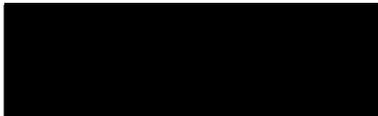


**ORDER
SELF-INSURING EMPLOYERS EVALUATION BOARD
FORMAL HEARING**

**IN THE MATTER OF: THE LONGABERGER COMPANY (EMPLOYER); RISK No.
20003994-0**

AND

**[REDACTED] (INJURED WORKER); CLAIM No. [REDACTED]
COMPLAINT No. 13883**



The Longaberger Company
Attn: Craig McDougale
P.O. Box 3400
Newark, OH 43058

Stewart Jaffy & Associates Co., L.P.A.
306 East Gay Street
Columbus, OH 43215

Calfee, Halter & Griswold, L.L.P.
Attn: Linda U. Elliott
1400 McDonald Investment Center
800 Superior Avenue
Cleveland, OH 44114-2688

Calfee, Halter & Griswold, L.L.P.
21 East State Street, Suite 1100
Columbus, OH 43215-4243

Gates McDonald Company
Attn: Sherry Jones
P.O. Box 182032
Columbus, OH 43215-2032

FOR THE EMPLOYER: Linda Elliott
FOR THE INJURED WORKER: Stewart Jaffy
FOR THE ADMINISTRATOR: Michael Travis

This matter came before the Board on 4/26/2006 for formal hearing on Complaint No. 13883 filed 5/6/2004, primarily concerning events that occurred between June 2002 and October 2003. This hearing is a continuation of a hearing originally held on 3/16/2005, at which additional time was afforded the parties to exchange information. The Board notes that this hearing has been reset and continued a number of times, giving rise to what has now become a several year period between the adjudication of the complaint, and the events which gave rise to the complaint. During this several year delay, the Board also observes that the injured worker has changed legal representatives, the employer has changed legal representatives and its third party administrator, and the composition of the Self-Insuring Employers Evaluation Board has changed. These facts, along with historically contentious parties and issues that do not lend themselves to easy

resolution under the best of circumstances, require this Board to exercise the Wisdom of Solomon in reaching its decision. In an attempt to do so, the Board will address the several allegations of the complaint separately, below.

After a review of the evidence on file and the arguments presented at hearing, the Board makes the following findings:

In the complaint filed 5/6/2004, the injured worker alleged that the employer failed to timely provide her a complete copy of her medical records. The injured worker asserted that a copy of the records was first requested in a telephone call on 7/10/2002, with several follow-up requests, and that she did not receive the complete medical record until 6/25/2003. An 8/19/2002 letter from the injured worker requested updated medical records from 5/29/2002. Records provided by the current third party administrator, CompManagement Inc. (CMI), as well as the 8/19/2002 letter suggest that the injured worker did timely receive copies of at least some medical records for the period prior to 5/29/2002. On 9/06/2002 CMI sent a letter and additional records to the injured worker. The injured worker asserted that the records were not complete and continued to request records that were excluded. Specifically, the injured worker identified three cover letters, dated 3/13/2002, 5/14/2002, and 6/13/2002 from Genex, which referenced documents that she did not receive until 6/25/2003, after repeated attempts with the employer, its TPA and representatives of the service provider.

The employer acknowledged it had no record of a response to the 7/10/2002 request but that the injured worker had records sent to her on 5/29/2002 and 8/26/2002. The employer argued that after the original file was sent to the injured worker, she would have been copied with new records as they became available. The employer further argued that it is not required to continue sending copies of the same documents that it had already provided. The employer acknowledged it could not determine whether the Genex records were complete, and stated that if any records were missing when copies were sent to the injured worker, the lack of these records was not purposeful. The employer also acknowledged that prior counsel took the position that nursing records were not medical records, which is not the position of current counsel. While the employer acknowledged that medical records must be provided within a reasonable amount of time, the employer pointed out there is no rule or statute providing a specific time period for providing copies of medical records.

The Board finds that the injured worker's request for copies of her medical records, initiated in July and August of 2002, was not completely fulfilled until 6/25/2003. While it is clear that the self-insuring employer at least partially complied with the injured worker's request in a timely manner, the medical documents attached to the cover letters from Genex identified above were not supplied to the injured worker until many months after they were requested. Ohio Adm.Code 4123-19-03(K)(4) and (9), effective 12/17/2001, require a self-insuring employer to provide copies of medical reports to an injured worker and to make available for review all the employer's records pertaining to the claim. While the rules do not include a specific time frame for providing copies of all documents to an injured worker, a review must be made available within a reasonable time, which is defined as 72 hours from the request. Notwithstanding the lack of a specific time frame for providing copies, the employer's failure to supply complete copies of the requested records for at least an eight month period does not comply with any reasonableness standard and is deemed a violation of the rules. The portion of the complaint pertaining to the employer's failure to provide copies of medical records is found valid, and a copy of the valid finding will be placed in the employer's self-insurance risk file.

The injured worker withdrew that portion of her complaint alleging the employer failed to timely approve or deny the request for TNS unit supplies. The Board finds accordingly, and dismisses that portion of the complaint.

The injured worker further alleged that the employer failed to timely approve, deny or pay for medications. Specifically, on 3/13/2003 the injured worker was prescribed new medications Celexa and Ziks. Ziks was approved on 4/19/2003 and Celexa was approved on 4/24/2003. Third Party Solutions (TPS), a company that handles prescription matters for self-insuring employers, approved the medications and therefore the pharmacy filled the prescriptions. After taking the medications for several months, the injured worker received a bill from TPS for a prescription filled on 4/21/2003. Apparently there was a dispute between TPS and CMI as to whether the medications were authorized. Finally, on 10/10/2003, TPS agreed not to pursue payment from the injured worker for the medication.

The employer argued that a self-insuring employer is permitted the opportunity to conduct a review to determine whether medications are necessary and appropriate for treatment of the allowed conditions. Once the appropriateness of the medications was confirmed, the medications were authorized and paid.

The Board finds that while the review of newly prescribed medications was not a seamless process, the actions of the employer's representative do not constitute a valid complaint. The employer used its TPA and another company, Third Party Solutions, to assist in the authorization of prescription drugs. As a result of what was later determined to be a mistake, TPS billed the injured worker in August of 2003 for medications from a date of service in April, 2003. That matter was resolved eight weeks later in the injured worker's favor and attributed to a misunderstanding between the TPA and TPS.

The Board finds the misunderstanding resulting in the mistaken billing in August, which was resolved by October, does not constitute a valid complaint. That portion of the injured worker's complaint is hereby dismissed.

The injured worker next alleged that the employer failed to pay a bill from a 12/17/2002 emergency room visit until 9/12/2005. The injured worker pointed out that in an order issued 7/02/2003, a Staff Hearing Officer ordered payment of the 12/17/2002 emergency room bills. The injured worker asserted that she nevertheless continued to receive bills and a collection letter after which, sometime during the summer of 2003, she paid a bill for \$154.81, for which she was not reimbursed until 9/12/2005. The injured worker asserted that she contacted the employer about the bill on 5/27/2003, and submitted the \$154.81 bill to the employer on 6/09/2003. She further asserted that she subsequently contacted the employer several times seeking reimbursement, and on 7/30/2003 faxed a copy of her payment of the bill to the employer's TPA.

The employer argued that the emergency room visit was originally denied and the matter taken to hearing, as is the employer's right. The employer did however, acknowledge that the bill was paid late and that it should have been paid shortly after the 7/02/2003 Staff Hearing Officer order.

The Board finds the injured worker was not timely reimbursed for the emergency room bill from services rendered on 12/17/2002, paid by the injured worker on 6/17/2003. The emergency room bill, originally contested by the self-insuring employer, was ordered paid by Staff Hearing Officer order issued 7/02/2003. R.C. § 4123.511(I) clearly requires payment of medical benefits after the issuance of a Staff Hearing Officer order. The portion of the complaint pertaining to the

employer's failure to timely pay the 12/17/2002 bill for emergency room treatment is found valid, and a copy of the valid findings will be placed in the employer's self-insurance risk file.

Finally, the injured worker alleged that the employer failed to pay for pain control consultants. In an order issued 5/12/2004 a Staff Hearing Officer authorized Dr. Dexter to perform selective tissue conductance, upper somatosensory evoked potential, for diagnostic purposes. The tests were performed on 4/22/2004. The injured worker asserted that the bills were paid in installments on 3/04/2005, 3/17/2005 and 3/30/2005. In an order issued 12/11/2004 a District Hearing Officer authorized an MRI. The injured worker asserted that the bill for the MRI was not paid until 1/13/2005. The employer was unaware of the issue involving payment of the MRI bill but acknowledged that the bills for the tests performed on 4/22/2004 were not paid timely. The injured worker also alleged that the employer did not pay bills involving blood tests. The injured worker last received a bill for the blood tests on 5/10/2005. The employer asserted that the lab tests were done as part of a smoking cessation program and that the employer would not be responsible for payment of such bills. The injured worker asserted that the smoking cessation program was part of pain management. The injured worker acknowledged that there is no Commission order authorizing payment of the lab tests involving nicotine levels.

The Board finds insufficient evidence to establish a valid complaint for late payment of the bill for the MRI. Further, the Board finds insufficient evidence to establish a valid complaint concerning bills related to a smoking cessation program. Accordingly, the Board dismisses that portion of the complaint concerning that matter.

Finally, the Board finds that bills for the tests performed 4/22/2004 and approved by Staff Hearing Officer order issued 5/12/2004, were not paid until March 2005. Such delay in payment constitutes a violation of the time frames set forth in R.C. § 4123.511(I) and Ohio Adm. Code 4123-19-93(K)(5). Accordingly, that portion of the complaint pertaining to the late payment of bills for tests performed 4/22/2004 is found valid, and a copy of the valid findings will be placed in the employer's self-insurance risk file.

A copy of this order shall be placed in the Self-Insured Department's file.

SELF-INSURING EMPLOYERS EVALUATION BOARD



Kevin R. Abrams, Chairman YES



Wesley Wells, Member YES



James Sharpe, Member YES

DATE MAILED: 18th DAY OF January, 2004