LAW OFFICES of McDERMOTT & CLAWSON, LLP

LEGAL BRIEFS NEWSLETTER

CASES & COMMENTS ON WORKERS' COMPENSATION

November 2007 www.mcdermott-clawson.com November 2007

Subject to Interpretation

Interpreter's liens continue to hit a raw nerve in many cases, especially when it seems to be apparent that the interpreting agency is 'gaming the system" to claim exorbitant and repetitive charges for providing interpreting services at routine treatment visits with doctors and physical therapists. The legal questions regarding the reimbursement for such charges remain unsettled. Questions persist as to the legal obligation to pay for interpreters during medical treatment at all. In addition, there may well be issues as to the reasonableness and necessity of the services in any given case.

There is no question that the services of a certified interpreter may be required in any proceeding of legal consequence when English is not the injured worker's native tongue. This holds true for the use of interpreters at medical/legal examinations, since the history and interview of the patient will have a direct impact on the economic value of the case.

8 C.C.R. 9795.3 provides a listing of those occasions for which the employer must provide an interpreter for the injured worker. The list includes examinations set by the claims department or the WCAB, comprehensive medical-legal examinations, depositions, pre-deposition preparation time with counsel, review of the deposition transcript, WCAB and Rehabilitation hearings, and conferences with the Information and Assistance officer. Labor Code 4600(f) also provides that the employee is entitled to the services of an interpreter at medical-legal examinations.

Conspicuous by its absence is any reference in any subdivision of Labor Code 4600 to the provision of interpreters for medical *treatment.* Nor does rule 9795.3 (cited above) make any mention of liability to provide interpreters for medical treatment visits. Thus it might be argued that, under the law, there is no obligation to pay interpreters for routine medical treatment visits.

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In accord with the above reasoning, Long Beach WCAB Judge Pamela Pulley ruled against Joyce Altman interpreters in *Alfonso Pineda v Employers Direct Insurance Co.*, LBO 0353598 (7/10/2006). In this trial level decision, the judge reviewed the terms of rule 9795.3 and noted that the rule did not include treatment in the laundry-list of events for which the carrier must provide an interpreter. The lien claimant did not offer any evidence to show that the doctor visits in question were necessary to a determination of the validity or extent of the injury and thus did not qualify as medical/legal visits.

In *Michelle Chang v. Manna Cake & Bakery/Hueng Lee; Zenith Insurance Co.*, MON 0285998, a WCAB panel denied reconsideration of a workers' compensation judge's decision rejecting a $7,350 lien filed by LA Language. However, the decision in that case turned on whether the lien claimant had proved reasonableness of the charges, but it did not directly reach the issue of whether interpreting services at medical treatment visits were potentially reimbursable.

The tide turned, however, last month when a WCAB panel ruled in the case of *Gerardo Perez v. A's Match Dyeing Inc.* that SCIF was required to pay Joyce Altman Interpreters for "re-evaluation visits" with the treating physician. Trial judge Charles Ringwalt allowed only $150 on the lien which stood at $863.55, and the interpreter appealed the decision.

The WCAB granted reconsideration and reversed the trial judge, pointing to a 2001 WCAB panel decision in *Garcia v. SCIF,* 29 CWCR 310 and relying on a liberal interpretation of Labor Code 4600, which requires the defendant to provide a number of enumerated medical services and services that is "reasonably required to cure or relieve the inured worker from the effects of his or her injury…." The situation was analogized to the provision of mileage reimbursement for treatment which, like interpreter's services, is not specifically mentioned in the code. The panel adopted the trial judge's report in *Garcia* in which he wrote: "Effective communication between doctor and patient is an essential component of medical treatment and the healing process."

So, is the issue resolved? Not hardly. None of these decisions is binding on any trial judge. While attention may no doubt be called by lien claimants to the panel decision in *Garcia*, at the time of this writing the WCAB had not declared the decision a *significant panel decision* and therefore its status as legal precedent is about equal to "honorable mention."

Given the above, what would be a recommended approach to these liens? First, determine whether the doctor visit was truly "medical/legal" in nature. Generally these would be examinations conducted by an AME or QME pursuant to LC 4060, 4061 or 4062. If so, reasonable and necessary interpreter's charges are payable.

If the examination is with a treating physician, determine whether the visit is an initial exam in which a comprehensive history is taken and a complete examination

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conducted, or whether it is a final (discharge) examination by the treating doctor. If so, it would seem reasonable that a non-English speaking patient be given the benefit of an interpreter to assure an accurate history and an accurate communication of symptoms. We would recommend a determination however, as to whether the doctor speaks the native tongue of the patient before agreeing to the reimbursement. We have uncovered instances of interpreters charging for Spanish language services at the offices of doctors who went to medical school in Mexico!

If the visits are for routine treatment, chiropractic adjustments, physical therapy, x-ray or lab studies, we would argue that it is neither reasonable nor necessary to have a certified interpreter present. There are plenty of good treating doctors available that speak most of the common languages found in Southern California, or who have staff members that can.

Beyond the above, you always have the right to ask for disclosure of the identity of the person appearing at each doctor visit, and their certification information. The burden is on the lien claimant to show legal entitlement to reimbursement. See *Zenith v. Workers' Compensation Appeals Board*, (Capi) (2006) 71 CCC 374 (Court of Appeal 4th District). Lien claimants have the initial burden of proving they are properly licensed or accredited. In workers' compensation matters, the burden of proof rests on the party or lien claimant "holding the affirmative of the issue." (Lab. Code, §§ 5705, 3202.5.)

If you want to find out if the interpreter is properly licensed, go to:
http://www.cps.ca.gov/SPB/interpreter/.

Article by Howard Stevens, Orange Office

*Editor's note: We normally do not have access to trial level opinions unless they involve cases within our own firm; therefore, our reporting of these cases is limited to information received via reliable sources. Decisions of trial level judges do not bind other judges, even at the same Board. However, they do give some indication of what judges may do at trial on cases with similar issues. Reports concerning writ denied cases are published in the California Compensation Cases and may be cited at trial level but are not binding authority on a trial judge.

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