 2024, that the RFA indicated the need for expedited review, and that defendant did not issue a determination in response to the RFA within 72 hours. The WCJ determined that defendant's Utilization Review (UR) determination issued on February 21, 2024 was untimely, and that the request for home caregiver assistance was medically necessary.

Defendant's Petition for Reconsideration (Petition) contends that the RFA failed to sufficiently document the need for expedited review, and that the UR decision of February 21, 2024 was appropriately decided within five business days of receipt, and was therefore timely.

We have received an Answer from applicant. The WCJ prepared a Report and Recommendation on Petition for Reconsideration (Report), recommending that the Petition be denied.

We have considered the Petition and the Answer, and the contents of the Report, and we have reviewed the record in this matter. For the reasons discussed below, we will deny reconsideration.

FACTS

Applicant sustained admitted injury to the wrists, lumbar spine, respiratory disorder, and psyche, from March 28, 2008 to July 12, 2013, while employed by defendant Display Products, Inc., insured by Travelers Property Casualty Company.

On February 16, 2024, primary treating physician M. A. Shamie, M.D., submitted an RFA for "care giver assistance" 12 hours per day, seven days per week, for a period of six months, along with medical transportation. (Ex. X1, Report and RFA of M. A. Shamie, M.D., dated February 16, 2024.) The RFA was marked for Expedited Review, indicating the "employee faces an imminent and serious threat to his or her health."

On February 21, 2024, defendant issued its UR determination that the requested treatment was non-certified. (Ex. X3, Utilization Review Determination, dated February 21, 2024.)

On March 20, 2024, the parties proceeded to trial on the issue of whether defendant's UR determination was timely, and if not, whether the underlying treatment modalities were medically necessary. The parties also indicated a related issue of whether "expedited review was appropriate and based on substantial medical evidence," whether the court could properly consider the rationale of the UR decision in determining medical necessity, and whether prior stipulations between the parties concerning home health care remained in effect. (Minutes of Hearing, March 20, 2024, pp. 2-3.)

On April 3, 2024, the WCJ issued his determination finding that defendant failed to issue its UR determination within 72 hours of the February 16, 2024 RFA, rendering defendant's February 21, 2024 determination untimely. (Finding of Fact Nos. 1 & 2.) The WCJ further determined the underlying request to be medically necessary and awarded the requested home health care and medical transportation. (Finding of Fact No. 4; Award, No. "a".) The Opinion observed that there was no evidence that a medical professional reviewed the RFA marked for expedited review within 72 hours of receipt. (Opinion on Decision, at pp. 4-5.)

Defendant's Petition contends the RFA fails to substantiate the need for expedited review, and that the UR decision rendered within five business days of the RFA was timely. (Petition, at p. 4:15.) Defendant observes that it previously stipulated to provide applicant with four hours of home health care seven days per week for six months, as of July 12, 2023. Defendant contends the need for increased home health care described in the February 16, 2024 RFA is not substantiated in the medical record. (*Id.* at p. 7:12.)

Applicant's Answer responds that a medical determination is necessary to justify a defendant's decision to disregard a request for expedited review, and that the record reflects no such medical evidence. (Answer, at p. 6:4.)

The WCJ's Report reviews our jurisprudence in this area and concludes that a medical professional must evaluate a request for expedited review within the 72 hours allowed by statute. The Report notes that defendant took no action within the required expedited review timeframe, and that defendant's after the fact determination that the RFA did not establish the need for expedited review was invalid. (Report, at p. 5.) Accordingly, the WCJ recommends we deny the Petition.

DISCUSSION

Labor Code section 4610 provides for a Utilization Review process to evaluate requested medical treatment, and subdivision (i)(3) makes specific provision for expedited review as follows:

> If the employee's condition is one in which the employee faces an imminent and serious threat to the employee's health, including, but not limited to, the potential loss of life, limb, or other major bodily function, or the normal timeframe for the decisionmaking process, as described in paragraph (1), would be detrimental to the employee's life or health or could jeopardize the employee's ability to regain maximum function, decisions to approve, modify, or deny requests by physicians prior to, or concurrent with, the provision of medical treatment services to employees shall be made in a timely fashion that is appropriate for the nature of the employee's condition, but not to exceed 72 hours after the receipt of the information reasonably necessary to make the determination.
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> (Lab. Code, § 4610(i)(3).)

Administrative Director (AD) Rule 9792.9.1(c) (Cal. Code Regs., tit. 8, § 9792.9.1(c)) provides, in relevant part:

> (3) Prospective or concurrent decisions to approve, modify, delay, or deny a request for authorization shall be made in a timely fashion that is appropriate for the nature of the injured worker's condition, not to exceed five (5) business days from the date of receipt of the completed DWC Form RFA.
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> (4) Prospective or concurrent decisions to approve, modify, delay, or deny a request for authorization related to an expedited review shall be made in a timely fashion appropriate to the injured worker's condition, not to exceed 72 hours after the receipt of the written information reasonably necessary to make the

> determination. The requesting physician must certify in writing and document the need for an expedited review upon submission of the request. A request for expedited review that is not reasonably supported by evidence establishing that the injured worker faces an imminent and serious threat to his or her health, or that the timeframe for utilization review under subdivision (c)(3) would be detrimental to the injured worker's condition, shall be reviewed by the claims administrator under the timeframe set forth in subdivision (c)(3).

Thus, an RFA marked for expedited review will normally require the claims administrator to review the request within 72 hours, unless the request is not reasonably supported by "evidence establishing that the injured worker faces an imminent and serious threat to his or her health." If the request for expedited review is not substantiated, the time for review would be five business days or 14 calendar days if the employer requests additional information from the treating physician. (Cal. Code Regs., tit. 8, § 9792.9.1(c)(4).)

Here, defendant contends that the February 16, 2024 RFA does not establish the need for expedited review. Defendant's Petition avers the RFA requests review "at the earliest convenience," and "fails to provide written evidence that expedited review was necessary." (Petition, at p. 4:21.) Defendant submits that applicant's condition is only described in general terms and does not address the effect of applicant's injuries on her activities of daily living. (*Id.* at p. 5:1.)

The WCJ's Report acknowledges that Rule 9792.9.1(c)(4) allows for non-expedited review timeframes when the need for expedited review is insufficiently documented. The question presented, however, is "in a case where a doctor has designated a request for expedited review, who gets to determine whether that designation was appropriate, and at what point can that decision be made?" (Report, at pp. 4-5.)

The WCJ observes that in enacting the reform legislation of SB863 in 2013, the legislature specified that "[t]hat having medical professionals ultimately determine the necessity of requested treatment furthers the social policy of this state in reference to using evidence-based medicine to provide injured workers with the highest quality of medical care…." (Report, at p. 5, citing Sen. Bill No. 863 (2011–2012 Reg. Sess.) § 1, subd. (e).) The WCJ reasons that in order to effectuate the stated legislative intent of having *medical professionals* decide issues of medical necessity, a medical professional, rather than a claims administrator, must evaluate whether the record supports the need for expedited review.

The WCJ's analysis finds support in our jurisprudence in this area. In *RJ Hall v. Western Medical* (December 13, 2017, ADJ9619437) [2017 Cal. Wrk. Comp. P.D. LEXIS 581], we held that "defendant is not authorized to disregard the treating physician's characterization of an RFA … No statute or case allows a defendant to ignore the statutory and regulatory time frames for acting by simply declaring that the RFA did not meet the criteria for expedited treatment." (*Id.* at pp. 3-4.) Conversely, in *Diaz v. Pacific Coast Framers* (August 14, 2023, ADJ14244911) [2023 Cal. Wrk. Comp. P.D. LEXIS 211], we held that defendant properly reviewed an RFA marked for expedited review under the non-expedited timeframe. However, the UR decision therein was prepared *by a UR physician* and specifically addressed the issue of whether the RFA established an imminent and serious threat to applicant's health.

Here, the WCJ's Report states:

> If a treating doctor has [determined that a treatment request requires expedited review], it is incumbent upon defendant to take that determination at face value and review the request within 72 hours. Within that 72 hour review period, as part of that review, the reviewing medical professional may, consistent with 8 C.C.R. 9792.9.1(c)(4), determine that the request is not reasonably supported by evidence establishing urgency, and that the standard prospective review timeframe will suffice. This is akin to allowing a defendant additional time to make a prospective decision if more information is required, but only if the request for additional information is made within the original time frame for a timely decision.
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> (Report, at p. 6.)

In the instant matter, there was no evidence of any medical review of the need for expedited review, because the record did not reflect *any action* taken by defendant within the requisite 72 hours afforded under Rule 9792.9.1(c)(4). The WCJ concludes that, "to allow defendant an opportunity to retroactively attack WCAB jurisdiction for want of 'urgency,' without responding in some fashion with the same urgency requested by the physician and demanded by the statute and regulation, is to defeat the purpose of having an expedited review procedure … Without a determination by a medical professional that the situation does not warrant expedited review, made within 72 hours of the receipt of the request, this Court was unwilling to second-guess the determination of applicant's treating doctor, a medical professional who did make such a determination." (Report, at p. 6.)

Pursuant to Rule 9792.9.1(c)(4), an RFA marked for expedited review involves two determinations, both of which are medical in nature. The reviewer must make an initial determination as to whether the request is reasonably supported by evidence establishing that the injured worker faces an imminent and serious threat to their health, or that the timeframe for non-expedited review would be detrimental to the injured worker's condition. Thereafter, the reviewer must determine whether the requested medical treatment is reasonably medically necessary, as supported by evidence-based medicine and applicable treatment guidelines. Both determinations involve an evaluation of medical issues, including the severity of the condition or diagnosis, the likelihood of imminent and serious threat to the applicant's health, factors mitigating or exacerbating the condition, and the interplay between evidence-based medicine, treatment guidelines, and the requested medical treatment modalities. Given the medical determinations inherent in evaluating both the urgency of the RFA as well as the requested treatment, we agree with the WCJ that the determination should be made by a medical professional, rather than a claims professional. We further agree that the initial review of whether the evidence supports expedited review should be accomplished within the timeframe described in AD Rule 9792.9.1(c)(4).

Here, there is no evidence that a medical professional reviewed the request for expedited review, or that *any* action was taken within the required timeframe for expedited review pursuant to AD Rule 9792.9.1(c)(4). Accordingly, we concur with the WCJ's conclusion that the UR decision was untimely.

Defendant further contends that the medical treatment requested in the February 16, 2024 RFA is not medically necessary. Defendant acknowledges that it previously authorized home caregiver assistance four hours per day, seven days per week. (Petition, at p. 7:12.) Defendant contends, however, that the RFA fails to "set forth and summarize the medical reports relied upon in reaching this conclusion and explain why this 'substantial increase in hours' is reasonable and medically necessary." (*Id.* at p. 7:17, citing the Opinion on Decision, at p. 6.)

The WCJ's Report responds:

> Per Dr. Shamie, the applicant's husband is now acting as her primary care giver, providing "essential care and support", to include assistance with bathing, dressing, grooming, meal preparation, and medication management. Applicant has already been receiving transportation services to all medical appointments at defendant's expense, which separately qualifies her as "homebound". Dr. Shamie states that applicant "requires extensive assistance with activities of daily living...." He describes applicant's husband's support as "essential",

> "integral", and "vital", providing support for eating, bathing, dressing, and medication management. Accepting as true that applicant requires "extensive" assistance with bathing, dressing, grooming, transportation, meal preparation, and medication management, and that her husband is currently providing her this "essential care and support", it would appear that authorization of such services would overcome the applicant's deficits in [Activities of Daily Living] and allow her to avoid inpatient care. A person who, without assistance, cannot bathe, dress, prepare their own meals, manage their own medications, or transport themselves outside of the home, is undoubtedly incapable of independent living. That applicant's husband currently happens to be providing these services without compensation has no bearing on whether those services are medically necessary or would otherwise be required to be provided by a 3rd party at defendant's expense. The Court found and finds that Dr. Shamie's request is consistent with the treatment
> recommendations outlined in the MTUS. Accordingly, the requested home healthcare services are medically necessary.
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> (Report, at p. 8.)

The February 16, 2024 RFA thus indicates the need for an increase in the previously authorized services. We are persuaded that the WCJ reasonably evaluated the impact of the requested increased hours on applicant's Activities of Daily Living, and concluded the requested treatment was consistent with evidence-based treatment guidelines. We decline to disturb the WCJ's finding of medical necessity of the requested treatment, accordingly.

In summary, we agree with the WCJ that the determination of whether expedited review of an RFA is supported in the record is an inherently medical determination that should be accomplished by a medical professional, in the timelines allocated for expedited review under AD Rule 9792.9.1(c)(4). Here, the record does not establish that defendant took any action within the required timeframe for expedited review pursuant to AD Rule 9792.9.1(c)(4). Accordingly, defendant's UR decision was untimely. We are further persuaded that the WCJ reasonably exercised his discretion to determine that the requested increase in home caregiver services was medically reasonable and necessary. We will deny reconsideration, accordingly.

For the foregoing reasons,

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

WORKERS' COMPENSATION APPEALS BOARD

/s/ CRAIG SNELLINGS, COMMISSIONER

I CONCUR,

/s/ JOSEPH V. CAPURRO, COMMISSIONER

KATHERINE A. ZALEWSKI, CHAIR
CONCURRING NOT SIGNING

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

July 2, 2024

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

SILVIA CORREA
SPARAGNA & SPARAGNA
WOOLFORD & ASSOCIATES

SAR/abs

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