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JCC Abuse of Discretion and Due Process

Franklin v. Riviera Beach Fire Rescue/Gallagher Bassett, 39 Fla.
L. Weekly D441 (Fla. 1st DCA February 26, 2014)

In a compensable claim, the claimant filed a petition which sought provision of upgraded hearing aids per the recommendation of his treating audiologist. The E/C balked at providing the model requested because the adjuster thought the specific model recommended was too costly and another model should be considered.

In its response, on the pre-trial and at the merits hearing, the E/C asserted that the hearing aids had never been denied and the claimant was entitled to new and upgraded hearing aids based on the authorized audiologist's recommendation. Despite those assertions, at trial, the JCC denied the claimant's request finding that he failed to prove the need for an upgrade with objective medical evidence.

The First DCA noted the E/C stated in the pretrial stipulation that the claim for the hearing aids recommended by

the treating physician had never been denied and expressly conceded at the final hearing that the medical necessity of upgraded hearing aids, as recommended by the authorized treating physician, was not an issue. Under those circumstances, it was a violation of due process and an abuse of discretion to deny Claimant's claim for authorization of upgraded hearing aids, without qualification, based on a finding that Claimant failed to produce evidence of medical necessity for any upgrade. The claim was reversed and remanded.

Medical Only Attorney's Fee

Luces v. Red Ventures/The Hartford, 39 Fla. L. Weekly D471 (Fla. 1st DCA February 28, 2014)

The parties entered into a settlement stipulation whereby the claimant received \$500 for "out of pocket costs" and the claimant's attorney was to receive a \$1,500 "medical only" fee from the E/C under Section 440.34(3)(a), Florida Statutes. The JCC ruled that claimant's counsel did not secure only (or perhaps any) medical benefits for the claimant, so that section did not apply and the fee was not approved. The JCC invited counsel for the claimant to provide additional evidence supporting the alleged medical only fee, but he failed to do so.

When the fee was not approved, the judge reformed the parties' settlement stipulation to redirect the \$1,500 to the claimant, which was contrary to any apparent intention or agreement of the parties. The First DCA held that the JCC correctly disapproved the portion of stipulation regarding the \$1,500 attorney fee payable by E/C, but the JCC lacked authority to reform the stipulation so as to redirect the fee to claimant rather than attorney. On remand, the parties could petition for the approval of attorney's fees payable to Claimant's counsel under section 440.34(3)(b)—not paragraph (3)(a), in discharge of any obligation that the E/C may have to Claimant's counsel for attorney's fees.

Impairment Benefits

White v. State of Florida, 39 Fla. L. Weekly D476 (Fla. 1st DCA March 4, 2014)

The E/C conditionally accepted the claim under the "pay and investigate" provision found in Section 440.20(4), Florida Statutes (2011), but eventually denied compensability of the claim. At trial, the claimant sought compensability and payment of impairment benefits based on a 10% rating by a formally authorized physician, which the judge denied.

On appeal, the claimant asserted she became entitled to the payment of impairment benefits during the period when her case was being handled by the E/C "as if the claim had been accepted as compensable," under section 440.20(4). Therefore, regardless of whether the injuries were in fact compensable, the E/C was obligated to pay some amount of impairment benefits to satisfy its liabilities incurred under section 440.15(3)(a), during pay and investigate period.

The First DCA affirmed the JCC's order finding that the claimant failed to demonstrate entitlement to the payment of impairment benefits during the pay and investigate period. In support, the Court noted the JCC made no express finding as to MMI; there was no competent, substantial evidence that Claimant reached MMI at any point prior to the denial of the case by the E/C and the record did not indicate the parties agreed on an MMI date.