



BRAMBILA V. VONS, INC., No. ADJ724329 (1/28/10) *Prepared by Suzanne Aboujudom, Esq. of the Oakland Office.*

In a decision after reconsideration, the WCAB affirmed a Trial judge's decision that an employer was not liable for prescription medications dispensed outside its Pharmacy Benefit Network (PBN). While not citable as authority, this decision provides some insight into how the WCAB would hold in an area without much controlling legal authority.

This case involved an applicant who claimed a sustained injury to various body parts while employed as a baker, settling by Compromise and Release on June 12, 2008. Defendant had established a Pharmacy Benefit Network pursuant to Labor Code section 4600.2 (a)¹. The matter proceeded to a Lien Trial, including the issue of whether the defendant was liable for an additional payments outside the PBN. One of the Trial Exhibits included a written contract which memorialized the Defendant's PBN. In addition, Defendant's bill reviewer testified that she had reduced the lien claimant's fee in accordance with the Official Medical Fee Schedule (OMFS). The WCJ issued a Findings and Order, ruling that the Defendant had no further liability on the lien.

The lien claimant, MH Express Pharmacy, sought reconsideration. Specifically, MH contended that it was entitled to additional payment because the medications it provided were prescribed by physicians within the medical provider network. It further argued that the WCJ erred in relying on the PBN contract, arguing that it was not placed in evidence.

The WCAB affirmed the WCJ's determination that the defendant was not liable for medications dispensed outside of the PBN. It noted that the lien claimant made a material misrepresentation by alleging that the PBN contract was not in evidence, an allegation that defendants' exhibits and testimony directly contradicted. Most importantly, the WCAB found that there was no dispute that the lien claimant was not within the defendant's PBN, given the sufficiency of the defendant's testimony and documentary evidence.

This decision provides some clarification in an area where there is little guidance on the issue of Pharmacy Benefit Networks. It also highlights the significance of issuing appropriate notices to avoid additional payments to non-PBN pharmacies.

¹ Notwithstanding Section 4600, when a self-insured employer, group of self-insured employers, insurer of an employer, or a group of insurers contracts with a pharmacy, group of pharmacies, or pharmacy benefit network to provide medicines and medical supplies required by this article to be provided to injured employees, those injured employees that are subject to the contract shall be provided medicines and medical supplies in the manner prescribed in the contract for as long as medicines or medical supplies are reasonably required to cure or relieve the injured employee from the effects of the injury.