

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

3
4 **Case No. ADJ2777203 (SRO 0137864)**

5 **ISMAEL MIRAMONTES,**

6 *Applicant,*

7 **vs.**

8 **LIONS RAISINS PACKING COMPANY;
9 ACCLAMATION INSURANCE
10 MANAGEMENT SERVICES,**

11 *Defendants.*

**ORDER DENYING
PETITION FOR
RECONSIDERATION**

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

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For the foregoing reasons,
IT IS ORDERED that said Petition for Reconsideration be, and it hereby is, **DENIED**.

WORKERS' COMPENSATION APPEALS BOARD

[Handwritten Signature]
FRANK M. BRASS

I CONCUR,

[Handwritten Signature]
RONNIE G. CAPLANE
PARTICIPATING, BUT NOT SIGNING
DEIDRA E. LOWE



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

DEC 05 2015

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

ISMAEL MIRAMONTES
LAW OFFICES OF JANE WOODCOCK
PETERSEN LAW OFFICES

[Handwritten Signature]

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WORKERS' COMPENSATION APPEALS BOARD
OF THE
STATE OF CALIFORNIA

ADJ2777203 [SRO0137864]



Ismael Miramontes

vs.

Lions Raisins, and
Acclamation Insurance Company

Workers' Compensation Judge:
MICHAEL J. HURLEY

Date of Injury: May 30, 2006

REPORT AND RECOMMENDATION ON PETITION FOR RECONSIDERATION

I

INTRODUCTION

This matter originally came before this judge for an expedited hearing on September 4, 2014. Both defense and applicant's exhibits were admitted and Juana Fuentes and applicant Ismael Miramontes testified. On October 20, 2014 this Judge issued a Findings and Order and it is from that Findings and Order that defendants have filed a timely Petition for Reconsideration. It is from that Petition for Reconsideration that this Report and Recommendation is made.

II

DISCUSSION

Defendant has alleged that this judge erred in finding that applicant was in need of home healthcare as this judge should not have found the opinion of Dr. Tran to be substantial evidence, that Dr. Tran's opinion on the amount of home health care is not substantial, and finally, that it was an error for this judge to find that the Utilization Reviews were invalid.

In their Petition for Reconsideration defendant provides a statement of facts. This Judge finds said statement to be generally accurate except for two major things. One, defendant had been providing applicant home healthcare since 2007. Home health care was based upon a prescription from Dr. Kimelman in 2007, finding eight hours per day to be reasonable and necessary home healthcare.

Next, in the statement of facts the defendant fails to mention their February 7, 2014 letter to applicant's counsel indicating that Dr. Tran had not written a prescription for home healthcare, and that they would like applicant to provide such a written prescription within 14 days or by February 21, 2014, or they would in fact, terminate home healthcare. Nor do they mention their March 7, 2014 letter to applicant where they advised him that his home health services were ending pending a request from his treating physician and decision by Utilization Review and indicating they would end payment of \$560.00 per week for home healthcare.

With these additional facts it is clear that defendant had been providing applicant home healthcare since 2007. In October of 2013 they wrote the applicant's treating physician Dr. Tran requesting he submit a request for ongoing custodial care indicating the number of hours per day that would be necessary. Dr. Tran does not respond. Defendants, in the February 7, 2014 letter to applicant's counsel, basically threaten they will end all home healthcare unless applicant's counsel gets Dr. Tran to provide a prescription for home healthcare. On March 7, 2014 they write applicant and tell him he is not getting any more home healthcare until they receive a prescription and it goes through Utilization Review. At this point applicant's counsel faxes them a prescription from Dr. Tran requesting home healthcare be full time. Defendants, now having a request for treatment, doing what the law

entitles them to do, put the prescription through Utilization Review which ends up denying any home healthcare at all.

As for substantial evidence, a review of Dr. Tran's deposition as well as his reports, clearly indicate that applicant needs home healthcare. Further, is clear applicant has needed home healthcare since 2007, more than seven years prior to defendant's stopping applicant's home healthcare. Defendant has presented no substantial evidence that applicant's condition changed and he was not in need of home healthcare at any time prior to their unilateral termination. Common sense indicates that a paraplegic who cannot even get himself in and out of bed, or in and out of a chair by himself, or in and out of a wheelchair, or on or off a toilet by himself, is going to be in need of some home healthcare. To suggest lack of substantial evidence for need for home healthcare in this case lacks any credibility.

With regard to defendant's objection that Dr. Tran failed to provide a specific number of hours in his prescription, said prescription does say full time. Additionally in his deposition, Dr. Tran clearly states 8 hours was a reasonable time period. Based upon the evidence presented by Ms. Fuentes, as well as a review of Dr. Kimelman's findings regarding home healthcare back in 2007 as set forth in Applicant's Exhibit 4, the time frame remains the same. It is clear to this judge that applicant needs at least eight hours of home healthcare per day, and that is why he ordered defendants to continue paying the \$10 an hour for 56 hours a week, which is eight hours a day.

With regard to the Utilization Review, this judge believes that defendant's unilateral stoppage of medical treatment to force a new prescription for any medical service that an injured worker has needed for seven years is disingenuous and should not be allowed by the Workers' Compensation Appeals Board. Defendant's forced the treater to provide a

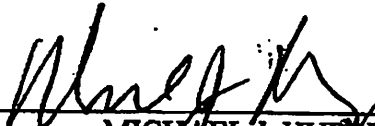
prescription so they could do Utilization Review by unilaterally stopping medical treatment in the form of home healthcare. They have presented no evidence that applicant's condition had changed anytime between October 2013 and February or March 2014 when defendants stopped providing home healthcare. Again, it is common sense that a paraplegic without use or feeling below the waist, that needs catheterization, is not going to need some amount of home healthcare. As defendants have presented no evidence of any other amount than the eight hours, this judge continues to find that to be a reasonable amount.

If defendant's real dispute is actually the number of hours they feel home healthcare should be provided this particular injured worker, they have resources other than stopping home healthcare to get that information. When Dr. Tran failed to respond to their additional requests in October of 2013 they could have come to the Board and asked us to order Dr. Tran to provide a response. They could have come to the Board and asked for a med-legal evaluation about this issue. There are numerous things they could have done other than actually stopping the provision of medical care without any evidence that said care was not necessary. This Judge believes the Workers' Compensation Appeals Board can't countenance the failure to provide medical treatment like this or it will put injured workers' lives in danger.

III

RECOMMENDATION

It is recommended that defendant's Petition for Reconsideration be denied.


MICHAEL J. HURLEY
WORKERS' COMPENSATION JUDGE

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