

SELF-INSURING EMPLOYERS EVALUATION BOARD
INFORMAL CONFERENCE FINDINGS
IN THE MATTER OF: Radio Shack (Employer), Risk No. 20003603-0
And
[REDACTED] (Injured Worker), Claim No. [REDACTED]
Complaint No. 15546

[REDACTED]

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Radio Shack Corporation
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300 West Wilson Bridge Road
Worthington, OH 43085-2279

FOR THE INJURED WORKER: Stewart Jaffy
FOR THE EMPLOYER: Corey Crognale, Larry Ricchi
FOR THE ADMINISTRATOR: Michael Travis

This matter was set for informal conference before the Self-Insuring Employers Evaluation Board on August 9, 2007 on Complaint No. 15546, filed January 23, 2007. The complaint alleged that the employer refused to pay for prescription medications received on December 5, 2006 and December 23, 2006, totaling \$1,054.45. The complaint further alleged that the employer incorrectly stated that the claim was closed.

The relevant history of this matter is as follows. On June 28, 2006, the injured worker filed a C-86 motion requesting a hearing on the C-9 request signed by Dr. Spare on March 6, 2006, denied by the employer on March 15, 2006, and the C-9 request signed by Dr. Spare on May 26, 2006, denied by the employer on June 1, 2006. The C-9 dated March 6, 2006 requested psychotherapy and medication management one time a week for six months. The C-9 dated May 26, 2006 requested referral to Dr. Prok for pain management but did not specify the frequency or duration of the requested treatment.

A hearing was held before a District Hearing Officer on September 12, 2006. The District Hearing Officer denied the C-9 requests dated March 6, 2006 and May 26, 2006, relying on the July 31, 2006 report of Dr. Murphy. The District Hearing Officer noted within the order, "It was Dr. Murphy's opinion that the injured worker should continue to be followed for his medications, but that given the length of counseling/psychotherapy in regard to this claim, he opined that further treatment was not indicated." The injured worker appealed the decision of the District Hearing Officer and a hearing was held before a Staff Hearing Officer on October 12, 2006. The Staff Hearing Officer affirmed the order of the District Hearing Officer and denied the C-9 requests dated March 6, 2006 and May 26, 2006. Further appeal was refused by the Industrial Commission.

The injured worker's representative, Stewart Jaffy, explained that the complaint was triggered as a result of frustration created by a letter dated January 4, 2007 from Progressive Medical, Inc. It appears that Progressive Medical was a pharmacy manager hired by the employer's Third Party Administrator (TPA). Progressive's January 4, 2007 letter informed the injured worker that following a hearing on November 16, 2006, his claim was closed and therefore the prescriptions the injured worker received on December 5, 2006 and December 23, 2006 would not be paid by his workers' compensation claim. The letter advised the injured worker that he was responsible for a total payment of \$1,054.45.

Mr. Jaffy pointed out that the November 16, 2006 hearing referred to by Progressive Medical involved a Staff Hearing Officer hearing on the issue of termination of temporary total disability and maximum medical improvement. In that order, the Staff Hearing Officer found that the injured worker had reached maximum medical improvement for the allowed psychological condition and therefore terminated temporary total disability compensation. Mr. Jaffy argued that nothing in that order pertained to the payment of medication. He further argued that the notation that the claim was "closed" was a gross misstatement.

By letter dated January 22, 2007, filed on January 23, 2007, the injured worker filed the instant complaint. In the complaint letter and at the conference, Mr. Jaffy noted that he contacted Progressive Medical and was told that the TPA had advised them that the claim was closed. Progressive Medical indicated that it would check with the TPA but Mr. Jaffy received no further response. Mr. Jaffy further noted that it is disturbing that the BWC's computer system was not checked to determine whether the claim was still open and called into question the competency of the TPA if it believed that a temporary total/maximum medical improvement hearing closed a claim. Mr. Jaffy further explained that additional correspondence to the employer or its representative failed to resolve the complaint.

The employer's representative, Meghan Dargay Majernick, responded to the complaint in a letter dated February 16, 2007. The employer asserted that based upon the October 12, 2006 Staff Hearing Officer order denying the C-9 requests dated March 6, 2006 and May 26, 2006, medications prescribed by Dr. Spare are not currently authorized. The employer further stated that medication management includes the writing of prescriptions for a prescribed medication and evaluation of the patient while on the prescribed medication. Therefore, the employer asserted that the medications prescribed by Dr. Spare were denied by the October 12, 2006 order. After explaining that Progressive Medical was its former pharmacy provider, the employer asserted that the TPA (Cambridge Integrated Services) has never stated nor implied that the claim was closed. Instead, the TPA instructed Progressive Medical that the medications had been denied by the Industrial Commission and should not be reimbursed. The employer suggested that Progressive Medical's statement that the claim was closed may have been a reference to the fact that the TPA is no longer contracting with Progressive Medical.

As a supplement to its February 16, 2007 letter, the employer's legal representative, Corey Crognale, submitted a letter dated March 8, 2007. The letter again explained the payment history relative to the medications at issue and asserted that there are no other outstanding requests for medication management. The letter stated that the employer will review future requests to determine if they are related, necessary, and appropriate for the treatment of the conditions allowed in the claim. The employer asserted that the complaint procedure is not the appropriate means to question the propriety of District and Staff Hearing Officer orders.

By letter dated March 9, 2007 the Self-Insured Department dismissed the complaint as invalid. The Self-Insured Department found that on August 4, 2004 a Staff Hearing Officer authorized a C-9 request from Dr. Spare for the treatment of the allowed psychiatric condition with the medications Effexor, Vioxx, Trazodone, and Neurontin. The Self-Insured Department noted that the March, 2006

C-9 request was denied by the Industrial Commission and therefore found that all medications prescribed by Dr. Spare have been determined to be unauthorized, unrelated and unnecessary for the treatment of the allowed conditions. Therefore, the Self-Insured Department found that the bill from Progressive Medical for medications supplied on December 5, 2006 and December 23, 2006 were for treatments no longer related to or necessary for the allowed conditions in the claim. The Self-Insured Department went on to find that the issues raised in this complaint are disputes and that all disputed matters should be adjudicated through the Industrial Commission.

By letter dated March 13, 2007, the injured worker requested reconsideration of the March 9, 2007 dismissal of the complaint. In the request for reconsideration and at the conference, Mr. Jaffy asserted that there is no order denying medication and that the C-9 requests denied by the October 12, 2006 Staff Hearing Officer order do not request the medications being denied.

In response to the request for reconsideration, the employer's representative, Corey Crognale, submitted a letter dated March 22, 2007. In the letter and at the conference, the employer again asserted that the C-9 requests denied by the October 12, 2006 order include the medications being denied. The employer also argued that the reconsideration request must be denied as it is an inappropriate means to seek a review as to the propriety of the District and Staff Hearing Officer orders.

By letter dated May 16, 2007, Joy Bush, BWC Director of Employer Management Services, granted the injured worker's request for reconsideration and found the complaint to be valid. Ms. Bush noted that the District and Staff Hearing Officer orders relied upon the report of Dr. Murphy to deny the C-9 requests and relied on Dr. Murphy's statement that the injured worker should continue to be followed for his medications on an every other month basis. Ms. Bush acknowledged that the District and Staff Hearing Officer orders denied the request for psychotherapy treatment and medication management at the rate of once a week for six weeks. Ms. Bush indicated there is no reason to reject Dr. Murphy's opinion that the injured worker should continue receiving medication management in the claim and that Dr. Murphy clearly indicated that the injured worker should continue to be followed for his medication. Ms. Bush also found that because there was no basis for concluding that all further medications were denied in the claim, the employer should have determined whether the requested medications were related to the allowed conditions and should not have mechanically cited the Commission orders to refuse to consider whether the medications were payable. Ms. Bush therefore found the employer violated Rule 4123-19-03(D) by not acting in accordance with the Commission orders and by failing to properly administer the claim. Ms. Bush finally found that in violation of Rule 4123-19-03(K)(5), the denial of payment did not state the actual reason for the denial and did not notify the injured worker of his right to have the issue decided at an Industrial Commission hearing.

In a letter dated May 30, 2007, the employer requested reconsideration of the May 16, 2007 decision of Ms. Bush. In the request for reconsideration, the employer asserted that Ms. Bush upheld a complaint for non-payment of prescription drugs based upon a request for medical treatments (once every other month for six months) which was not submitted until after the self-insured complaint was even filed. The employer argued that such a finding based upon a set of facts not in existence at the time of the complaint is unfair, invalid and subject to review by the Self-insuring Employers Evaluation Board. The employer referenced a C-9 signed by Dr. Spare on February 27, 2007, denied by the employer on March 29, 2007, requesting medication management on an every other month basis for six months. The employer notes that this was the first time any such request was presented to the employer. On May 15, 2007, the injured worker filed a C-86 motion requesting a hearing on the denied C-9 request.

The Board agrees with the employer's position on this matter. The employer, through its TPA and former pharmacy manager, objected to payment of bills for prescription drugs supplied on December

5, 2006 and December 23, 2006. The employer satisfied the requirements of Ohio Adm.Code 4123-19-03(K)(5) concerning payment of fee bills by asserting its belief that the claim was closed, although it is clear such belief was erroneous.

The Board agrees with the injured worker's assertion that at the time the complaint was filed, there was no Industrial Commission order that specifically denied payment of the medication. It is equally true, however, that there was no Industrial Commission order that specifically required payment of the medication. The Board finds that these facts clearly constitute a "contested issue" for which R.C. 4123.511 mandates resolution through the hearing process.

The finding of a valid complaint in this instance required a finding that was not made by the Industrial Commission, and improperly removed this matter from the legislatively prescribed hearing process. The Self-Insured Department properly dismissed the complaint and the Self-Insuring Employers Evaluation Board hereby reinstates that portion of the Self-Insured Department's determination. The Board hereby finds the complaint invalid and it is dismissed. Finally, the Board notes that the issue giving rise to the complaint was properly addressed through the Industrial Commission hearing procedures on May 15, 2007 and July 17, 2007, from which further appeal was refused.

SELF-INSURING EMPLOYERS EVALUATION BOARD


Kevin R. Abrams, Chairman YES


Wesley Welts, Member NO


William Holt, Member YES

DATE MAILED: 19th DAY OF September, 2007