

**WORKERS' COMPENSATION APPEALS BOARD  
STATE OF CALIFORNIA**

**YOJAN PEREZ LOPEZ, *Applicant***

**vs.**

**POWER BY SPARK;  
STATE COMPENSATION INSURANCE FUND, *Defendants***

**Adjudication Number: ADJ11845925  
Van Nuys District Office**

**OPINION AND DECISION  
AFTER RECONSIDERATION**

We granted reconsideration<sup>1</sup> to further study the factual and legal issues in this case. This is our Opinion and Decision After Reconsideration. Defendant sought reconsideration of the Findings and Order re: Ongoing Treatment at Casa Colina issued by a workers' compensation administrative law judge (WCJ) on April 8, 2021. The WCJ found that applicant, while employed on August 16, 2018, as an electrician, sustained an admitted industrial injury to his head, both knees, upper back, lower back, and fingers of his left hand, and claimed injury to other body parts. The WCJ found defendant may not unilaterally cease to provide applicant's inpatient care services at Casa Colina Transitional Living Center (Casa Colina), until there is a change in circumstance that would warrant a new utilization review determination. The WCJ ordered that defendant continue to provide the services until there is a change in circumstances.

Defendant contended that the principles of *Patterson v. The Oaks Farm*, 79 Cal.Comp.Cases 910, 2014 LEXIS 98 (*Patterson*)<sup>2</sup> do not apply to this case, arguing that

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<sup>1</sup> Commissioner Lowe, who was on the panel that issued a prior decision in this matter, no longer serves on the Appeals Board. Another panelist has been assigned in her place.

<sup>2</sup> WCAB panel decisions are citeable authority, particularly on issues of contemporaneous administrative construction of statutory language [see *Griffith v. WCAB* (1989) 209 Cal.App.3d 1260, 1264, fn. 2, 54 Cal.Comp.Cases 145]. However, WCAB panel decisions are not binding precedent, as are en banc decisions, on all other Appeals Board panels and workers' compensation judges [see *Gee v. Workers' Comp. Appeals Bd.* (2002) 96 Cal.App.4th 1418, 1425 fn. 6, 67 Cal.Comp.Cases 236]. While WCAB panel decisions are not binding, the WCAB will consider these decisions to the extent that it finds their reasoning persuasive [see *Guitron v. Santa Fe Extruders* (2011) 76 Cal.Comp.Cases 228, fn. 7 (Appeals Board En Banc Opinion)].

utilization review specified that certification was only for a limited period of time. Defendant also contended that the testimony of applicant's witness, the executive director of patient access and care at Casa Colina, was not competent or substantial, and that the subsequent utilization review determination non-certification of the program was appropriate because the program was ineffective. Applicant filed an Answer.

We received a Report and Recommendation on Petition for Reconsideration (Report) from the WCJ in response to defendant's Petition for Reconsideration, which recommended that the petition be denied.

We have reviewed the record and have considered the allegations of the Petition for Reconsideration, the Answer, and the contents of the WCJ's Report. Based on our review of the record, for the reasons discussed below, and for the reasons stated in the Report, which we adopt and incorporate, we affirm the WCJ's April 8, 2021 decision.

## **FACTS**

Applicant, while employed on August 16, 2018, as an electrician, sustained an admitted industrial injury to his head, both knees, upper back, lower back, and fingers of his left hand, and claimed injury to other body parts.

On August 27, 2020, applicant was evaluated by his primary treating physician, Allen Huang, M.D., specialist in physical medicine and rehabilitation. Dr. Huang diagnosed applicant with multiple significant problems due to his industrial traumatic brain injury. He noted that applicant suffers from cognitive deficits, multiple orthopedic issues, crippling anxiety, and an inability to safely perform activities of daily living. Dr. Huang opined that applicant requires continued participation in Casa Colina's residential program. (Applicant's Exhibits 1, 3, 5 and 8.)

A request for authorization (RFA) dated September 8, 2020, requested four weeks of inpatient physical rehabilitation at Casa Colina. (Defendant's Exhibit N.)

On September 26, 2020, defendant's utilization review certified the requested inpatient treatment. (Defendant's Exhibit M.) The determination certified room and board, up to five hours of therapy per day, including physical, occupational, speech and neuropsychology, 24-hour oversight, and certified four weeks of inpatient treatment between 9/8/2020 and 3/23/2021. Applicant was admitted to the residential program on October 5, 2020. (Applicant's Exhibit 3.)

A subsequent RFA dated December 24, 2020, requested certification of inpatient care at Casa Colina from January 5, 2021 through February 4, 2021. On December 30, 2020, defendant's utilization review denied certification. (Defendant's Exhibit G.) The reason for the denial was that the reviewer found "no documented evidence of clinically meaningful improvement in functional deficits" after the initial inpatient program. (*Id.*)

A subsequent RFA requested inpatient care, and defendant's February 27, 2021 utilization review determination again denied certification. (Defendant's Exhibit H.) In its Petition for Reconsideration, defendant argues that "precisely because there is no change (*i.e.*, no improvement to the applicant's condition) that the requested authorization for further inpatient rehabilitation is not medically justified." (Defendant's Petition for Reconsideration, 6: 7-9.)

The matter proceeded to an expedited hearing on March 4, 2021. The sole issue for adjudication was "whether the *Patterson* case precluded utilization review of RFAs for the TLC inpatient program at Casa Colina after that treatment was first authorized and provided by defendants." (Minutes of Hearing/Summary of Evidence (MOH/SOE), 3/4/21, 2: 9-10.) In addition to the documentary evidence, Jennyfer Poduska, executive director for patient access and case management at Casa Colina, testified on behalf of applicant. She testified that the repeated RFAs were submitted to ensure payment. Ms. Poduska also stated that although a physician always makes treatment recommendations, there has not been a change in applicant's circumstances sufficient to warrant a discontinuation of the residential program, and it was not safe for him to go home. (MOH/SOE, 3/4/21, pp. 5-7.)

In his Report, the WCJ explained that, pursuant to *Patterson* and later cases, defendant was not entitled to unilaterally cease home health care services absent a showing that applicant's circumstances had changed to warrant a new utilization review. Here, the WCJ determined, because defendant denied applicant's residential treatment program without meeting its burden to show changed circumstances, the issue of applicant's continued care should not have been submitted to utilization review.

## DISCUSSION

Labor Code section 4600(a)<sup>3</sup> provides that an industrially injured worker is entitled, at his/her employer's expense, to medical treatment that is reasonably required to cure or relieve the

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<sup>3</sup> All further statutory references are to the California Labor Code, unless indicated otherwise.

effects of the industrial injury. (§ 4600(a).) The coverage of section 4600 extends to any medically related services that are reasonably required to cure or relieve the effects of the industrial injury, even if those services are not specifically enumerated in that section. (*Smyers v. Workers' Comp. Appeals Bd.* (1984) 157 Cal.App.3d 36, 41.)

Terminating medical treatment that was earlier authorized as reasonably required to cure or relieve the injured worker from the effects of the industrial injury is contrary to section 4600(a) unless supported by substantial medical evidence. With respect to provision of a nurse case manager, in *Patterson, supra*, a panel of the Appeals Board held that:

An employer may not unilaterally cease to provide approved nurse case manager services when there is no evidence of a change in the employee's circumstances or condition showing that the services are no longer reasonably required to cure or relieve the injured worker from the effects of the industrial injury. . . .

[And] It is not necessary for an injured worker to obtain a Request For Authorization to challenge the unilateral termination of the services of a nurse case manager. (*Patterson*, 79 Cal. Comp. Cases at p. 917.)

The Appeals Board in *Patterson* concluded that:

Defendant acknowledged the reasonableness and necessity of nurse case manager service[s] when it first authorized them, and applicant does not have the burden of proving their ongoing reasonableness and necessity. Rather, it is defendant's burden to show that the continued provision of the services is no longer reasonably required because of a change in applicant's condition or circumstances. Defendant cannot shift its burden onto applicant by requiring a new Request for Authorization and starting the process over again. (*Id.* at p. 918.)

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Applicant has no obligation to continually show that the use of a nurse case manager is reasonable medical treatment. Instead, once defendant authorized nurse case manager services as reasonable medical treatment, it became obligated to continue to provide those services until they are no longer reasonably required under section 4600 to cure or relieve the effects of the industrial injury. Like all medical treatment decisions, that determination must be based upon substantial medical evidence. (*Lamb v. Workers' Comp. Appeals Bd.* (1974) 11 Cal.3d 274 [113 Cal. Rptr. 162, 520 P.2d 978, 39 Cal. Comp. Cases 310]; *LeVesque v. Workmens' Comp. Appeals Bd.* (1970) 1 Cal.3d 627 [35 Cal. Comp. Cases 16].)

Defendant failed to meet its burden of showing by substantial evidence that applicant's condition and circumstances changed in a way that made the further provision of nurse case manager services no longer reasonable medical treatment in this case. (*Id.* at p. 919.)

The WCJ wrote in his Report,

Although the *Patterson* case itself involved Nurse Case Management services, its reasoning has been applied to other kinds of medical treatment, including home health care services (*Kumar v. Sears Holding Corp.* (2014) 2014 Cal. Wrk. Comp. P.D. LEXIS 502; *Darlene Ferrona v. Warner Brothers* (2015) 2015 Cal. Wrk. Comp. P.D. LEXIS 220; *Gaylynn Dewey v. Object Geometrics, Inc.* (2019) 2019 Cal. Wrk. Comp. P.D. LEXIS 255; *William Romo v. Pacific Bell Telephone Company* (2019) 2019 Cal. Wrk. Comp. P.D. LEXIS 525; *Ruthiea Avist v. San Francisco Medical Center* (2020) 2020 Cal. Wrk. Comp. P.D. LEXIS 254; *Silvia Zucchi Paz v. Tinco Sheet Metal* (2020) 2020 Cal. Wrk. Comp. P.D. LEXIS 403. (Report, pp. 3-4.)

The WCJ continued by noting numerous cases applying the *Patterson* rationale including medical transportation, *Gunn v. San Diego Dept. of Social Services* (2015) 2015 Cal. Wrk. Comp. P.D. LEXIS; nonmedical transportation, *Ramirez v. Kuehne and Nagel* (2014) 2014 Cal. Wrk. Comp. P.D. LEXIS 537; *Rabenau v. San Diego Imperial Counties Development Services Incorporated* (2018) 2018 Cal. Wrk. Comp. P.D. LEXIS 97; assisted living facilities, *Duncan v. County of Ventura* (2017) 2017 Cal. Wrk. Comp. P.D. LEXIS 131, and rehabilitation treatment, “squarely in line with this case, Casa Colina Transitional Living Center, (*Tinsley v. Vertis Communications* (2015) 2015 Cal. Wrk. Comp. P.D. LEXIS 375, concurring opinion of Commissioner Sweeney). Accordingly, the reasoning in *Patterson* should apply in this case, eliminating the need for repeated utilization review every four weeks or any other interval, absent a change in circumstances that would warrant a new utilization review determination regarding applicant’s need to remain at Casa Colina.” (*Id.*)

As the foregoing cases instruct, a request for an RFA must be based on a change in applicant’s condition or circumstances sufficient to show that the treatment is no longer reasonably required to cure or relieve the effects of the industrial injury. We are not persuaded that the dicta cited by defendant from *Romo, supra*, supports a different result. Regarding defendant’s assertion that the inpatient treatment at Casa Colina has not been effective, the WCJ noted “the somewhat paradoxical legal issue of whether a lack of a change in circumstances can constitute a change in under [*sic*] *Patterson* because there is no evidence (or lack of evidence) to substantiate defendant’s

claim that the Casa Colina LLC program was ineffective.” (Report, p. 6.) Although the initial certification of inpatient treatment was for a limited time, *Patterson* requires a showing of a change in circumstances in order to initiate additional utilization review. In this matter there is no evidence in the record of any change in applicant's condition or circumstance that reasonably supports the initiation of utilization review to re-evaluate his treatment at Casa Colina.

The WCJ addressed defendant’s contention that Ms. Poduska’s testimony was not competent or substantial as follows:

The opinion does not, however, rely upon Ms. Poduska as a medial expert. Her testimony is relevant only as a lay witness who has observed applicant’s participation in the Casa Colina TLC program as part of her work duties. In this capacity, Ms. Poduska provided relevant testimony about applicant’s participation in the program, and that she did not see any change in circumstances to warrant discontinuation of the inpatient rehabilitation program including 24-hour oversight of applicant. (Report, p. 4.)

The WCJ concluded, and we agree, that the principles of *Patterson* apply to this case, and defendants are required to continue to authorize residential care at Casa Colina until there is a change in applicant’s circumstances warranting a new utilization review determination.

For the foregoing reasons,

**IT IS ORDERED** as the Decision After Reconsideration of the Workers' Compensation Appeals Board that the Findings and Order re: Ongoing Treatment at Casa Colina issued by the WCJ on April 8, 2021, is **AFFIRMED**.

**WORKERS' COMPENSATION APPEALS BOARD**

**/s/ KATHERINE WILLIAMS DODD, COMMISSIONER**

**I CONCUR,**

**/s/ ANNE SCHMITZ, DEPUTY COMMISSIONER**

**/s/ CRAIG SNELLINGS, COMMISSIONER**



**DATED AND FILED AT SAN FRANCISCO, CALIFORNIA**

**November 2, 2022**

**SERVICE MADE ON THE ABOVE DATE ON THE PERSONS LISTED BELOW AT THEIR ADDRESSES SHOWN ON THE CURRENT OFFICIAL ADDRESS RECORD.**

**YOJAN PEREZ LOPEZ  
ODJAGHIAN LAW GROUP  
STATE COMPENSATION INSURANCE FUND**

**MG/abs**

I certify that I affixed the official seal of the Workers' Compensation Appeals Board to this original decision on this date. *abs*

# REPORT AND RECOMMENDATION ON PETITION FOR RECONSIDERATION

## I

### INTRODUCTION

Defendant State Condensation Insurance Fund has filed a timely, verified petition for reconsideration of the Findings and Order re: Ongoing Treatment at Casa Colina dated April 8, 2021, which applied the reasoning in *Patterson v. The Oaks Farm* (2014) 79 Cal.Comp.Cases 910 to an ongoing inpatient care program for traumatic brain injury patients at Casa Colina Hospital's Transitional Living Center (TLC), which utilization review had initially certified. Defendant's petition contends that the order was without or in excess of the undersigned's powers, that the evidence does not justify the findings of fact, and that the findings do not support the order or decision. Specifically, the petition contends that the principles of the *Patterson* decision do not apply to this case, where utilization review specified that certification is for a limited period. that the testimony of applicant's witness, the executive director of patient access and care at Casa Colina, was not competent or substantial, and that the subsequent utilization review determination non-certification of the program was appropriate because the program was ineffective.

An answer to the petition has not yet been filed at the time of this report, but is anticipated.

## II

### FACTS

After an expedited hearing with testimony, the parties submitted for decision the sole issue of whether repeated use of utilization review to term in applicant's residential care at Casa Colina TLC, which had been certified by utilization review on September 26, 2020 and authorized by defendants, was precluded by the reasoning of the significant panel decision in *Patterson*, cited *supra*, which requires a change in circumstances to submit care of an ongoing nature to utilization review. A findings and order dated April 8, 2021 concluded that the reasoning in *Patterson* does apply to this case, and that defendants are required to continue to authorize the residential care being provided by Casa Colina until there is a change in circumstances warranting a new utilization review determination.

At trial, the parties stipulated that Yojan Perez Lopez, while employed on August 16, 2018 as an electrician at Tarzana, California by Power By Spark, insured by State Compensation Insurance Fund, sustained injury arising out of and in the course of employment to his head, both knees, upper back, lower back, and fingers of his left hand, and claims to have sustained injury arising out of and in the course of employment to other body parts (MOH/SOE 3/4/2021, p. 2, lines 3-7).

Based on the reasoning of the significant panel decision in *Patterson*, it was found that defendants may not unilaterally cease to provide residential care at Casa Colina TLC when there is no evidence of a change in circumstances that would warrant a new utilization review determination after the September 26, 2020 utilization review certification of this treatment (admitted into evidence as Defendant's M). No such change in circumstances was shown by any



of the exhibits in evidence, nor was it indicated by the testimony at hearing of Jennyfer Poduska, Executive Director of Patient Access and Case Management for Casa Colina. who testified that although Mr. Lopez continues to improve, there has been no change in circumstances to warrant discontinuation of his participation in the residential program at Casa Colina, and it is not safe for Mr. Lopez to go home at this time (MOH/SOE 3/4/2021, pp. 5-7).

It was also found that the residential program at Casa Colina described by Ms. Poduska and certified by utilization review on September 26, 2020 is more like the ongoing services of a Nurse Case Manager described in *Patterson* than not. Some forms of medical treatment do require periodic renewal and review. such as a prescription for OxyContin, Norco, and Lyrica as noted in the panel decision in *McCool v. Monterey Bay Medicar*. 2014 Cal. Wrk. Comp. P.D. LEXIS 578, but a residential rehabilitation program, unlike a prescription for narcotics, does not require repeated renewal for legal reasons intended to protect the patient's health and well-being and prevent abuse.

Accordingly, the issue of whether utilization review determinations subsequent to September 26, 2020 were timely in this case was found to be moot, and it was ordered that defendant State Compensation Insurance Fund continue to authorize ongoing treatment of applicant Yojan Perez Lopez in the residential program at Casa Colina TLC as initially authorized in the utilization review certification dated September 26, 2020, until there is a change in circumstances that warrants a new utilization review determination.

### III DISCUSSION

Defendants raise three contentions: (1) the principles of the *Patterson* decision do not apply to this case, where utilization review specified that certification is for a limited period, (2) the testimony of applicant's witness Jennyfer Poduska. the executive director of patient access and care at Casa Colina, was not competent or substantial, and (3) the subsequent utilization review determination non-certification of the program was appropriate because the program was ineffective. Each of those contentions is addressed below.

*(1) Utilization review certification for a limited period of time should not automatically terminate the provision of ongoing services that are compatible with the reasoning in the Patterson case*

Defendants correctly point out that the September 26, 2020 utilization review certification of inpatient treatment at Casa Colina TLC includes time limits. Specifically, the utilization review determination reads as follows:

The prospective request for 1 inpatient physical rehabilitation casa colina transitional living center residential program to include room and board, up to 5 hours of therapy per day: physical, occupational, speech and neuropsychology; and 24 hour oversight for 4 weeks between 9/8/2020 and 3/23/2021 is certified.

(GENEX Certification dated September 26, 2020, admitted as Defendant's M, p. 1, para. 3.) Although many kinds of medical treatment do require limited periods of authorization, such as the

use of certain medications as described in the *McCool* case, cited above, other kinds of treatment are of an ongoing nature that justifies their uninterrupted provision unless a change in circumstances is shown, as explained in the *Patterson* decision. To enforce arbitrary time limits on such ongoing services would be completely antithetical to the rationale for the *Patterson* decision.

Although the *Patterson* case itself involved Nurse Case Management services, its reasoning has been applied to other kinds of medical treatment, including home health care services (*Kumar v. Sears Holding Corp.* (2014) 2014 Cal. Wrk. Comp. P.D. LEXIS 502; *Darlene Ferrona v. Warner Brothers* (2015) 2015 Cal. Wrk. Comp. P.D. LEXIS 220; *Gaylynn Dewey v. Object Geometries, Inc.* (2019) 2019 Cal. Wrk. Comp. P.D. LEXIS 255; *William Romo v. Pacific Bell Telephone Company* (2019) 2019 Cal. Wrk. Comp. P.D. LEXIS 525; *Ruthiea Avist v. UC San Francisco Medical Center* (2020) 2020 Cal. Wrk. Comp. P.D. LEXIS 254; *Silvia Zucchi Paz v. Tinco Sheet Metal* (2020) 2020 Cal. Wrk. Comp. P.D. LEXIS 403), medical transportation (*Gunn v. San Diego Dept of Social Services* (2015) 2015 Cal. Wrk. Comp. P.D. LEX IS 414 ), non-medical transportation (*Ramirez v. Kuehne and Nagel, Inc.* (2014) 2014 Cal. Wrk. Comp. P.D. LEXIS 537; *Rabenau v. San Diego Imperial Counties Development Services Incorporated* (2018) 2018 Cal. Wrk. Comp. P.D. LEXIS 97), assisted living facilities (*Duncan v. County of Ventura* (2017) 2017 Cal. Wrk. Comp. P.D. LEXIS 131), and, squarely in line with this case, Casa Colina's Transitional Living Center (*Tinsley v. Vertis Communications* (2015) 2015 Cal. Wrk. Comp. P.D. LEXIS 575. concurring opinion of Commissioner Sweeney). Accordingly, the reasoning in *Patterson* should apply in this case, eliminating the need for repeated utilization review every four weeks, or at any other interval, absent a change in circumstances that would warrant a new utilization review determination regarding applicant's need to remain at Casa Colina. No such change in circumstances has been shown in this case, and so the inpatient care should continue to be authorized per the utilization review certification of September 26, 2020.

(2) *The testimony of the executive director of patient access and care at Casa Colina was relevant, but not required to support the order as the burden was on defendants to show a change of circumstances under the Patterson case*

Defendant's petition argues that the testimony of Jennyfer Poduska, Executive Director of Patient Access and Case Management for Casa Colina, was not substantial or competent on medical issues such as applicant's need for ongoing care or whether there was a change in circumstances. The opinion on decision did cite Ms. Poduska's testimony that although Mr. Lopez continues to improve, there has been no change in circumstances to warrant discontinuation of his participation in the residential program, at Casa Colina, and it is not safe for Mr. Lopez to go home at this time (MOH/SOE 3/4/2021, pp. 5-7). The opinion does not, however, rely upon Ms. Poduska as a medical expert. Her testimony is relevant only as a lay witness who has observed applicant's participation in the Casa Colina TLC program as part of her work duties. In this capacity, Ms. Poduska provided relevant testimony about applicant's participation in the program, and that she did not see any change in circumstances to warrant discontinuation of the inpatient rehabilitation program, including 24-hour oversight of applicant.

However, the entire argument about the competence and substantiality of applicant's witness misses the point of the *Patterson* significant panel decision about the burden of proof.

*Patterson* does not require applicants to constantly prove the absence of a change in circumstances to avoid redundant and inconsistent utilization review determinations. Under the reasoning in *Patterson*, it is defendant's burden to show the change in circumstances that would call into question the need for ongoing care. The *Patterson* case explained this as follows:

Applicant has no obligation to continually show that the use of a nurse case manager is reasonable medical treatment. Instead, once defendant authorized nurse case manager services as reasonable medical treatment, it became obligated to continue to provide those services until they are no longer reasonably required under section 4600 to cure or relieve the effects of the industrial injury. Like all medical treatment decisions, that determination must be based upon substantial medical evidence. (*Lamb v. Workers' Comp. Appeals Bd.* (1974) 11 Cal. 3d 274 [113 Cal. Rptr. 1 62. 520 P.2d 978, 39 Cal. Comp. Cases 31 O]; *Le Vesque v. Workmens' Comp. Appeals Bd* (1970) 1 Cal. 3d 627 [35 Cal. Comp. Cases 16].)

Defendant failed to meet its burden of showing by substantial evidence that applicant's condition and circumstances changed in a way that made the further provision of nurse case manager services no longer reasonable medical treatment in this case.

(*Patterson*, cited *supra*, 79 Cal.Comp.Cases 910 at 919.) Although *Patterson* noted that medical treatment determinations must be based upon substantial medical evidence, it is not within the undersigned's powers to invalidate a timely utilization review determination, such as the initial September 26, 2020 utilization review certification of treatment at the Casa Colina TLC program, for lack of substantial medical evidence (*Dubon v. World Restoration, Inc.* (2014 en banc) 79 Cal.Comp.Cases 1298 [*Dubon II*]). Accordingly, the initial September 26, 2020 utilization review certification of treatment at the Casa Colina TLC program must be followed, and under the reasoning of the significant panel decision in *Patterson*, it must be followed until there is a change in circumstances warranting a new determination. Such a change in circumstances could be indicated by non-expert testimony, but it is defendants' burden of proof and it was not shown in this case.

(3) *No evidence was adduced by defendants to support its assertion that the Casa Colina TLC program was ineffective as a change in circumstances under Patterson.*

To summarize the above discussion, it is not within the undersigned's powers to invalidate the timely September 26, 2020 utilization review certification of treatment at the Casa Colina TLC program by revisiting whether it was based upon substantial medical evidence (*Dubon II*, cited *supra*), and care of such an ongoing nature must be authorized until defendants can show a change of circumstances to warrant a new utilization review determination, as explained in the *Patterson* significant panel decision. Accordingly, the undersigned has no power to terminate the initial utilization review certification based upon defendant's argument that the authorized treatment was ineffective.

Additionally, defendant's contention that the treatment at Casa Colina TLC was ineffective fails to constitute a change of circumstances that would justify repeated review of the care under

the rationale of the *Patterson* case. Defendant argues that the subsequent utilization review non-certifications of the authorized program should have been allowed "precisely because there is no change" (Petition for Reconsideration dated May 3, 2020, p. 6, line 7). Fortunately it is not necessary to address the somewhat paradoxical legal issue of whether a lack of change in circumstances can constitute a change in circumstances under *Patterson*, because there is no evidence (or lack of evidence) to substantiate defendant's claim that the Casa Colina TLC program was ineffective. On the contrary, Ms. Poduska's testimony indicated that the program has been effective for applicant, but not to the point where he has been released to go home. With some evidence to suggest that the program is effective, and no evidence to the contrary, there is no basis for defendant's requested finding that the program's ineffectiveness justified a new utilization review determination after the September 26, 2020 utilization review certification of treatment at the Casa Colina TLC program.

#### IV

#### RECOMMENDATION

It is respectfully recommended that the petition for reconsideration be denied.

DATE: 5/17/2021

**Clint Feddersen**  
WORKERS' COMPENSATION  
ADMINISTRATIVE LAW JUDGE