

2022 WL 821829 (N.Y.Work.Comp.Bd.)

Workers' Compensation Board

State of New York

EMPLOYER: FOJP SERVICE CORPORATION

Case No. G305 3228

Carrier ID No. 0619-WC-22-0001292 W204002

March 10, 2022

\*1 State Insurance Fund  
PO Box 66699  
Albany, NY 12206  
Date of Accident 6/17/2021

The claimant requests review of the WCLJ decision filed October 26, 2021. The carrier filed a rebuttal.

#### ISSUE

The issue presented for administrative review is whether the carrier must pay for any portion of the bill for the claimant's out of network imaging studies.

#### FACTS

The claim has been established for a June 17, 2021 back injury. The AWW is established at \$450.00.

The record shows that on July 5, 2021, the claimant had an MRI of the lumbar spine performed by Dr. Kolb of Kolb Radiology, PC.

The carrier objected to the entire \$460.00 bill as it was for diagnostic testing which was outside of the network.

A hearing was held on October 21, 2021, at which time the claimant's counsel conceded that the testing was outside of the network and that the carrier had sent the appropriate paperwork, but alleged that the carrier was responsible for at least that portion of the bill which would have been the network charge for such service. The Board Panel notes that there is no issue regarding whether the carrier properly advised the claimant of her requirement to use the diagnostic testing network.

In the decision filed October 26, 2021, the WCLJ, inter alia, found the C-8.1(b) in favor of the carrier.

#### LEGAL ANALYSIS

The claimant alleges that the decision is in error as the C-8.1(b) should have been resolved in favor of the provider at the network rate. The claimant cited several cases in support, the most recent being *Matter of Rivera v North Central Bronx Hospital*, 101 AD3d 1304 (2012).

In rebuttal, the carrier asserts that the decision is correct as the carrier satisfied the requirements for the diagnostic testing network to be used.

12 NYCRR 325-7.5(a) (a) Required use of diagnostic testing network states that:

(1) A claimant must obtain diagnostic examinations and tests through a diagnostic testing network when:

(i) the insurance carrier responsible for claimant's claim has contracted with a diagnostic testing network that is in compliance with Workers' Compensation Law Section 13-a (7) and this Subpart and requires claimant to obtain or undergo diagnostic examinations and tests with an affiliated network provider; and

(ii) the insurance carrier responsible for the claimant's claim has provided the notification required in paragraph (d) (1) of this section.

(2) The requirement to obtain or undergo diagnostic examinations or tests through a diagnostic testing network applies regardless of the cost of the diagnostic examinations or tests.

12 NYCRR 325-7.5 (b) states that:

(2) A claimant shall not be required to obtain or undergo diagnostic examinations and tests from an affiliated network provider:

(i) prior to being provided with the notice required by paragraph (d)(1) of this section; or

\*2 (ii) in the event of a medical emergency as defined in section 325-7.1 (k) of this Subpart; or

(iii) when the diagnostic testing network does not have a provider or facility within a reasonable distance from the claimant's residence or place of employment as defined in section 325-7.1 (n) of this Subpart; or

(iv) the diagnostic testing network does not have a provider or facility within a reasonable distance from the claimant's residence or place of employment that can perform the diagnostic examinations and tests within five days as required by section 325-7.3 (i) of this Subpart.

Further, 12 NYCRR 325-7.5(d)(4) states that if the carrier or self-insured employer has provided notice of the requirement to use a diagnostic testing network to the claimant, and to the claimant's treating health care providers, as required by 12 NYCRR 325-7.5(d)(1), and "the claimant utilizes the services of a facility or provider, including the treating medical provider, that is not an affiliated network provider for diagnostic examinations and tests, then the insurance carrier is not liable for the cost of the diagnostic examinations and tests."

The diagnostic testing network regulations do not apply to testing that is done prior to the effective date of the regulation, March 21, 2012. However, they do as of that effective date. Matter of Rivera, cited by the claimant, is not applicable as the testing in Rivera took place before the effective date of the 2012 amendments (101 AD3d 1304 [2012]).

Therefore, the Board Panel finds, upon a review of the record and based upon a preponderance of the evidence, that the decision of the WCLJ is supported by the applicable legal authority.

## CONCLUSION

ACCORDINGLY, the WCLJ decision filed October 26, 2021 is AFFIRMED.

No further action is planned at this time.

All Concur.

Loren D. Lobban  
Mark D. Higgins  
Mark R. Stasko

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