

**Terry Pearson v. BH Transfer and Chartis Claims**

Case No. 14-4560

**Facts** – The Claimant filed a Petition for Benefits requesting authorization of a medical procedure recommended by his authorized treating physician. The Carrier filed a response to the Petition more than ten days after receipt of same. The JCC then denied the request for surgery based on no medical necessity. The Claimant appealed the JCC's order arguing that the Employer/Carrier was precluded from defending that the procedure was not medically necessary because they had statutorily waived the defense by virtue of their failure to timely respond to the request.

**Issue** – Whether the Employer/Carrier had waived their right to contest medical necessity of the surgery based on Sections 440.13(3) (d) & (i), Florida Statutes?

**Holding and Analysis** – The First DCA held that Sections 440.13(3) (d) & (i), Florida Statutes require a carrier to respond to a request for a specific timeframe or forfeit its right to contest the medical necessity of the requested service. The Court cited to case law which indicates that under sections 440.13(3)(d) and (i), an Employer/Carrier forfeits the right to contest the medical necessity of an authorized doctor's referral for (additional) medical treatment, unless the employer or carrier responds to the authorized doctor's written request for a referral within the time allowed i.e. within ten days as per Section 440.13(3)(i). As such, the Court found that the JCC's interpretation of the statute was erroneous. The JCC's order was reversed and remanded it for an entry of an order awarding the surgery.

**CVS Caremark and Gallagher Bassett Services v. Sharon McIntosh**

Case No. 14-4703

**Facts** – The Employer/Carrier appealed an award of psychiatric care entered by the JCC on remand from the appeal in *McIntosh v. CVS Pharmacy*, 135 So. 3d 1157 (Fla. 1<sup>st</sup> DCA 2014). The Claimant cross-appealed seeking to reverse the denial of claims for TTD benefits and inpatient psychiatric care.

**Issue** – (1) Whether the Employer/Carrier waived their right to challenge compensability of the Claimant's post-traumatic stress disorder (2) Whether the JCC erred in denying the Claimant's request for TTD benefits based on no credible medical evidence of disability or

inability to work (3) whether the JCC erred in denying inpatient psychiatric care requested by the Claimant?

**Outcome and Analysis** – The First DCA affirmed the award of psychiatric care stating that the JCC did not err in concluding the Employer/Carrier waived their right to challenge compensability of Claimant's post-traumatic stress disorder under section 440.20(4), Florida Statutes, based on their failure to show material facts that could not have been discovered through a reasonable investigation within the applicable 120-day time period.. However, on the Claimant's cross-appeal, the DCA found the denial of TTD benefits and inpatient psychiatric care should be reversed. On the TTD issue, the Court referred to earlier case law decisions establishing it was the Employer/Carrier's burden to demonstrate a change of work status and that the Claimant had been notified of such change. In this case, the Employer/Carrier offered no such evidence and the Claimant was entitled to rely on the work status assigned by her authorized treating physician. On the inpatient care issue, the Court noted the JCC had awarded psychiatric care, but failed to explain why he rejected the unrefuted medical testimony that inpatient care was necessary. The Court explained a JCC may reject unrefuted testimony from a doctor as unreliable, but must give a valid reason for doing so. Here, the JCC relied on the authorized physician's opinion when awarding ongoing psychiatric care, but failed to give a valid reason why he denied the inpatient psychiatric care that was recommended by the same authorized physician. Thus, the denial of TTD benefits was reversed and the denial of inpatient care was remanded for clarification of the reason for such denial.

***Maria Suarez v. Steward Enterprises and Travelers Insurance***

Case No. 14-3495

**Facts** – The Claimant attempted to schedule, EMA, Dr. Rozencwaig's deposition, but was advised that the doctor's fee was \$750 per hour and that the deposition would not go forward unless the doctor received an advance payment of \$750. The explanation provided by Dr. Rozencwaig's office staff was that the doctor believed he was not limited to \$200 per hour because he was the appointed EMA. At hearing, the JCC declined to determine the fee, concluding that giving a deposition is not a service contemplated by either section 440.13(9), Florida Statutes, the section addressing EMAs, or by Florida Administrative Code Rule 69L-30, also addressing EMAs. Further, the JCC concluded that because that the EMA was not a mere health care provider, but was an expert, and as such, the fee limitation in section 440.13(10) did not apply. Through a petition for writ of certiorari, the Claimant argued that the Judge JCC departed from the essential requirements of law by denying her request to limit the deposition fee of the expert medical advisor (EMA) to \$200 per hour, the amount referenced in section 440.13(10), Florida Statutes, and that error represented material harm that could not be remedied on appeal.

**Issue** – Whether an EMA is health care provider under the statutory definition and is therefore subject to the statutory fee limitation in section 440.13(10), Florida Statutes?

**Outcome and Analysis** – The First DCA first found the Claimant demonstrated irreparable harm because she faced with only the options of either paying the \$750 without the ability to recover the same as a taxable cost, or foregoing the deposition and proceeding without the means to contest the EMA report, neither of which could be remedied on appeal. The Court also held that the JCC departed from the essential requirements of law as case law and statutes indicate that an EMA is a health care provider under the statutory definition, and is therefore subject to the statutory fee limitation imposed by Section 440.13(10). The JCC's order was quashed, and the matter was remanded for entry of an order setting the deposition fee at \$200 per hour.