

**RISSMAN, BARRETT, HURT,
DONAHUE & McLAIN, P. A.
ATTORNEYS AT LAW**

STEVEN A. RISSMAN
ROBERT C. BARRETT
JENNINGS L. HURT III
ROBERT A. DONAHUE
JOHN E. McLAIN III
RICHARD S. WOMBLE
JOHN P. DALY
STACIE B. GREENE
THEODORE N. GOLDSTEIN
RAYMOND A. LOPEZ
VANCE R. DAWSON
RICHARD B. MANGAN JR.
HENRY W. JEWETT II
DANIEL M. POLLACK
ART C. YOUNG
NICOLE D. RUOCCO
DANIEL T. JAFFE
BEATRIZ E. JUSTIN
J. GREGORY GIANNUZZI
DAVID K. BEACH
F. DEAN HEWITT
EDWARD M. COPELAND IV
DAVID R. KUHN
G. WILLIAM LAZENBY IV
R. CLIFTON ACORD II
ROBERT D. BARTELS
JILL M. SPEARS
JEFFREY J. KERLEY
KARISSA L. OWENS

OF COUNSEL
ROBERT J. JACK

EXECUTIVE DIRECTOR
W. SCOTT PETERSON

201 EAST PINE STREET
15TH FLOOR
P.O. BOX 4940
ORLANDO, FLORIDA 32802-4940
TELEPHONE (407) 839-0120
TELECOPIER (407) 841-9726
ORLANDO@RISSMAN.COM

TAMPA COMMONS
ONE NORTH DALE MABRY HIGHWAY
11TH FLOOR
TAMPA, FLORIDA 33609
TELEPHONE (813) 221-3114
TELECOPIER (813) 221-3033
TAMPA@RISSMAN.COM

207 S. 2nd STREET
FT. PIERCE, FLORIDA 34950
TELEPHONE (772) 409-1480
TELECOPIER (772) 409-1481
FTPIERCE@RISSMAN.COM

WWW.RISSMAN.COM

PLEASE REPLY TO: ORLANDO

AMY L. BAKER
SEAN M. CROCKER
CHRISTOPHER E. DENNIS
SARAH E. EGAN
JAMES E. FAVERO III
JOSHUA T. FRICK
SUSAN R. FULLER
PAUL B. FULMER
JANNINE C. GALVEZ
ELISE J. GEIBEL
CHRISTOPHER A. HANSON
VICTORIA S. LUNA
LAURA F. LYTLE
DARIEN M. MCMILLAN
ERIC F. OCHOTORENA
JEREMY T. PALMA
JEFFREY M. PATNEAUDE
WENDY L. PEPPER
D. BLAKE REHBERG
KELLEY A. RICHARDS
JUAN A. RUIZ
BRYAN R. SNYDER
LARRY D. SPENCER
MEREDITH M. STEPHENS
ELIZABETH M. STUART
F. PAUL TIPTON
NICOLETTE E. TSAMBIS
JASON R. URBANOWICZ
CHRISTINE V. ZHAROVA

FLORIDA LAW WEEKLY

Week of February 17, 2012

MEDICAL BENEFITS - CHANGE IN PROVIDER UNDER MANAGED CARE

McNealy v. Verizon Support Center, 37 Fla. L. Weekly D370 (Fla. 1st DCA February 9, 2012)

The claimant sustained a compensable repetitive motion injury on April 11, 2001, involving both hands/wrists. The claimant became dissatisfied with her initial treating orthopedic physician, Dr. Rodriguez, and filed a Petition for Benefits seeking an alternative physician, which resulted in her attorney selecting Dr. Okun. Dr. Okun began treating the claimant in September 2009. Then, in 2010, the claimant filed a Petition for Benefits seeking authorization of a primary care provider as well as attorney's fees and costs. The E/C asserted that Dr. Okun served as the claimant's primary care provider and as an authorized treating physician and under those facts a change in primary care provider was not appropriate. The JCC accepted the argument of the E/C.

The First District Court of Appeal looked to Florida Statute §440.134(6)(c)(10) and to Florida Administrative Code Rule 59A-23.003(7)(i) and found that under a managed care agreement the E/C had to provide the claimant with a selection of a primary care

provider from the list of providers in the network. The Court stated it was clear that the Statute provided for a selection of a primary care provider and then a one-time change in primary care providers and the claimant was not required to establish the medical necessity of the request. Therefore, the Court reversed the decision of the JCC and ruled that the claimant was entitled to that benefit under the Statute.

TEMPORARY TOTAL DISABILITY BENEFITS

Urquiza v. Don Greene Poultry, Inc., 37 Fla. L. Weekly D386 (Fla. 1st DCA February 14, 2012)

The claimant appealed the decision of the JCC which found that he was not entitled to temporary total disability benefits. After his injury, the claimant began developing psychiatric difficulties and treated with Dr. Gomez. At the time he began treating the claimant, Dr. Gomez indicated the claimant was on a no work status and he remained of that opinion until Dr. Conde took over the claimant's care during the summer of 2010. Dr. Conde agreed that the claimant should be out of work from a psychiatric standpoint and the claimant remained out of work through March of 2011.

The attorney for the employer/carrier conferenced with Dr. Gomez after he stopped treating the claimant and Dr. Gomez opined that the claimant was capable of part-time work which Dr. Gomez signed off on in a letter. On that basis, the employer/carrier changed the claimant's work status from TTD to TPD from September 15, 2010, through November 23, 2010. At the time of the Final Hearing, the claimant objected to the admission of the letter as it was not authenticated. The objection was sustained by the JCC. Despite sustaining the objection, the JCC relied on the information contained in the letter to find that the claimant was not credible and knew he could return to work and denied TTD benefits.

The First District Court of Appeal noted that the claimant's entitlement to TTD benefits hinged on his submission of medical evidence and not lay evidence. The claimant submitted medical evidence showing that between September 15, 2010, and November 23, 2010, he was on a no work status per Dr. Gomez and Dr. Conde. Submission of that medical evidence shifted the burden to the E/C to submit evidence that the claimant could work and was actually TPD. The Court noted that the JCC's determination that the claimant knew he could return to work was not relevant as the claimant had already submitted medical evidence that he was out of work during the relevant time period. The only medical evidence before the JCC was that of Dr. Conde who specifically opined the claimant was TTD during that time period. The Court found that the JCC abused her discretion in considering the claimant's credibility when there was no medical evidence to suggest that the

claimant was anything other than on a no work status. The decision of the JCC was reversed.