WORKERS' COMPENSATION APPEALS BOARD
STATE OF CALIFORNIA

ODILIO VELASQUEZ, ***Applicant***

vs.

BLUE CORE CONSTRUCTION, INC.;
STATE COMPENSATION INSURANCE FUND, ***Defendants***

Adjudication Number: ADJ12632885
Pomona District Office

OPINION AND ORDER DENYING PETITION FOR RECONSIDERATION

Defendant seeks reconsideration of the February 6, 2025 Findings and Award (F&A), wherein the workers' compensation administrative law judge (WCJ) found that applicant, while employed as a laborer on July 6, 2019, sustained industrial injury to his head, brain, neck and back. The WCJ found in relevant part that applicant was entitled to the continuation of previously authorized home health care services because defendant failed to establish a change in applicant's condition or circumstance warranting renewed utilization review.

Defendant contends that its provision of home healthcare services was mandated by utilization review, and that the case law relied upon by the WCJ applies only in situations where a defendant makes a unilateral decision to offer medical treatment.

We have received an Answer from applicant. The WCJ prepared a Report and Recommendation on Petition for Reconsideration (Report), recommending that the Petition be denied.

We have considered the Petition for Reconsideration, the Answer, and the contents of the Report, and we have reviewed the record in this matter. For the reasons set forth in the WCJ's Report, which we adopt and incorporate, and for the reasons discussed below, we will deny reconsideration.

FACTS

Applicant claimed injury to his head, brain, neck, back, left shoulder, bilateral knees, bilateral ankles, cardiovascular system, psyche, urological system, ears, and eyes while employed as a laborer by defendant Blue Core Construction on July 6, 2019. Defendant admits injury to the head, brain, neck, and back, and disputes injury to all other claimed body parts.

The relevant facts are set forth in the WCJ's Opinion on Decision, as follows:

> The Applicant has been treated at the Casa Colina medical facility. Providers at Casa Colina have diagnosed the Applicant with the following: traumatic brain injury; memory impairment; foot fracture, left; bilateral occipital neuralgia; right knee pain; sleep apnea; left knee pain; post-concussion syndrome; headache as late effect of brain injury; cognitive and neurobehavioral dysfunction following brain injury; attention and concentration deficit; vision loss; BPPV; vertigo; vestibular dysfunction; cubital tunnel syndrome on [the] left; carpal tunnel syndrome on both sides; cervicalgia; low back pain; insomnia; and depression as late effect of head injury. (Applicant's Exhibit 4, p. 9.)
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> Applicant's treatment at Casa Colina included participation in a day treatment center program, the continuation of which was eventually non-certified. (Applicant's Exhibit 1, p. 4.) Thus, to allow for Applicant's safe transition out of the day treatment center program, PTP Dr. Sangnil had recommended home health care services.1 The initial request for home health care services appears to have been made on August 26, 2022. (*Id*., at p. 1.) This specific request was for a duration of 8 hours per day, 5 days per week for 3 months. Genex certified this request without modification on October 7, 2022 despite acknowledging that 40 hours per week exceeded what the relevant guidelines recommended. (*Id*., at p. 4.) Within its reasoning, the UR determination referenced Applicant's history of impaired balance and frequent falls as a result of his industrial traumatic brain injury. (*Ibid*.) Because it was anticipated that the home health care services were to be performed by the Applicant's wife, the UR determination explicitly noted that there was no evidence that these services were regularly performed in the same manner or in the same degree prior to the date of injury. (*Ibid*.)
>
> The home health care services were subject to review again in early April 2023. In a UR determination dated April 8, 2023, Genex modified the request for home health care to 28 hours per week for 3 months, reasoning that the reduction in duration was more in line with the guidelines. (Applicant's Exhibit 2, p. 5.) The determination cited some of the same concerns previously mentioned, including the Applicant's significant fall risk. (*Ibid*.) It was further noted that Applicant's wife would cease as the home health care. (*Ibid*.)
>
> Genex issued another UR determination on September 26, 2023, again modifying the requested home health care to 28 hours per week for 3 months.

> (Applicant's Exhibit 3, p. 5.) The determination further memorialized Applicant's ongoing balance issues, posing a significant fall risk and difficulties with ADLs. (*Ibid*.)
>
> Then on November 22, 2023, Genex issued another UR determination non-certifying the home health care request in its entirety. The UR determination characterized the home health care services as being custodial in nature and for personal care that is being provided absent skilled medical care. (Applicant's Exhibit 5, pp. 3-4.) It further cited, in relevant part, Labor Code section 5307.8, which disallow fees for any services, including those provided by a member of the employee's household, to the extent the services had been regularly performed in the same manner and to the same degree prior to the date of injury. (Ibid. Lab. Code, § 5307.8, subd. (b).) There is no evidence showing that the Applicant, by and through his attorney, appealed this November 22, 2023 UR determination via Independent Medical Review.
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> Since this non-certification, providers from Casa Colina, including Dr. Elliott Block and Dr. Marline Sangnil re-requested the home health care services on December 7, 2023, February 27, 2024 and April 15, 2024, respectively. (Defendant's Exhibit D, p. 3; Applicant's Exhibit 6, p. 2; Applicant's Exhibit 8, p. 3.) These requests were denied by the adjuster on December 12, 2023, March 5, 2024 and April 18, 2024, respectively, citing the 12-month rule pursuant to Labor Code section 4610(k) subsequent to the November 22, 2023 non-certification. (Applicant's Exhibit 7; Defendant's Exhibit H.)

(Opinion on Decision, at pp. 1-3.)

On December 19, 2024, the parties proceeded to trial and framed for decision the issue of whether the reasoning and analysis in *Patterson v. The Oaks Farm* (2014) 79 Cal.Comp.Cases 910 [2014 Cal. Wrk. Comp. LEXIS 98] (Significant Panel Dec.) (*Patterson*)[1] applied to the dispute regarding the provision of home health care services. (Minutes of Hearing, dated December 19, 2024, at p. 2:14.) The parties further identified related issues of whether there was a change in circumstances that would trigger a utilization re-review of the requested home health care within the April 30, 2024, RFA form, and if utilization review is deemed untimely, whether the requested home health care is reasonable and necessary. Neither party offered witness testimony, and the WCJ ordered the matter submitted for decision.

[1] A significant panel decision is a decision of the Appeals Board that has been designated by all members of the Appeals Board as of significant interest and importance to the workers' compensation community. Although not binding precedent, significant panel decisions are intended to augment the body of binding appellate and en banc decisions by providing further guidance to the workers' compensation community. (Cal. Code Regs., tit. 8, § 10305(r).)

On February 6, 2025, the WCJ issued the F&A, determining in relevant part that the analysis in *Patterson, supra*, applied to the instant home health care dispute. (Finding of Fact No. 2.) Following a review of the evidentiary record, the WCJ concluded that defendant had not met its burden of establishing a change in applicant's condition or circumstance that would require a review of the medical necessity of previously authorized medical treatment or services. (Finding of Fact No. 3.) Accordingly, the WCJ ordered defendant to continue to provide home health care services at the previously authorized levels of 28 hours per week. (Award No. "A".)

Defendant's Petition avers the holding in *Patterson, supra*, applies only to situations where the defendant is unilaterally and voluntarily providing medical treatment or services. (Petition, at p. 3:5.) Inasmuch as Utilization Review determined the requested 28 hours of weekly home health care herein to be medically necessary, defendant's provision of the home health care was mandatory rather than voluntary. Accordingly, defendant contends the WCJ erred in applying a *Patterson* analysis to find that defendant failed to meet its burden of establishing a change in condition or circumstance. (*Id.* at p. 3:21.)

Applicant's Answer observes that recent case law supports the WCJ's application of the analysis in *Patterson* to the facts of this case, and that defendant failed to meet its evidentiary burden of establishing a precipitating material change in circumstance or condition. (Answer, at p. 5:8.)

DISCUSSION

I.

Former Labor Code[2] section 5909 provided that a petition for reconsideration was deemed denied unless the Appeals Board acted on the petition within 60 days from the date of filing. (Lab. Code, § 5909.) Effective July 2, 2024, section 5909 was amended to state in relevant part that:

> (a) A petition for reconsideration is deemed to have been denied by the appeals board unless it is acted upon within 60 days from the date a trial judge transmits a case to the appeals board.
>
> (b)
>
> (1) When a trial judge transmits a case to the appeals board, the trial judge shall provide notice to the parties of the case and the appeals board.

[2] All further references are to the Labor Code unless otherwise noted.

> (2) For purposes of paragraph (1), service of the accompanying report, pursuant to subdivision (b) of Section 5900, shall constitute providing notice.

Under section 5909(a), the Appeals Board must act on a petition for reconsideration within 60 days of transmission of the case to the Appeals Board. Transmission is reflected in Events in the Electronic Adjudication Management System (EAMS). Specifically, in Case Events, under Event Description is the phrase "Sent to Recon" and under Additional Information is the phrase "The case is sent to the Recon board."

Here, according to Events, the case was transmitted to the Appeals Board on March 7, 2025, and 60 days from the date of transmission is May 6, 2025. This decision is issued by or on May 6, 2025, so that we have timely acted on the petition as required by section 5909(a).

Section 5909(b)(1) requires that the parties and the Appeals Board be provided with notice of transmission of the case. Transmission of the case to the Appeals Board in EAMS provides notice to the Appeals Board. Thus, the requirement in subdivision (1) ensures that the parties are notified of the accurate date for the commencement of the 60-day period for the Appeals Board to act on a petition. Section 5909(b)(2) provides that service of the Report and Recommendation shall be notice of transmission.

Here, according to the proof of service for the Report and Recommendation by the workers' compensation administrative law judge, the Report was served on March 7, 2025, and the case was transmitted to the Appeals Board on March 7, 2025. Service of the Report and transmission of the case to the Appeals Board occurred on the same day. Thus, we conclude that the parties were provided with the notice of transmission required by Labor Code section 5909(b)(1) because service of the Report in compliance with Labor Code section 5909(b)(2) provided them with actual notice as to the commencement of the 60-day period on March 7, 2025.

II.

Section 4600(a) provides that an industrially injured worker is entitled, at their employer's expense, to medical treatment that is reasonably required to cure or relieve the effects of the industrial injury. (Labor Code § 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 [49 Cal.Comp.Cases 454].)

In *Patterson, supra*, 79 Cal.Comp.Cases 910, the Appeals Board held that an employer may not unilaterally cease to provide treatment authorized as reasonably required to cure or relieve the effects of industrial injury upon an employee without substantial medical evidence of a change in the employee's circumstances or condition. The panel reasoned:

> Defendant acknowledged the reasonableness and necessity of [the medical treatment at issue] when it first authorized [that treatment], and applicant does not have the burden of proving [its] ongoing reasonableness and necessity. Rather, it is defendant's burden to show that the continued provision of the [treatment] 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.)

In *Warner Bros. v. Workers' Comp. Appeals Bd.* (*Ferrona*) (2015) 80 Cal.Comp.Cases 831 [2015 Cal. Wrk. Comp. LEXIS 94], the Second District Court of Appeal upheld the Appeals Board's application of the *Patterson* analysis to a case involving home health care services.

In *National Cement Co. v. Workers' Comp. Appeals Bd.* (*Rivota*) (2021) 86 Cal.Comp.Cases 595, the Second District Court of Appeal upheld the Appeals Board's application of *Patterson* to award an applicant continued inpatient care, stating:

> [T]he principles advanced in [*Patterson*] apply to other medical treatment modalities as well. Here ... Applicant had continued need for placement at Casa Colina. Further, [applicant's witness] stated that there was no change in Applicant's circumstance and no reasonable basis to discharge Applicant from care. The WCJ ... concluded that Applicant's continued care at Casa Colina was necessary, without ongoing RFAs, to ensure Applicant's safety and provide him with a stable living situation and uninterrupted medical treatment.

(*Id.* at p. 597.)

In upholding this application of *Patterson*, the *Rivota* court rejected the employer's attempt to distinguish it on the grounds that it had never authorized inpatient care for an unlimited or ongoing period, had never relinquished its right to conduct UR, and had never been subject to a finding that inpatient treatment was reasonable and necessary for the applicant under section 4600. (*Id*.)

In *Los Angeles County MTA v. Workers' Comp. Appeals Bd.* (*Burton*) 89 Cal.Comp.Cases 977 [2024 Cal. Wrk. Comp. LEXIS 55] (writ denied), applicant challenged defendant's UR non-certification of ongoing inpatient treatment, on the grounds that there had been no demonstrable

change in applicant's condition such that a new UR determination was appropriate and necessary. The WCJ agreed and determined that applicant was entitled to continue her inpatient rehabilitation treatment until such time as defendant could establish a change in circumstance. The WCJ noted that "the whole point of *Patterson* is that a Form RFA is not required in certain circumstances involving care of an ongoing nature … [t]he decision is about when an RFA is required, and if one is not required in the first place, then there can be no valid UR therefrom, timely or otherwise." (*Id*. at p. 980.) Thus, defendant's submission of the RFA to UR was invalid without a precipitating change in circumstance. The Appeals Board denied defendant's petition for reconsideration without further comment, and defendant's subsequent petition for writ of review was denied by the Second District Court of Appeal and the Supreme Court. (See *Los Angeles County MTA v. Workers' Comp. Appeals Bd.* (2024) 2024 Cal. LEXIS 6103.)

Here, defendant contends that the analysis in *Patterson* is limited to the facts of that case, that is, to situations wherein the defendant voluntarily and unilaterally provides medical treatment or services. (Petition, at p. 3:5.) Because the defendant in the instant matter was legally obligated to provide the services determined to be medically necessary by Utilization Review, defendant contends that *Patterson* is distinguishable. (*Id.* at p. 3:21; see also *State Comp. Ins. Fund v. Workers' Comp. Appeals Bd.* (*Sandhagen*) (2008) 44 Cal.4th 230, 237 [73 Cal.Comp.Cases 981].)

The WCJ's Report observes, however, that:

> [P]etitioner asserts a jurisdictional challenge, arguing that the Applicant's recourse to the November 22, 2023 utilization review non-certification would have been appealed the same via the Independent Medical Review process and that the WCAB lacks jurisdiction to adjudicate such disputes … [b]ut if under *Patterson* the burden of proof shifted to the Petitioner to show that the home health care is no longer reasonable and necessary, then there should be no need for new and recurring Request for Authorization forms that would then trigger Utilization Review and Independent Medical Review. And if new and recurring Request for Authorization forms are not required for the continued provision of previously authorized home health care services, then the Utilization Review and Independent Medical Review processes should in turn have never been triggered. Requiring the Applicant to go through the Utilization Review and Independent Medical Review processes over and over again, every time a new Request for Authorization form for the previously authorized home health care services would shift the burden back to the Applicant, which the Court in *Patterson* deemed improper.

(Report, at p. 6.)

We agree with the WCJ's analysis and note that a similar formulation was applied in *Burton, supra*, which concluded that defendant's submission of a disputed medical issue to utilization review was invalid without a *precipitating change in circumstance*. (*Burton, supra*, 89 Cal.Comp.Cases at p. 980.) Our holding in *Patterson* provides that where medical treatment is required on an *ongoing basis*, such as home health care, and is authorized, a defendant has the burden of proof to show a change in condition before it may cease provision of such treatment. Once defendant has shown that the issue is different from one which was previously decided, the prior authorization of medical treatment is no longer binding.

We observe that in many instances defendant may meet its burden of identifying evidence of a material change in condition or circumstance in treating physician reports, including discussions of the efficacy of past and currently authorized treatment modalities, material changes in presenting complaints, collateral factual medical and non-medical developments, additional diagnoses, diagnostic testing results, or review of submitted medical records. Other sources of evidence of a material change in applicant's circumstance or condition include but are not limited to medical-legal reporting, subpoenaed medical records, and the testimony of applicant, physicians, or other witnesses. In this respect, we reiterate that liberal pre-trial discovery is both desirable and beneficial. (*Hardesty v. McCord & Holdren* (1976) 41 Cal.Comp.Cases 111, 114-115.) However, defendant cannot shift its burden onto applicant by requiring the submission of a new Request for Authorization prior to authorizing medical treatment that has been previously authorized as medically necessary under section 4600(a). (Lab. Code, § 4600(a); *Patterson, supra,* at p. 918; Lab. Code, § 4600(a).) We will deny reconsideration, accordingly.

For the foregoing reasons,

IT IS ORDERED that the Petition for Reconsideration is **DENIED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ ANNE SCHMITZ, DEPUTY COMMISSIONER

I CONCUR,

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER

JOSÉ H. RAZO, COMMISSIONER
PARTICIPATING NOT SIGNING

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

May 6, 2025

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

ODILIO VELASQUEZ
LAW OFFICE OF ARASH KHORSANDI
STATE COMPENSATION INSURANCE FUND

SAR/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 RECOMMENDATIONS ON PETITION FOR RECONSIDERATION

I
INTRODUCTION

1.	Applicant's Occupation:	Laborer
	Applicant's Age:	56
	Date of Injury:	July 6, 2019
	Parts of Body Injured:	Head, brain, neck, back, left shoulder (disputed), knees (disputed), ankles (disputed), cardiovascular system (disputed), psyche (disputed), urological system (disputed), ears (disputed), and eyes (disputed)
2.	Identity of Petitioner:	Defendant State Compensation Insurance Fund has filed the Petition.
	Timeliness:	The Petition if filed timely.
	Verification:	A verification is attached to the Petition.
3.	Date of service of Findings and Award:	February 6, 2025

II.
CONTENTIONS

1. That by the Decision, the Appeals Board acted without or in excess of its powers;
2. The evidence does not justify the findings of fact;
3. The findings of fact do not support the order, decision, or award.

III.
FACTS

The Applicant, Odilio Velasquez, born [], sustained an industrial injury on July 6, 2019 to his head, brain, neck, and back while working for Blue Core Construction, Inc. as a Laborer. The Applicant further alleged injuries to the following additional body parts and systems as a result of this July 6, 2019 incident, all of which the Defendant has disputed: left shoulder, knees, ankles, cardiovascular system, psyche, urological system, ears, and eyes.

Part of Applicant's treatment has included home health care. The initial request for home health care services appears to have been made on or around August 26, 2022. (Applicant's Exhibit 1, p. 1.) This specific request was for a duration of 8 hours per day, 5 days per week for 3 months. Genex certified this request on October 7, 2022. (Id., at p. 4.) Within its reasoning, the UR determination referenced Applicant's history of impaired balance and frequent falls as a result of his industrial traumatic brain injury. (*Ibid*.)

Despite having been authorized and provided by the Defendant, the home health care services were subject to review again in early April 2023. In a UR determination dated April 8, 2023, Genex modified the request for home health care to 28 hours per week for 3 months, reasoning that the reduction in duration was more in line with the guidelines. (Applicant's Exhibit 2, p. 5.) Genex issued another UR determination on September 26, 2023, again modifying the requested home health care to 28 hours per week for 3 months. (Applicant's Exhibit 3, p. 5.) These modified certifications further memorialized Applicant's ongoing balance issues, posing a significant fall risk and difficulties with ADLs. (*Ibid*.) Then on November 22, 2023, Genex issued another UR determination, this time non-certifying the home health care request in its entirety. (Applicant's Exhibit 5, pp. 3-4.) The Applicant did not appeal this non-certification via the Independent Medical Review process.

This matter proceeded to Trial to address issues relating to the continuation of the home health care services since its discontinuation via the November 22, 2023 UR non-certification. The matter was ultimately submitted on December 19, 2024. The undersigned WCJ issued its Findings and Award and Opinion on Decision on February 6, 2025, finding that the Defendant did not meet its burden of proof in showing that the home health care was no longer reasonable and necessary due to a change in Applicant's circumstances or condition under *Patterson*, and that the Applicant was entitled to continued medical treatment in the form of home health care.

Defendant (hereinafter "Petitioner") has filed a timely and verified Petition for Reconsideration.

IV
DISCUSSION

Under Labor Code section 5900(a), a Petition for Reconsideration may only be taken from a "final" order, decision, or award. A "final" order has been defined as one that either "determines any substantive right or liability of those involved in the case" (Rymer v. Hagler (1989) 211 Cal. App. 3d 1171, 1180) or determines a threshold issue that is fundamental to the claim for benefits (Maranian v. Workers' Comp. Appeal Bd. (2000) 81 Cal. App. 4th 1068, 1070.) Pursuant to Labor Code section 5903, any person aggrieved by any final order, decision, or award may petition for reconsideration upon one or more of the following grounds:

(a) That by the order, decision, or award made and filed by the appeals board or the workers' compensation judge, the appeals board acted without or in excess of its powers.
(b) That the order, decision, or award was procured by fraud.
(c) That the evidence does not justify the findings of fact.
(d) That the petitioner has discovered new evidence material to him or her, which he or she could not, with reasonable diligence, have discovered and produced at the hearing.
(e) That the findings of fact do not support the order, decision, or award.

Petitioner asserts under Labor Code section 5903 that the undersigned acted without or in excess of his powers, that the evidence does not justify the findings of fact, and that the findings of fact do not support the order, decision, or award.

Whether *Patterson* applies to allow Defendant to deny requested home health care

Once a defendant acknowledges the reasonableness and necessity of medical services and authorizes the same, the Applicant does not have the burden of proving the ongoing reasonableness and necessity of the services; instead, the employer has the burden to show that the continued provision of the medical services is no longer reasonably required due to a change in the Applicant's circumstances or condition. (*Patterson v. The Oaks Farm*, 79 Cal. Comp. Cases 910, 918). Defendant cannot shift its burden onto the Applicant by requiring a new Request for Authorization form and starting the process over again. (Id., at p. 918.)

Here, it is undisputed that the Petitioner authorized and provided home health care services to the Applicant. Specifically, the Petitioner initially authorized and commenced the home health care services by way of a Utilization Review certification on October 7, 2022. (Applicant's Exhibit

1, p. 4.) And though the authorization had been subsequently reduced in scope as to time/duration by way of Utilization Review modifications on April 8, 2023 and September 26, 2023, Defendant provided home health care services for approximately one year until a November 22, 2023 Utilization Review non-certification. (Applicant's Exhibit 2, p. 5; Applicant's Exhibit 3, p. 5; Applicant's Exhibit 5, pp. 3-4.) While *Patterson* involved nurse case manager services, subsequent case law has unambiguously applied the holdings from *Patterson* to instances involving home health care.[3] As such, the undersigned believes under *Patterson* that any discontinuation of the home health care services must be based upon a showing by the Petitioner that said services were no longer reasonable and necessary based on a change in the Applicant's circumstances and condition. And based on the evidence submitted on the record, Petitioner failed to meet its burden in showing that the home health care services were no longer reasonable or necessary.

However, the core conflict raised within the Petition for Reconsideration centers around whether the holdings in *Patterson* can be applied to the facts in this case and whether *Patterson* can be reconciled with the RFA/UR/IMR processes and *Dubon II*. The Petitioner essentially argues that *Patterson* is not applicable to requests for continuing treatment provisions that were originally authorized via Utilization Review, that ongoing requests for the continuation of said treatment must be determined via the UR/IMR processes, and that the WCAB lacks jurisdiction to adjudicate disputes related to said treatment unless there is an untimely utilization review determination as contemplated under *Dubon II*.

First, the Petitioner asserts that the holdings in *Patterson* only apply to medical treatment that Defendant had unilaterally authorized, that is, medical treatment authorized by a claims examiner or other agent and not via the utilization review process. However, the Petitioner does not cite any authority that definitively limits the application of *Patterson* to instances where a defendant had unilaterally provided the medical treatment. While the undersigned acknowledges that the facts in *Patterson* involve nurse case management services that had been initially authorized and provided by the defendant outside of the utilization review process, there has since been cases that applied *Patterson* to treatment originally authorized via the utilization review process. (See *Chadwell v. Scully Distribution Servs*., 2017 Cal. Work. Comp. P.D. LEXIS 485; White v. Dep't of Soc. Servs., 2014 Cal. Work. Comp. P.D. LEXIS 420 [the Court found that it

[3] Of note, the undersigned is not advocating for the application of Patterson to all types of medical treatment modalities. However, case law has made it clear that Patterson is applicable to cases involving home health care.

was defendant's burden to show that the medical treatment provision of assisted living, which was originally authorized by defendant via a Utilization Certification, was no longer reasonably required because of change in applicant's condition or circumstances].) These cases would suggest that the holdings in *Patterson* can be applied in scenarios where the treatment at issue was originally authorized by a Utilization Review certification and not limited to a claims examiner's unilateral decision to approve the same.

Should the WCAB find that the holdings in *Patterson* apply to the home health care services at issue in this case, then the focus of the Court's analysis should simply be whether Petitioner met its burden in showing that the home health care services were no longer reasonable and necessary. And as mentioned above, the record is devoid of any evidence showing a change in Applicant's circumstances or condition to warrant to discontinuation of the home health care.

Second, Petitioner asserts a jurisdictional challenge, arguing that the Applicant's recourse to the November 22, 2023 utilization review non-certification would have been appealed the same via the Independent Medical Review process and that the WCAB lacks jurisdiction to adjudicate such disputes. By asserting this jurisdictional challenge, the Petitioner is attempting to divert the Court's attention away from the fact that it has completely failed to meet its burden of proof. Petitioner attempts to sidestep this entire dialogue by instead focusing and directing the Court's attention to this jurisdictional challenge. But if under *Patterson* the burden of proof shifted to the Petitioner to show that the home health care is no longer reasonable and necessary, then there should be no need for new and recurring Request for Authorization forms that would then trigger Utilization Review and Independent Medical Review. And if new and recurring Request for Authorization forms are not required for the continued provision of previously authorized home health care services, then the Utilization Review and Independent Medical Review processes should in turn have never been triggered. Requiring the Applicant to go through the Utilization Review and Independent Medical Review processes over and over again, every time a new Request for Authorization form for the previously authorized home health care services would shift the burden back to the Applicant, which the Court in *Patterson* deemed improper.

Generally, the undersigned agrees that *Dubon II* takes away the Court's jurisdiction in determining the reasonableness and necessity of medical treatment as it relates to the RFA/UR/IMR processes unless there is an untimely UR determination. However, to reconcile *Patterson* and *Dubon II*, the undersigned suggests that the holdings in *Dubon II* should not even

have been invoked in this case as it is not the Applicant's burden to show that the home health care services remain reasonable and necessary via the RFA/UR/IMR processes. As aforementioned, the onus is on the Petitioner to establish a change in Applicant's circumstances or condition without the need for ongoing RFAs to justify the termination of such treatment. And if there is no need for ongoing Request for Authorization forms for the Applicant's previously authorized home health care, then this treatment dispute should fall outside of the legislative construct of Utilization Review and Independent Medical Review.

V
RECOMMENDATIONS

For the reasons stated above, it is respectfully recommended that the Defendant's Petition for Reconsideration be denied.

DATE: March 7, 2025

JASON L. BUSCAINO
WORKERS' COMPENSATION JUDGE