Trovillion, Inveiss & Demakis

Trovillion, Inveiss & Demakis, APC has grown in reputation as one of Southern California's premier law firms specializing in representation of employers, insurance carriers and third party administrators in workers' compensation litigation.

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Retirement of Office Manager

Trovillion, Inveiss & Demakis' long time office manager announces her retirement. Nancy Baker will be retiring effective April 15, 2014.

Joining the firm in 2007, Nancy has been an invaluable team member. Everyone at TID wishes Nancy the best as she embarks on the next stage of her life.

Nancy will be joining her husband Jack taking long road trips and spending more time with her granddaughter.

Practice Pointer: Defending Attacks on Utilization Review Decisions

On February 27, 2014, the WCAB issued the *en banc* decision, *Jose Dubon v. World Restoration, Inc.; and State Compensation Insurance Fund*, (2014) 78 Cal. Comp. Cases, ADJ4274323, ADJ1601669, clarifying the distinctions between when a Utilization Review decision can be attacked via the WCAB and when it can be attacked via Independent Medical Review.

In *Dubon,* a July 1, 2013 report and a request for authorization was made regarding spinal fusion. The UR doctor, a board certified orthopedic surgeon, reviewed the July 1, 2013 report, a June 8, 2011 spine MRI and 18 pages of unidentified medical records. On July 19, 2013, UR denied the request for surgery deeming it not reasonable or necessary since there was no documented imaging of injury at the fusion levels, evidence that conservative treatment failed, or evidence of injury to which the fusion was supposed to relieve.

Applicant's attorney filed for IMR. Two days later, applicant's attorney filed a Declaration of Readiness for an Expedited Hearing regarding the UR denial. The WCJ issued a decision stating the UR decision because it was not substantial medical evidence. The opinion cited the fact that the 18 pages of additional records were not documented and that UR did not review "a wealth of [other] medical records" including AME reports, other diagnostic studies, and other PTP reports.

The WCAB *en banc* agreed with the trial judge. The WCAB held

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that (1) IMR is *only* to address disputes that arise from a *valid* UR denial; (2) a UR decision is invalid if it is untimely or materially deficient; (3) if UR is found to be procedurally invalid, then it is the court that decides the issue of medical necessity and not IMR.

This is not necessarily new. The case merely codifies what most believed was the Legislature's intent between UR and IMR.

Once a UR denial (and presumptively a modification) is issued, applicant attorneys can file for both an Expedited Hearing to attack the procedural aspects of the decision and an application for IMR to attack the material aspects of the denial.

The case enlightens applicant attorneys to attack UR denials as unsubstantial medical evidence. Although it is definitely a case-by-case basis, merely relying on PR-2 reports and minimal medical evidence to substantiate a denial *may* be determined by a WCJ to be an invalid decision if the lack of medical evidence is proven, by the employee, to be a material defect.

This may undoubtedly increase UR litigation as applicant attorneys attempt to prove to the court that UR did not have sufficient medical evidence to support a decision. Applicant attorneys must still prove to the WCAB how and why the medical treatment is reasonable and necessary in order to win their case as they carry the burden of proof.

Claims Examiners should ensure that sufficient medical evidence is provided to UR and is well documented in the UR determination. At an Expedited Hearing, defense attorneys should be prepared for two arguments: the UR decision is not substantial medical evidence, and if that fails, that the treatment is not medically reasonable or necessary based on sufficient medical data and medical guidelines.