

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

RIGOBERTO PLASCENCIA, *Applicant*

vs.

**OASIS OUTSOURCING, INCORPORATED;
ZURICH AMERICAN INSURANCE COMPANY, administered by ESIS, INC. *Defendants***

**Adjudication Numbers: ADJ11597078, ADJ11597097
Van Nuys District Office**

**OPINION AND ORDER
GRANTING PETITION FOR
RECONSIDERATION
AND DECISION AFTER
RECONSIDERATION**

Applicant seeks reconsideration of the Supplemental Joint Findings of Fact and Award (F&A) issued on August 25, 2025. The workers' compensation administrative law judge (WCJ) found, in relevant part, that applicant is entitled to home health care services four hours per day for four days per week for three months retroactive as of January 20, 2023 and from December 5, 2024 to present and continuing.

Applicant alleges in pertinent part that the WCJ erred by awarding home health care services at four hours per day four days per week and that the award should have been for eight hours a day for seven days a week.

Defendant did not file an answer. The WCJ issued a Report and Recommendation (Report) recommending the Petition be granted with an amended award to clarify that the award is for two separate periods of time, one starting January 20, 2023 for three months and a separate period from December 5, 2024 and ongoing, but still awarding home health care services at four hours per day four days per week.

We have considered the allegations of the Petition for Reconsideration and the contents of the Report. Based on our review of the record, and for the reasons stated in the WCJ's report, we will grant reconsideration, amend the WCJ's decision to find that applicant is entitled to home

health care services of four hours per day, five days per week from January 23, 2023 to May 9, 2023 and of eight hours per day, seven days per week as of May 10, 2023 and defer the issue of the period from May 2, 2022 to January 22, 2023. We will otherwise affirm the decision of August 25, 2025.

FACTS

Applicant while employed during the period of June 20, 2016 to June 20, 2017, as a welder, by defendant Oasis Outsourcing, sustained a cumulative injury to his lumbar spine, bilateral knees, neurological system, and bowels. Applicant also sustained injury on June 20, 2016 to his lumbar spine. The primary treating physician is Mathew Longacre, M.D. (Minutes of Hearing (MOH), 07/3/2024, 3:9.)

On May 2, 2022, applicant was examined by Dr. Longacre. The relevant history notes post lumbar spine surgery on February 20, 2020, status post T10-S2 fusion with neurosurgery, pending requests for neurology consultations and follow up with spine specialists. (Applicant's Ex. 56, p. 2.) The report notes applicant has worsening pain in the lumbar spine down to the bilateral lower extremities as well as right knee pain, and that applicant has limited range of motion and diffuse pain. (*Id.* p. 1.) Dr. Longacre states, "Due to patient's significant limitations, he will require home health care 8 hours a week (*sic*) for 7 days a week." (*Id.* at p. 2.)

On June 16, 2022, applicant returned to Dr. Longacre. Dr. Longacre notes applicant has worsening pain in the lumbar spine radiating up to his thoracic spine down his bilateral lower extremities with continuous locking in the right knee. (Applicant's Ex. 57, p. 1.) The report documents "intermittent uncontrollable spasms of upper and lower extremities (reportedly worsened when in public)." (*Id.* at p. 2.) Dr. Longacre notes a "denial letter" for home health care services. He states, "Patient has significant limitations in ability to ambulate as well as bathe and change. I am requesting reconsideration for home health for 5 days a week for 4 hours for one month. This is to help him with normal activities of daily living but he is unable to complete due to his uncontrollable spasms in upper extremities." (*Id.* at p. 2.)

On July 5, 2022, applicant returned to Dr. Longacre. Dr. Longacre again notes a reconsideration request for home health care services of 4 hours a day for 5 days a week for 30 days. (Applicant's Ex. 58, p. 2.)

In a report dated October 26, 2022, Dr. Longacre notes that applicant has intermittent uncontrollable spasms of upper and lower extremities and notes use of morphine to alleviate pain

as needed. (Applicant's Ex. 65, p. 1.) Dr. Longacre notes, "Patient continues to need assistance in his home. Wife has been overextended trying to help him with his limitations. He continues to need home health care assistance however this was requested before and was denied. I am simply requesting a home health care assessment at this time." (*Id.* at p. 2.)

On December 1, 2022, Dr. Longacre notes that applicant had a fall at home which resulted in a CT scan being performed. The CT scan showed that applicant had a failed fusion in the lumbar spine and a revision was recommended on an urgent basis. (Applicant's Ex. 68, p. 2.) Dr. Longacre notes, "Patient continues to need assistance in his home. Wife has been overextended trying to help him with his limitations. We are pending authorization for home health care assessment at this time." (*Id.*)

On January 5, 2023, Dr. Longacre noted applicant's symptoms of pain and intermittent uncontrollable spasms of upper and lower extremities and that applicant continues telemedicine appointments due to the tremors. Dr. Longacre again notes, "We are pending home health care. Patient continues to need assistance in his home. Wife has been overextended trying to help him with his limitations." (Applicant's Ex. 69, p. 2.)

The RFA for this recommendation is dated January 20, 2023, indicating a new request for home health care 4 hours a day, 4 days per week. (Applicant's Ex. 70.)

Then on February 1, 2023, Dr. Longacre notes again, "We are pending home health care authorization. I received correspondence letter dated 1/25/2023 requesting for additional information. I requested for home health care 4 days a week 4 hours a day. It is requested how many sessions total. I am requesting for home health care for 3 months which is the equivalent of 48 sessions." (Applicant's Ex. 71.) Subsequently, in his report of March 1, 2023, Dr. Longacre notes that home health care services have been denied. (Applicant's Ex. 73.)

On May 10, 2023, nurse case manager, Karen Brand, RN, performed a comprehensive nursing assessment. (Applicant's Ex. 116.) The report notes that the assessment was agreed to by both parties. (*Id.* p. 6.) Ms. Brand notes that applicant has intermittent uncontrollable spasms and weakness in his upper extremities. (*Id.* at p. 7.) Applicant advises that he cannot dress himself without assistance, is unable to bend at the waist, and cannot perform other activities of daily living. (*Id.*) His wife works 30 hours per week outside the home but is also the primary caregiver with the help of their son when she is at work. (*Id.*) Ms. Brand comments, "As she ages, she will not be able to take care of IW (*sic*) as she does right now. Assistance from an in-home caregiver 8

hours a day 5 days per week to include help with self-care needs and prevent further injury or worsening of IW's condition.” (*Id.* at p. 7.) However, she goes on to delineate the specific amount of time for each category of care. For nutrition, she recommends assistance from home health aide for nutritional needs and dressing/grooming each at 2 hours a day, 7 days per week and for bathing, gastrointestinal/genitourinary, mobility (including ambulating and transferring), household management each at 1 hour per day, 7 days per week. (*Id.* at pp. 7-12.)

On July 3, 2024, the matter proceeded to trial. The only issue was the “need for further medical treatment in the form of home healthcare.” (MOH, 07/03/2024, 2:24 and 3:11.) No testimony was taken. Applicant objected to defense exhibits A through D, which included utilization review (UR) and independent medical review (IMR) determinations, on the basis that defendant did not list the exhibits on the pre-trial conference statement with sufficient specificity. (MOH, 07/03/2024, 16:7-9.) Defendant argued relevance but conceded that the authors and dates of the documents were not specifically listed. (MOH, 07/03/2024, 16:9-10.) Ruling on the admissibility of the exhibits was deferred.

On July 10, 2024 the WCJ issued a Joint Findings of Fact and Orders (F&O). In his Findings of Fact, he found that, “the court has jurisdiction to determine the reasonableness of the need for medical treatment (in the form of home health care)” and “that there was insufficient evidence to support the reasonableness of the need for medical treatment (in the form of home health care).” In addition to ordering development of the record on the issue of home health care services from primary treating physician (PTP) Dr. Longacre, the WCJ excluded defendant's exhibits due to the failure to comply with Labor Code section 5502(d)(3)¹ and WCAB Rule 10759(c) (Cal. Code Regs., tit. 8, § 10759(c)). Neither party challenged the finding that the WCAB has jurisdiction to address the reasonableness and necessity of the requested medical treatment in the form of home health care services.

On October 1, 2024, Dr. Longacre issued a “supplemental report/review of medical records.” (Applicant's Ex. 120.) The home health assessment is reviewed and relied upon. (*Id.* at p. 27.) Dr. Longacre discusses a UR denial of home health care for four hours per day and 4 days per week for 3 months dated February 3, 2023 and refutes the UR physician's determination that the applicant was not homebound. (*Id.* at p. 21.) There is reference to another UR denial dated

¹ All further statutory references will be to the Labor Code unless otherwise indicated.

June 9, 2023² in which 8 hours per day, 7 days per week for 120 days between June 7, 2022 and August 6, 2022 was denied. (*Id.* at p. 22.) Dr. Longacre goes on to state that there is clear mobility issues in line with the MTUS guidelines and indicates that applicant meets the clinical criteria for medical necessity of home healthcare. (*Id.* at p. 23.) He does not specify duration or quantity.

On December 5, 2024, Dr. Longacre evaluated applicant and issued a report. (Applicant's Ex. 121.) Dr. Longacre observes moderate assistance transferring from seated to standing position and that applicant is using a wheeled seated walker. (*Id.* at p. 24.) Applicant had persistent hand, foot, neck, and back tremors which prevented a full physical examination. (*Id.*) He opines again that the applicant meets the criteria for home health services and requests home health care for 8 hours per day, 7 days per week for 3 months. (*Id.* at p. 29.)

On February 25, 2025, Dr. Longacre was cross-examined by way of deposition. He provides detailed descriptions of applicant's physical limitations due to use of a walker, uncontrollable spasms, the fusions resulting in weakness and loss of range of motion. (Applicant's Ex. 122.) Dr. Longacre is asked about the specific recommendations in the home health assessment and agrees with all the recommendations. (*Id.* at 22:10-29:13.) He is also asked whether applicant has improved since the home health evaluation, to which the answer was no. (*Id.* at 29:17-25.) He also confirmed that it was unlikely that there would be foreseeable change in applicant's condition warranting a reduction in his recommendation for home health care. (*Id.* at 30:20-31:10.) Dr. Longacre also notes that applicant probably needs a combination of skilled and unskilled care. (35:21-23.)

The matter proceeded to part two of the trial on August 19, 2025. Applicant, his wife, and their son testified. Applicant testified to the level of care he needs and receives from his wife and son which includes dressing himself, bathing, ambulating, and assistance with most activities of daily living. (MOH, 08/19/2025, 6:1-7.) His wife underwent open heart surgery and during her recovery he was assisted by his son. (MOH, 08/19/2025, 6:8-11.) His wife and son also testified to the level of care they provided consistent with applicant's account.

On August 25, 2025, WCJ issued the F&A finding in relevant part, "The Applicant is entitled to further medical treatment in the form of home health care four hours per day for four days per week for three months retroactive as of January 20, 2023 and from December 5, 2024 to

² Though there is no RFA corresponding to this date in the record, it would appear that this was meant to refer to June 9, 2022 as he cites a *prospective* request.

present and continuing.” (F&A, p. 1.) In his Opinion, the WCJ noted that the development of the record was sufficient to support a finding of home health care services four hours per day four days a week retroactive from January 20, 2023 based on the detailed supplemental reports and deposition of the PTP.

DISCUSSION

I

Former 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, section 5909 was amended to state in relevant part that:

- (2) 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 22, 2025 and 60 days from the date of transmission is November 21, 2025. This decision is issued by or on November 21, 2025, so that we have timely acted on the petition as required by 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 22, 2025 and the case was transmitted to the Appeals Board on September 22, 2025. 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 22, 2025.

II

Section 4600 requires the employer to provide reasonable medical treatment to cure or relieve from the effects of an industrial injury. (Lab. Code, § 4600(a).) It is well settled that defendant can be liable for reasonable and necessary medical treatment in the form of home health care services for both skilled and unskilled care, including household tasks that are incidental to the medical treatment. (*Smyers v. Workers' Comp. Appeals Bd.* (1984) 157 Cal.App.3d 36 [49 Cal.Comp.Cases 454].) Moreover, services rendered by a spouse or other family members are compensable. (*Henson v. Workmen's Comp. Appeals Bd.* (1972) 27 Cal.App.3d 452 [37 Cal.Comp.Cases 564].)

Employers are required to establish a UR process for treatment requests received from physicians. (Lab. Code, § 4610; *State Comp. Ins. Fund v. Workers' Comp. Appeals Bd. (Sandhagen)* (2008) 44 Cal.4th 230, 236.) In *Dubon v. World Restoration, Inc.* (2014) 79 Cal.Comp.Cases 1298, 1299 (Appeals Board en banc) (*Dubon II*), the Appeals Board held that if a UR decision is untimely, the UR decision is invalid and not subject to IMR. The *Dubon II* decision further held that the Appeals Board has jurisdiction to determine whether a UR decision is timely. (*Id.*) If a UR decision is untimely, the determination of medical necessity for the treatment requested may be made by the Appeals Board. (*Id.* at p. 1300.) Here as explained below, UR is no longer at issue, but we emphasize that even without a timely or proper UR, applicant still must meet their burden to prove that the requested treatment is reasonably and necessary and comports with the MTUS guidelines. (Lab. Code, §§ 4600(b); 5705.)

A petition for reconsideration may be taken from a “final” order, decision, or award. (Lab. Code, §§ 5900(a), 5902, 5903.) A “final” order has been defined as one that either “determines any substantive right or liability of those involved in the case” (*Rymer v. Hagler* (1989) 211 Cal.App.3d 1171, 1180; *Safeway Stores, Inc. v. Workers’ Comp. Appeals Bd. (Pointer)* (1980) 104 Cal.App.3d 528, 534-535 [45 Cal.Comp.Cases 410]; *Kaiser Foundation Hospitals v. Workers’ Comp. Appeals Bd. (Kramer)* (1978) 82 Cal.App.3d 39, 45 [43 Cal.Comp.Cases 661]) or determines a “threshold” issue that is fundamental to the claim for benefits. (*Maranian v. Workers’ Comp. Appeals Bd.* (2000) 81 Cal.App.4th 1068, 1070, 1075 [65 Cal.Comp.Cases 650].) Threshold issues include, but are not limited to, the following: injury arising out of and in the course of employment, jurisdiction, the existence of an employment relationship and statute of limitations issues. (See *Capital Builders Hardware, Inc. v. Workers’ Comp. Appeals Bd. (Gaona)* (2016) 5 Cal.App.5th 658, 662 [81 Cal.Comp.Cases 1122].) Failure to timely petition for reconsideration of a final decision bars later challenge to the propriety of the decision before the Appeals Board or court of appeal. (See Lab. Code, § 5904.)

In this matter, the WCJ determined that the WCAB had jurisdiction to review medical necessity of the requested treatment, a final threshold order. When defendant did not seek reconsideration to challenge this finding of jurisdiction, it became final. Thus, the only remaining issue is whether medical treatment in the form of home health care services is reasonable and necessary at any time since applicant’s first request, and UR is no longer at issue.

In *Ramirez v. Workers’ Comp. Appeals Bd.* (1970) 10 Cal.App.3d 227 [35 Cal.Comp.Cases 383], the court of appeal observed that:

Upon notice or knowledge of a claimed industrial injury an employer has both the right and duty to investigate the facts in order to determine his liability for workmen’s compensation, but he must act with expedition in order to comply with the statutory provisions for the payment of compensation which require that he take the initiative in providing benefits. He must seasonably offer to an industrially injured employee that medical, surgical or hospital care which is reasonably required to cure or relieve from the effects of the industrial injury.

(*Ramirez, supra*, at p. 234, italics added.)

As discussed in *Neri Hernandez v. Geneva Staffing, Inc. dba Workforce Outsourcing, Inc.* (2014) 79 Cal.Comp.Cases 682 (Appeals Board en banc), section 4600(h) includes home health care services in the definition of medical treatment, but they must be prescribed by a physician and the prescription received by defendant. As stated in that case, “...in order to obtain an award of

home health care services, section 4600(h) requires applicant to show that he had a prescription, that it was received by defendant, and that he met the requirements of section 5307.1 or section 5307.8.” (*Neri Hernandez, supra*, 79 Cal.Comp.Cases at p. 688-689.) We further explained:

The prescription required by section 4600(h) is either an oral referral, recommendation or order for home health care services for an injured worker communicated directly by a physician to an employer and/or its agent; or, a signed and dated written referral, recommendation or order by a physician for home health care services for an injured worker.

(*Id.* at p. 693.)

We also stated that the definition of “prescription” does not require a detailed description of the recommended services, that there is no requirement that an injured worker have actually incurred the cost of services before home health care services are sought, and that an employer has a duty to investigate a request. (*Neri Hernandez, supra*, 79 Cal.Comp.Cases at pp. 692, 694, 695.) Thus, under *Neri Hernandez*, the definition of “prescription” is very broadly construed. Additionally, under section 4600, where an employer has actual notice of an injured worker’s need for medical treatment, the employer has a duty to investigate. (*Neri Hernandez, supra*, 79 Cal.Comp.Cases at p. 695; *United States Cas. Co. v. Industrial Acc. Com. (Moynahan)* (1954) 122 Cal.App.2d 427, 435 [19 Cal.Comp.Cases 8].) As stated in *Moynahan*,

Section 4600 of the Labor Code places the responsibility for medical expenses upon the employer when he has knowledge of the injury....The duty imposed upon an employer who has notice of an injury to an employee is not ... *the passive one of reimbursement but the active one of offering aid in advance and of making whatever investigation is necessary* to determine the extent of his obligation and the needs of the employee.

(*Moynahan, supra*, at p. 435.)

Here, on May 2, 2022, Dr. Longacre issued an RFA for home health care services for “eight hours a week (*sic*),” seven days a week. (Applicant’s Ex. 56.) This request satisfies the requirements for a prescription as outlined in *Neri Hernandez*. Defendant does not deny receiving the RFA, but nonetheless, there is no evidence that defendant performed any investigation into the need for home health care services or arranged for a home health care assessment until a year later.

The function of the court on review is to determine whether the evidence, if believed, is substantial and supports the findings. (*Le Vesque v. Workers' Comp. Appeals Bd.* (1970) 1 Cal. 3d 627 [35 Cal.Comp.Cases 16]; *Foster v. I.A.C.* (1955) 136 Cal. App. 2d 812, 816.) Here, we agree

with the WCJ that the medical evidence supports the request from Dr. Longacre on January 20, 2023, but it is unclear from this record why the WCJ did not consider the medical necessity of applicant's request for home health care services beginning on May 2, 2022. Thus, we will defer the issue of whether applicant was entitled to home health care services from May 2, 2022 to January 20, 2023 for home health care services.

The record confirms that the need for home health care services at eight hours per day, seven days per week existed earlier than the December 10, 2024 report. The parties eventually agreed to a home health care assessment, which took place on May 10, 2023. The assessment outlines in detail the basis for the need in home health care services. As noted in the PTP's deposition, there was no change in applicant's condition from that point. In the supplemental reporting and the deposition, the PTP indicated that the home health care services were necessary, listing the bases using the MTUS rubric for home health care. The WCJ found these opinions to be substantial and that they satisfied applicant's burden of proof. We agree.

A defendant has an affirmative duty to investigate the need for medical treatment. UR and IMR processes do not abrogate the claims administrator's duty to investigate whether benefits are due. (Cal. Code Regs., tit. 8, § 10109; see also *Braewood v. Workers' Comp. Appeals Bd.* (1983) 34 Cal.3d 159, 161 [48 Cal.Comp.Cases 566].) The record is clear that defendant did not proceed with a home health assessment until a year after it was recommended, despite agreeing to authorize it. Though we do not have any response from defendant, the duty to investigate the need for home health care services is defendant's. There is no evidence that they sent the assessment to the PTP or other evidence about why they were unresponsive. They cannot thereafter benefit from the years long delay due to the failure to perform due diligence in the face of a clear need and multiple recommendations.

Thus, when the PTP opined that applicant needed home health care services at the increased level and that applicant's condition had not changed since that assessment, applicant was entitled to home health care services of eight hours per day, seven days per week as of May 10, 2023. We agree with the WCJ that applicant was entitled to home health care services of four hours per day, five days per week from January 23, 2023 to May 9, 2023. As noted above, as the current evidence is not clear with respect to the period from May 2, 2022 to January 22, 2023, we defer that issue.

Accordingly, we grant applicant's Petition for Reconsideration, amend the F&A, and otherwise affirm the WCJ's decision.

For the foregoing reasons,

IT IS ORDERED that applicant's Petition for Reconsideration of the decision of August 25, 2025 is **GRANTED**.

IT IS FURTHER ORDERED as the Decision After Reconsideration of the Workers' Compensation Appeals Board that the decision of August 25, 2025 is **AFFIRMED, EXCEPT** that it is **AMENDED** as follows:

FINDINGS OF FACT

3. Applicant is entitled to further medical treatment in the form of home health care services four hours per day, four days per week from January 20, 2023 up to May 10, 2023. The issue of whether applicant was entitled to home health care services from May 2, 2022 up to January 20, 2023 is deferred.

4. Beginning on May 10, 2023, applicant is entitled to further medical treatment in the form of home health care services for eight hours per day, seven days per week continuing until such time as there is substantial medical evidence that applicant's circumstances have changed.

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE A. ZALEWSKI, CHAIR

I CONCUR,

/s/ JOSEPH V. CAPURRO, COMMISSIONER

/s/ PAUL F. KELLY, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

NOVEMBER 21, 2025

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

**RIGOBERTO PLASCENCIA
GRAIWER KAPLAN
HANNA BROPHY**

TF/md

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