



California Workers' Compensation Institute

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JUNE 23, 2016

SIGNIFICANT DECISION 16-06

CHP v WCAB (MARGARIS)

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT - DIVISION THREE
B269038

FILED: JUNE 22, 2016

An untimely IMR determination is valid and binding on the parties.

SIGNIFICANCE: Even if an IMR determination is not issued within the 30-day time period prescribed by §4610.6, it is nonetheless valid and the WCAB does not obtain jurisdiction to determine medical necessity of a treatment request.

FACTS: Applicant timely requested IMR of a UR denial. Defendant sent the necessary medical records to Maximus on November 26, 2014. On January 8, 2015 (43 days later), Maximus issued its decision upholding the UR determination. The question presented to the Court of Appeal was whether an IMR determination issued *after* the 30-day period prescribed by §4610.6(d) has expired is invalid and thereby vests jurisdiction with the WCJ to decide whether the proposed treatment is medically necessary.

HOLDING: The Court of Appeal reversed the decision of the Appeals Board and held that the 30-day time limit is directory and not mandatory, and that even an untimely IMR determination is valid and binding on the parties.

DISCUSSION: The Appeals Board had been split 3-3 on this issue, with half of the Commissioners opining that the timelines are mandatory and the other half finding that the timelines are merely directory. The Court of Appeal granted the writ of review because the case presented “an important issue of first impression” and because the Appeals Board had rendered inconsistent and conflicting decisions on the subject.

After providing a detailed review of the legislative history behind SB 899 and SB 863 as well as referring to the recent published decision in *Stevens*, the Court next discussed case law interpreting statutes directing government actions (remember, the IMR is performed by Maximus on behalf of the Administrative Director). Relying on the Supreme Court case of *People v. McGee*, the Court found that “shall” can be either mandatory-directory or mandatory-permissive, depending on the context. Applying the *McGee* standards to the facts of this case, the Court determined that the statutory reference to “shall” in §4610.6 was ambiguous and thus required reference to the underlying legislative intent.

Once the Court delved into legislative intent, of course, the rest of the job became easy. First noting that statutory time limits applicable to government action are almost universally construed as directory (rather than mandatory or jurisdictional), the Court noted that the Legislature had provided only limited grounds for appeal. Coupled with the fact that the Legislature did not include any self-executing consequence in §4610.6 for a failure to act, the Court determined that the Legislature did not intend to divest the Administrative Director of jurisdiction to issue an IMR determination after the expiration of the 30-day period.

But the Court went even further into the legislative history and found that the Legislature intended to remove the authority to make decisions about medical necessity from the WCJs and the Appeals Board, and place it into the hands of independent, unbiased medical professionals. In particular, the court referenced the language of §4610.6(i), mandating that “in no event” shall a WCJ or the Appeals Board make a determination of medical necessity contrary to the IMR result.

The decision closes with a discussion of applicant’s option to seek redress by way of a writ of mandate, which is an application to the court asking that the Administrative Director/Maximus be compelled to issue a decision. To the extent that Maximus actually fails to render a decision, an injured worker has a writ of mandamus as a secondary remedy. But under this decision, if the IMR has actually issued but is merely untimely, it is still valid and binding on the parties.

As a decision of the Court of Appeal, this case is binding on the Appeals Board and all WCJs in all cases. Keep in mind, however, that two other cases on the identical issue are pending in the Third District (*Southard* and *Baker*). **If** those cases are eventually decided with a different outcome from *Margaris*, then (**and only then**) there will be a split of authority at the Court of Appeal level and the Appeals Board and the WCJs will once again be permitted to choose among the outcome options -- at least until the Supreme Court weighs in to resolve the conflict.

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