

2022 WL 1057725 (N.Y.Work.Comp.Bd.)

Workers' Compensation Board

State of New York

EMPLOYER: SUPREME COURT, 1ST JUDICIAL DE

Case No. G091 5046

Carrier ID No. 67334912-154 W204002

March 30, 2022

*1 State Insurance Fund
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Albany, NY 12206
Pasternack, Tilker, Ziegler
Walsh, Stanton & Romano, LLP
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Brooklyn, NY 11201
Date of Accident 7/10/2014

The claimant requests administrative review of the Workers' Compensation Law Judge (WCLJ) decision filed on December 2, 2021. The carrier timely filed a rebuttal.

ISSUE

The issue presented for administrative review is whether the Notice of Treatment Issue/Disputed Bill Issue (Form C-8.1 Part B) was properly resolved in favor of the carrier.

FACTS

This claim has been established for work related injuries to the back, right shoulder, and right wrist, stemming from an accident that occurred on July 10, 2014.

The claimant underwent a lumbar spine MRI on September 28, 2021, performed by Dr. Toder, referred by Dr. Spina.

The carrier, by C-8.1B dated November 10, 2021, objected to a bill dated October 5, 2021, for a treatment date of September 28, 2021, in the amount of \$922.86. The listed basis for the objection was the assertion that the diagnostic test was performed out of network.

Attached to the C-8.1B was an April 23, 2021 letter to Dr. Toder c/o One Call Medical, Inc. (the physician/group who billed for the disputed MRI testing), as well as a June 1, 2021 letter to the claimant, advising them of the carrier's use of a diagnostic testing network, and providing them with the names and addresses of the providers within the diagnostic testing network.

By decision filed on December 2, 2021, the WCLJ found the C-8.1B in favor of the carrier.

LEGAL ANALYSIS

The claimant contends that, where a test is performed out of network, the proper resolution is for the carrier to be directed to pay the out of network provider at the network rate.

The carrier contends that the finding in its favor was correct and should not be disturbed.

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."

Here, the file shows that the claimant was given the requisite notice, as was the claimant's treating physician. Nevertheless, the diagnostic testing in question was still performed by an out of network provider. The claimant has not alleged any facts which would excuse her from complying with the in-network requirement. In view of the fact that the carrier gave the claimant and her treating physician notice that diagnostic testing was to be performed within the established network, the claimant was required to use a provider from the carrier's designated testing network. As the claimant utilized an out of network diagnostic testing provider, the C-8.1(b) is properly found in favor of the carrier.

*2 Therefore, the Board Panel finds, upon review of the record and based upon a preponderance of the evidence, the C-8.1B was properly found in favor of the carrier.

CONCLUSION

ACCORDINGLY, the WCLJ decision filed on December 2, 2021, is AFFIRMED. No further action is planned at this time.

All Concur.

Steven A. Crain
Linda Hull
Ellen O. Paprocki

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