

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS
OFFICE OF THE JUDGES OF COMPENSATION CLAIMS
FORT LAUDERDALE DISTRICT

Jeffrey Hewitt,
Employee/Claimant,

OJCC Case No.: 15-002089IF

vs.

Accident date: 6/16/2014

Co-Advantage/Seminole Glass & Mirror
CCMSI
Employer/Carrier.

Judge: Iliana Forte

_____/

David S. Benn, Esquire, Attorney for the Employee
Laura Leathem, Esquire, Attorney for the Employer/Carrier

FINAL EVIDENTIARY ORDER

This matter came before me, the undersigned Judge of Compensation Claims on April 16, 2015 for an evidentiary hearing on the Claimant's Motion to Deauthorize and Disqualify Dr. Robert Baylis and Motion for Protective Order Prohibiting the Nurse Case Manager's Participation in this case filed 2/20/2015. The Employer/Carrier ("E/C") filed its Response on 3/10/2015.

DOCUMENTS RECEIVED

Claimant:

1. Certification of Authenticity of Medical Records from Sharon Dufek (#24 on the Docket).
2. Claimant's Motion to Deauthorize and Disqualify Dr. Robert Baylis based upon his Ex-Parte Mini Trial with the Nurse Case Manager and Motion for Protective Order

Prohibiting the Nurse Case Manager's Participation in this Case with attached Exhibits.

Employer/Carrier:

1. Records of Dr. Robert Baylis (#28 on the Docket).
2. E/C Response to Claimant's Motion to Deauthorize and Disqualify Dr. Baylis and Motion for Protective Order

Joint Exhibits:

None.

Live witness testimony:

Claimant.

FINDINGS OF FACTS

Claimant's Testimony:

1. The Claimant sustained what was accepted a compensable accident on 6/16/2014 when he injured his lower back. The Claimant was squatting down picking up a window when he felt a pinch in his back causing him to fall to the floor.

2. He was initially treated at a clinic and an MRI was performed. The MRI revealed disc herniations at the L4/L5-S1 levels. He was thereafter referred to Dr. Meli an orthopedic physician. Dr. Meli referred the Claimant to a pain management specialist – Dr. Hadi.

3. The E/C assigned a nurse case manager, Sharon S. Dufek to this case. Ms. Dufek would either attend the appointments with the Claimant of Dr. Meli and Dr. Hadi, or would speak to the doctors outside of the Claimant's presence.

4. The Claimant volunteered at a visit with Dr. Meli that was attended by Ms. Dufek, that he had previously undergone chiropractic treatment for his low back. At the request of Ms. Dufek, the Claimant signed a release for Ms. Dufek to obtain those chiropractic records.

The Claimant testified that he and his family have been receiving chiropractic treatment for years as a form of “wellness” treatment not as a result of a particular back problem.

5. The Claimant returned to work full duty per the recommendation of Dr. Meli, however, he continued to experience back pain. He contacted Ms. Dufek to find how to he could return to see a doctor. Ms. Dufek informed him that he could request a one-time change of physician and provided him a form to complete.

6. The Claimant was then scheduled to be evaluated by Dr. Robert Baylis. He discussed with Dr. Baylis his prior chiropractic treatment. Dr. Baylis recommended a Tens unit and informed him that his condition was pre-existing. Ms. Dufek was also in attendance at this office visit.

7. The Claimant was unaware that he could return to Dr. Meli or Dr. Hadi. During this time period, the Claimant was not represented by an attorney. He is still in pain and would like to see an orthopedist.

Documentary Evidence:

8. Claimant’s counsel produced the entire file of the nurse case manager; however, the parties agreed that the most relevant materials were those contained as exhibits in Claimant’s motion. Ms. Dufek did not appear before the undersigned to testify in this matter, so the undersigned is relying on the emails and reports introduced by the parties.

9. Ms. Dufek’s emails to the claims adjuster, Ellen Ellis reveal that she was very involved in this matter well over what appears to be appropriate under s. 440.13(4)(c). Of particular concern is the email dated 10/21/2014 where Ms. Dufek reports that she provided Dr. Hadi with Dr. Bofshever, the chiropractor’s reports, and Dr. Hadi continued to opine that the major contributing cause (MCC) was the work injury. She then tried to have Dr. Hadi defer

further care to Dr. Meli, which Dr. Hadi refused to do. Therein she reports that she will be providing Dr. Meli with all chiropractic records to address MCC.

10. On 11/17/2014, Ms. Dufek's email reveals that she once again attended Claimant's office visit with Dr. Hadi, and again attempted to have his care transferred back to Dr. Meli. There is no indication in this email that Dr. Hadi agreed to transfer the care, in fact Dr. Hadi continued the Claimant on light duty restrictions and gave him a follow up appointment for 12/17/2014.

11. The email of 11/20/2014 reveals that she attended the office visit of 11/19/2014 with Dr. Meli, and Dr. Meli placed the Claimant at maximum medical improvement and assigned a 1% impairment rating – full duty. She indicated that Dr. Meli opined that no further pain management was needed and he could return to Dr. Meli as needed, p.r.n.

12. On 11/21/2014 Ms. Dufek reports to the adjuster that she will cancel the 12/17/2014 appointment with Dr. Hadi, per Dr. Meli and goes on to indicate that Dr. Hadi (who has repeatedly refused to do so in the past) will defer care to the orthopedic MD since no further care is medically necessary.

13. On 11/24/2014 Ms. Dufek reports to Ms. Ellis that the Claimant reported being unable to return to work and noted only 10% improved. She inquired about speaking to the Claimant about his one-time change and whether he would like to exercise this or not; she would recommend Dr. Baylis.

14. On 11/25/2014, Ms. Dufek contacted Dr. Baylis' office and scheduled an appointment for the Claimant for 12/15/2014 at 10:00 a.m. She prepared the one time change appointment letter for the Claimant and mailed and emailed the letter to the Claimant. On 12/1/2014 she emailed the Claimant's medical records to Dr. Baylis' office.

15. On 12/2/2014 Ms. Ellis acknowledged receiving the Claimant's one-time change letter.

16. On 12/15/2015 Ms. Dufek emailed Ms. Ellis requesting that she sign the fee agreement of Dr. Baylis and informed her of Dr. Baylis \$250 charge for completing the MCC letter. She submitted the MCC letter and agreement to Dr. Baylis and attended the appointment with the Claimant. Dr. Baylis completed the MCC letter drafted by Ms. Dufek, finding that the 6/16/2014 accident was not the major contributing cause for further treatment and was 100% pre-existing/NOT work-related.

17. There is no indication in the record that the Claimant has been afforded any additional treatment by the E/C after Dr. Baylis' MCC letter.

CONCLUSIONS OF LAW

18. The Legislature intended that the Workers' Compensation Law be interpreted as to assure the quick and efficient delivery of disability and medical benefits to an injured worker and to facilitate the worker's return to gainful reemployment at a reasonable cost to the employer. Fla. Stat. Section 440.015.

19. In order to facilitate the self-executing feature of the law, the injured workers specifically waives any physician-patient privilege with respect to any condition or complaint reasonable related to the condition for which the employee claims compensation. Additionally, the E/C's representatives are allowed to discuss with the medical providers the medical condition of the injured worker restricted to conditions relating to the workplace injury. Fla. Stat. Section 440.13(4)(c).

20. Under the facts of this case, Ms. Dufek was within her authority to request the Claimant's chiropractic records upon learning that the Claimant had received said treatment in

the past for the lower back. It was also within her authority to provide the chiropractic records to Dr. Meli and Dr. Hadi and to discuss said records and their relevance to the Claimant's work related injury regarding MCC.

21. However, I find Ms. Dufek's repeated attempts to transfer the Claimant's care from Dr. Hadi back to Dr. Meli, based on Dr. Hadi's refusal to opine that the Claimant's back problems were pre-existing, is not within the authority contemplated under s. 440.13(4)(c).

22. Likewise, I find no justification in the record or case law that allowed Ms. Dufek to unilaterally cancel the Claimant's appointment with Dr. Hadi scheduled for 12/17/2014. At the 11/17/2014 appointment, Ms. Dufek specifically noted that Dr. Hadi did not want to return the Claimant back to full duty in order to avoid re-injury and gave him the follow up appointment. At that time, Dr. Hadi refused to transfer his care back to Dr. Meli.

23. When the Claimant contacted Ms. Dufek complaining of continued pain and wanting to know how to go back to his doctors, Ms. Dufek advised the Claimant that his only option was to request a one-time change of physician, which she had pre-determined should be Dr. Baylis an orthopedist.

24. Ms. Dufek failed to advise the Claimant that he could return to Dr. Meli or Dr. Hadi. The records do not establish, despite Ms. Dufek's inquiries, that either Dr. Meli or Dr. Hadi opined that the Claimant's need for treatment was due to a pre-existing condition and not the MCC of the compensable accident. In fact, the records from Ms. Dufek support the contrary conclusion.

25. It appears abundantly clear from the evidence that Ms. Dufek offered the Claimant her preference for a one-time change of physician, in order to have a third attempt to address MCC.

26. I do not find that the Claimant voluntarily exercised his option for a one-time change of physician pursuant to s. 440.13(2)(f). The Claimant was given no other option by Ms. Dufek to see a physician when he informed her that he was still in pain and needed treatment. Ms. Dufek knew or should have known that the Claimant could return to either Dr. Meli or Dr. Hadi, because both doctors opined that the MCC of the need for treatment was the compensable accident. Dr. Meli released the Claimant with a 1% impairment, to return p.r.n.; Dr. Hadi had scheduled a follow up visit in December which Ms. Dufek cancelled. The Claimant relied on the E/C's representative to obtain medical treatment and was otherwise misinformed of his different options. Thus, I do not find that the Claimant's acquiesced to Dr. Baylis as his one-time change of physician, he simply had no other option.

27. Based on the evidence before me, I do not find that Dr. Baylis' opinion regarding MCC was influenced by a "mini trial" conducted by Ms. Dufek, but by the same token, I find that this evaluation was at the request of the E/C and not at the request of the Claimant's per s. 440.13(2)(f).

28. I did not review any evidence where the E/C deauthorized Dr. Meli in writing upon authorizing Dr. Baylis. Therefore, Dr. Meli and Dr. Hadi remain authorized to treat the Claimant.

29. The Claimant is entitled to a one-time change of physician pursuant to s. 440.13(2)(f).

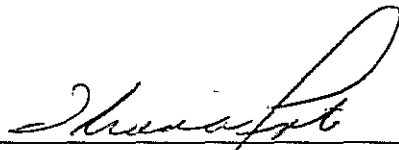
30. I deny Claimant's request to prohibit Ms. Dufek from participating in his case in the future however, I caution Ms. Dufek that the undersigned does not look favorably on overly zealous conduct that gives the appearance of interfering with the physician-patient relationship or providing wrong or misleading information to a claimant.

WHEREFORE, IT IS ORDERED AND ADJUDGED THAT:

1. Claimant's Motion to Deauthorize and Disqualify Dr. Robert Baylis as the Claimant's one-time change of physician is GRANTED.

2. Claimant's Motion for Protective Order Prohibiting the Nurse Case Manager's Participation in this Case is DENIED.

DONE AND ORDERED in Chambers, on April 20, 2015, at Ft. Lauderdale, Broward County, Florida.



Iliana Forte
Judge of Compensation Claims
Division of Administrative Hearings
Office of the Judges of Compensation Claims
Ft. Lauderdale District Office
4500 North State Road 7, Building 1, Suite 200
Lauderdale Lakes, Florida 33319
(954) 714-3400

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the above Order was entered by the Judge of Compensation Claims and a copy was served by electronic transmission on this 20th day of April 2015, to the parties counsel or by mail if parties are unrepresented.



Secretary to the Judge of Compensation Claims

COPIES FURNISHED:

David Benn, Esq.
david@accidentlawyerfl.com

Lisa Hicks, Esq.
lhicks@hhdefense.com