WORKERS' COMPENSATION APPEALS BOARD

STATE OF CALIFORNIA

ROQUE NERI-HERNANDEZ, ***Applicant,*** **vs.** **WORKFORCE STAFFING, TOWER GROUP COMPANIES,** ***Defendants.***	**Case No. ADJ7995806** **(Stockton District Office)** **OPINION AND ORDER GRANTING RECONSIDERATION ON APPEALS BOARD MOTION**

Defendant Geneva Staffing and Tower Point National Insurance Company sought reconsideration of the Findings and Award (F&A) issued by a workers' compensation administrative law judge (WCJ) on May 30, 2013. On August 12, 2013, we issued an Opinion and Order Granting Petition for Reconsideration and Decision After Reconsideration.

Based upon our review of the record, we believe reconsideration of our Opinion and Order must be granted in order to allow sufficient opportunity to further study the factual and legal issues in this case. We believe that this action is necessary to give us a complete understanding of the record and to enable us to issue a just and reasoned decision. Reconsideration will be granted for this purpose and for such further proceedings as we may hereinafter determine to be appropriate.

Thus, we grant reconsideration on own motion.

For the foregoing reasons,

IT IS ORDERED on motion of the Workers' Compensation Appeals Board pursuant to Labor Code section 5900(b) that reconsideration of the "Opinion and Order Granting Petition for Reconsideration and Decision After Reconsideration" issued by the Workers' Compensation Appeals Board on August 12, 2013 is **GRANTED**.

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IT IS FURTHER ORDERED that pending the issuance of a Decision After Reconsideration in the above case, all further correspondence, pleadings, objections, motions, requests and communications shall be filed in writing only with the Office of the Commissioners of the Workers' Compensation Appeals Board at either its street address (455 Golden Gate Avenue, 9th floor, San Francisco, CA 94102) or its Post Office Box address (PO Box 429459, San Francisco, CA 94142-9459), and shall *not* be submitted to the Stockton District Office or any other district office of the WCAB and shall *not* be e-filed in the Electronic Adjudication Management System (EAMS).

WORKERS' COMPENSATION APPEALS BOARD

ALFONSO J. MORESI

I CONCUR,

DEPUTY

NEIL P. SULLIVAN

RONNIE G. CAPLANE

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

AUG 16 2013

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

ROQUE NERI-HERNANDEZ
RANCANO & RANCANO
SAMUELSEN, GONZALEZ, VALENZUELA & BROWN, LLP, ATTN: BRIAN ISHIMOTO

AS/jp

WORKERS' COMPENSATION APPEALS BOARD

STATE OF CALIFORNIA

ROQUE NERI-HERNANDEZ, ***Applicant,*** **vs.** **WORKFORCE STAFFING, TOWER GROUP COMPANIES,** ***Defendants.***	**Case No. ADJ7995806** **(Stockton District Office)** **OPINION AND ORDER GRANTING PETITION FOR RECONSIDERATION AND DECISION AFTER RECONSIDERATION**

Defendant Geneva Staffing and Tower Point National Insurance Company seeks reconsideration of the Findings and Award (F&A) issued by a workers' compensation administrative law judge (WCJ) on May 30, 2013. In the F&A, the WCJ found in pertinent part that applicant Roque Neri-Hernandez was entitled to self-procured medical care from August 3, 2011 and continuing and awarded applicant payment for self-procured medical care. Defendant contends in pertinent part that the WCJ erred when he awarded payment directly to applicant; applicant's spouse, the provider, did not submit an itemization of services pursuant to Labor Code[1] section 4603.2(b)(1); applicant did not have a proper prescription within the meaning of section 4600(h) and there was no substantial medical evidence to support an award of payment; and, the award of home health services was in excess of the medical evidence.

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

We have reviewed the record and have considered the allegations of the Petition, the Answer, and the contents of the Report. Based on our review of the record and for the reasons discussed below, we

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[1] Unless otherwise stated, all statutory references are to the Labor Code.

will grant the Petition for Reconsideration, rescind the F&A and return the matter to the WCJ for further proceedings and a new decision from which any aggrieved party may timely seek reconsideration.

FACTS

I.

Applicant was employed as a machine operator for defendant, and on July 11, 2011, he sustained a crush injury to his right dominant hand. Applicant was treated by hand surgeon Charles Lee, M.D., of St. Mary's Medical Center at least through June 2012 and then saw Mark Diaz, M.D., beginning on August 9, 2012. (Exhibit AA, Report of Leonard Gordon, M.D., September 17, 2012, pp. 3, 5-9; October 1, 2012, p. 2.) He was evaluated by hand surgeon Leonard Gordon, M.D., as an Agreed Medical Evaluator (AME) on September 17, 2012, and Dr. Gordon prepared reports of September 17, 2012, October 1, 2012, and November 5, 2012. (Exhibit AA.)

Following his injury, applicant was hospitalized at St. Mary's Medical Center and had three surgeries on his right hand while hospitalized. (Exhibit AA, Report of Leonard Gordon, M.D., September 17, 2012, pp. 3, 5-9.) As set forth in Dr. Gordon's report, Dr. Diaz apparently stated that applicant was hospitalized for "over a month" and was released from St. Mary's Medical Center "on the 21st or 22nd of August [2011]." (Exhibit AA, September 17, 2012, p. 9.) According to defendant's Petition, applicant was hospitalized for twenty two consecutive days. (Petition for Reconsideration, p. 2, line 17.) Applicant had further surgeries on his right hand on September 19, 2011 for an infection and on December 20, 2011. (Exhibit AA, September 17, 2012, pp. 3, 5-9.) Up through August 2012, he received therapy to his right hand. (Exhibit AA, September 17, 2012, pp. 3, 4.) Apparently, additional further surgery is recommended. (Exhibit AA, September 17, 2012, p. 10; October 1, 2012, p. 2; November 5, 2012, p. 5.)

In sum, AME Dr. Gordon determined that:

> "It is evident that Mr. Neri-Hernandez has had a devastating injury to his right hand with a severe crush injury, and he has extremely severe pain and essentially no function.
>
> "He is not able to flex any of the fingers without extreme pain. He is not able to move the thumb away from the index finger so that he has no ability to pinch, grip, manipulate, or use the hand.
>
> "Combined with this, he has extremely severe pain when trying to move the hand in any way at all." (Exhibit AA, September 17, 2012, p. 10.)

Dr. Gordon concluded that: "As it stands at this point, [applicant] has essentially lost all use of the right upper extremity." (Exhibit AA, Report of Leonard Gordon, M.D., September 17, 2012, p. 11.)

II.

As a result of his injury, applicant sought home health care.

A handwritten note on St. Mary's Medical Center letterhead dated November 11, 2011 stated in its entirety that:

> "To Whom it may Concern,
>
> "This is to notify that Neri Hernandez Roque has been under the care of Dr. Charles K. Lee for severe injury to his right hand since 7-11-11 at which time he has needed constant care from his wife Adrianna Bayona.
>
> "Mr. Neri Hernandez will need continuous care as his ongoing treatment goes on. [sic]
>
> "If you have any questions please call our office at Pros at (415)750-55-88. [sic]
>
> "Sincere, [sic]
> Dr. Charles K. Lee"

A "C" is scrawled on the bottom of the letter. (Exhibit 1, Report by Charles Lee, M.D. November 11, 2011.)

On November 28, 2011, applicant served defendant with the handwritten note by Dr. Lee. (Exhibit 2, Letter from Applicant's Counsel to Defense Counsel, November 28, 2011.) Although a proof of service is not in evidence, defendant appears to concede this fact in its Petition. (Petition for Reconsideration, p. 2, lines 18-19.) The letter stated in its entirety that:

> "Attached please find Dr. Charles Lee correspondence dated November 11, 2011. Please allow this letter to serve as my formal request that you authorize the applicant's wife, Adrianna Bayona to provide in-home [sic] for the applicant.
>
> "If I have not received written confirmation of your authorization for the above requested treatment within 5 days, I will file for an Expedited Hearing on this matter."

Dr. Gordon issued a report on November 5, 2012 report, in which he opined in pertinent part that:

> "As far as the second question which relates to an attendant, I do feel that it is reasonable for the patient to have support, transportation, and attendant care at the rate of six hours per day. There does not appear to be

> any particular need for skilled nursing as at this time there are no bandages or unusual care that is needed, and this would be at the unskilled level."

III.

On March 12, 2012, applicant filed a Declaration of Readiness (DOR) to proceed to expedited hearing. The DOR stated that:

> "Defendants have failed to authorize medical treatment consistent with the applicant primary treating physicians and has [sic] failed to provide the applicant with temporary total and disability benefits Board intervention necessary."

On March 26, 2012, Defendant filed an Objection to the DOR. It objected on the basis that it had denied injury to applicant's psyche, sleep and left extremity, and contended that: "Applicant's attorney has not indicated what medical treatment is not being provided and whether or not that would be consistent with any of the parts of body that have been denied." At the expedited hearing on April 3, 2012, the WCJ ordered in pertinent part that: "Defendant ordered to provide all reasonable & necessary medical care to the right upper extremity (not to include the elbow or above)."

A further hearing took place on May 8, 2012, and the parties entered into a stipulation, but there was no reference to home health care.

On July 3, 2012 and on October 12, 2012, applicant e-filed DORs for an expedited hearings, but there were no references to home health care. On August 14, 2012 and on November 5, 2012, the parties returned for further expedited hearings, and the parties entered into further stipulations, but there were no references to home health care.

Finally, on January 24, 2013, applicant e-filed a DOR for an expedited hearing and contended that: "Defendants have failed to provide attendant care and temporary disability benefits consistent with Dr. Leonard Gordon's report dated 11/5/12. Board intervention necessary."

Defendant filed an Objection on February 4, 2013, and alleged in pertinent part that "applicant's counsel has not attached any medical report showing a request for authorization of attendant care has been made. If no request for authorization has been made, there would be no dispute at this time."

The parties appeared on March 5, 2013 for expedited hearing. Applicant sought an Order providing for payment for home health care services provided by his spouse, Andrianna Bayona, and an

award "for retroactive payment for said care to the date of injury payable to the applicant as a medical benefit." (Minutes of Hearing, Summary of Evidence, March 5, 2013 (MOH), p. 3, lines 4-8.) Applicant contended that applicant's spouse's testimony was an adequate basis to determine the hourly rate of reimbursement. (MOH, p. 3, lines 12-15.) Issues of penalties and sanctions were deferred. Defendant contended that the November 11, 2011 report by Dr. Lee was not a valid prescription; that the terms "support" and "attendant care" in the November 5, 2012 report by Dr. Gordon were ambiguous; that neither doctor's report was "sufficient to determine the type of care required"; and, that newly enacted section 4600(h) applied. (MOH, p. 2, lines 14-29.)

Applicant's spouse Adrianna Bayona Hernandez testified as follows. She has been married to applicant for nine years. (MOH, p. 4, lines 15-16.) For fifteen years, up to the time of applicant's injury, she worked as a teacher's assistant at a day-care center for forty hours per week with an average of three hours per week of overtime and earned $11.30 per hour. (MOH, p. 4, lines 16-29.) After the injury, applicant was in the hospital for twenty two days; she did not work at the day-care center during that time and was "laid off" because of missing time from work. (MOH, p. 4, lines 31-40.) After applicant was released, she took care of applicant at home, including bathing him, giving him medicines, feeding him, and dressing him, and took him to the doctor in San Francisco. (MOH, p. 5, lines 1-8.) She "was required to spend all day long with the applicant back then, but that level of involvement has lessened since then." (MOH, p. 5, lines 6-8.) Applicant got an infection, and Dr. Lee told her that she "had to clean the applicant up as they could not get a nurse" and he gave her a letter. (MOH, p. 5, lines 10-16.) She took care of applicant's infection for approximately a year's time. (MOH, p. 5, lines 14-16.)

Currently, she helps applicant with his medications three times per day and with applying his pain patches, opens his water bottles, shaves him, trims his moustache and nails, scrubs applicant, washes his head, helps him bathe and helps him to dress including changing from his pajamas and tying his shoes, and putting on his belt, pants, and jacket. (MOH, p. 5, lines 18-23, 26-27, 32-36, p. 6, lines 15-16, 23-28, 30-34.) Applicant showers each day and the showers take forty five minutes to an hour. (MOH, p. 6, lines 20-21.) She drives applicant. (MOH, p. 5, lines 25-26, p. 6, lines 39-45.) She also takes care of the yard and the cars. (MOH, p. 5, lines 27-28.) She prepares meals and does applicant's laundry. (MOH, p.

5, lines 18-23, 29-30, p. 6, lines 35-37, p. 7, lines 3-4.) Applicant can toilet himself; she last assisted him to use the toilet about a year and a half ago. (MOH, p. 6, lines 18-20.) She estimates that she spends six to eight hours a day helping applicant. (MOH, p. 5, lines 32-33.) She has not worked outside the home since applicant's injury. (MOH, p. 5, lines 37-38.)

Prior to the injury, she took care of the house on weekends. (MOH, p. 5, lines 21-23.) Applicant did the cooking, although she made dinner "sometimes." (MOH, p. 5, lines 18-23, p. 6, lines 13-15.) Applicant took care of the yard, worked on the cars, and did his own laundry. (MOH, p. 5, lines 21-23, 27-28, 29-30.) He also did grocery shopping. (MOH, p. 7, lines 1-3.)

She drew unemployment insurance from September 2011 to February 2013 at $246.00 per week. (MOH, p. 6, lines 4-6.) Her last full year worked was 2010 and she earned $24,000.00. (MOH, p. 6, lines 6-8.) Between her and applicant, they have three children, ages 20, 21, and 24, but they are never at the house and they do not eat with them. (MOH, p. 6, lines 11-13.)

On May 30, 2013, the WCJ issued the F&O.

DISCUSSION

I.

We first consider whether section 4600(h) applies.

Section 4600(h) states in pertinent part that:

> "Home health care services shall be provided as medical treatment only if reasonably required to cure or relieve the injured employee from the effects of his or her injury and prescribed by a physician and surgeon. . . . The employer shall not be liable for home health care services that are provided more than 14 days prior to the date of the employer's receipt of the physician's prescription."

Section 4600(h) was enacted by SB 863 [Stats. 2012, ch. 363, § 35], which became effective on January 1, 2013. Uncodified section 84 of SB 863 provides that "[t]his act shall apply to all pending matters, regardless of date of injury, unless otherwise specified in this act, but shall not be a basis to rescind, alter, amend, or reopen any final award of workers' compensation benefits." Section 4600(h) does not specify that it applies only to dates of injury on or after January 1, 2013. Therefore, as of January 1, 2013, the provisions of section 4600(h) became applicable to any case still pending, except

cases that were "final" subject only to the Appeals Board's continuing jurisdiction under sections 5803 and 5804.

This conclusion is mandated by the appellate cases that interpreted uncodified section 47 of SB 899. (E.g., *Sierra Pacific Industries v. Workers' Comp. Appeals Bd.* (*Chatham*) (2006) 140 Cal.App.4th 1498, 1506-1509 [71 Cal.Comp.Cases 714] (SB 899's amendment of Lab. Code § 4600(b), which required application of the ACOEM guidelines in determining whether medical treatment was reasonably required, was applicable to all pending cases, regardless of the date of injury); *E & J Gallo Winery v. Workers' Comp. Appeals Bd.* (*Dykes*) (2005) 134 Cal.App.4th 1536, 1543 [70 Cal.Comp.Cases 1644] (SB 899's new Lab. Code §§ 4663 and 4664 apportionment provisions were applicable to all non-final cases, regardless of date of injury); accord: *Rio Linda Union School Dist. v. Workers' Comp. Appeals Bd.* (*Scheftner*) (2005) 131 Cal.App.4th 517, 531 [70 Cal.Comp.Cases 999] (same); *Marsh v. Workers' Comp. Appeals Bd.* (2005) 130 Cal.App.4th 906, 916 [70 Cal.Comp.Cases 787]; *Kleemann v. Workers' Comp. Appeals Bd.* (2005) 127 Cal.App.4th 274, 285-289 [70 Cal.Comp.Cases 133].)

This conclusion is also mandated by the well-established principle that the right to receive workers' compensation benefits is "wholly statutory." (*DuBois v. Workers' Comp. Appeals Bd.* (1993) 5 Cal.4th 382, 388 [58 Cal.Comp.Cases 286]; *Beverly Hilton Hotel v. Workers' Comp. Appeals Bd.* (*Boganim*) (2009) 176 Cal.App.4th 1597, 1604 [74 Cal.Comp.Cases 927]; *Graczyk v. Workers' Comp. Appeals Bd.* (1986) 184 Cal.App.3d 997, 1002–1003 [51 Cal.Comp.Cases 408].) Furthermore, where a right is created solely by a statute, and the right has not been perfected by a final decision, the right is not vested but merely inchoate and may be modified or even entirely abolished by the Legislature at any time. (*Boganim*, 176 Cal.App.4th at pp. 1605-1607; *Graczyk*, *supra*, 184 Cal.App.3d at pp. 1006–1007; see also, e.g., Gov. Code, § 9606; *Green v. Workers' Comp. Appeals Bd.* (2005) 127 Cal.App.4th 1426, 1436 & fn. 16 [70 Cal.Comp.Cases 294]; *Weiner v. Ralphs Co.* (2009) 70 Cal.Comp.Cases 736, 742-743 (Appeals Board en banc) [*Weiner I*].)

Thus, since the issue of applicant's request for home health care was pending on January 1, 2013 and no final decision had issued, section 4600(h) applies.

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II.

Here, the November 11, 2011 note from Dr. Lee states that applicant has been under the care of Dr. Lee "for severe injury to his RT. hand since 7-11-11 at which time he has needed constant care from his wife Adriana Bayona." (Exhibit 1) We conclude that this note is a prescription for home health care services within the meaning of section 4600(h).

The letter from applicant's counsel to defendant's counsel reflects that Dr. Lee's November 11, 2011 prescription was not served until at least November 28, 2011. (Exhibit 2; see Petition for Reconsideration, p. 2, lines 18-19.) In that letter, applicant's counsel stated: "Please allow this letter to serve as my formal request that you authorize the applicant's wife, Adrianna Bayona to provide in-home [sic] for the applicant." There is no evidence in the record before us that defendant conducted utilization review (UR) with respect to Dr. Lee's November 11, 2011 prescription, as required by *State Comp. Ins. Fund v. Workers' Comp. Appeals Bd.* (*Sandhagen*) (2008) 44 Cal.4th 230 [73 Cal.Comp.Cases 981].

However, we reiterate that *Sandhagen* did *not* hold that, if a defendant fails to undertake UR, the employee is relieved of his or her burden of proof (see Lab. Code, §§ 3202.5, 5705). Instead, *Sandhagen* held that if a defendant's UR is untimely an employee "may" utilize Labor Code section 4062 to resolve a medical treatment dispute, which implies then that the employee is not automatically entitled to the recommended treatment. (*Sandhagen*, 44 Cal.4th at pp. 237, 244-245.) More pertinently, *Sandhagen* also expressly declared:

> "The Legislature amended section 3202.5 to underscore that all parties, including injured workers, must meet the evidentiary burden of proof on all issues by a preponderance of the evidence. (Stats. 2004, ch. 34, § 9.) Accordingly, *notwithstanding whatever an employer does (**or does not do**)*, an injured employee must still prove that the sought treatment is medically reasonable and necessary. That means demonstrating that the treatment request is consistent with the uniform guidelines (§ 4600, subd. (b)) or, alternatively, rebutting the application of the guidelines with a preponderance of scientific medical evidence (§ 4604.5)." (*Sandhagen*, 44 Cal.4th at p. 242 [italics, underlining, and bolding added].)

Accordingly, we have consistently held that even if UR not undertaken, was untimely, or was otherwise invalid, the injured employee still has the burden of proof (see Lab. Code, §§ 3202.5, 5705) and must demonstrate: (1) that the treatment is reasonably required (see Lab. Code, § 4600); and (2)

either that the treatment falls within the presumptively correct medical treatment utilization schedule or that this presumption has been rebutted (see Lab. Code, § 4604.5). (E.g., *Flores v. Harbor Rail Transp.* (2013) 2013 Cal. Wrk. Comp. P.D. LEXIS 14, at pp. *18-*19; *Chairez v. Cherokee Bindery* (2012) 2012 Cal. Wrk. Comp. P.D. LEXIS 506, at p. *9.)

Here, we find that applicant has met this burden of proof. The November 11, 2011 prescription is consistent with the subsequent reports of Dr. Gordon, the orthopedic hand surgery physician who acted as the AME. Dr. Gordon's September 17, 2012 and November 5, 2012 reports reflect that applicant sustained a "severe crushing injury" to his right hand when it was "crush[ed]" in a power press machine, resulting in the "near-amputation" of his right hand. Dr. Gordon's September 17, 2012 report reflects that, following his July 11, 2011 injury, applicant had five surgeries and that even as of the time of the September 17, 2012 report, applicant had essentially lost all use of his hand and continued to have "extremely severe pain when trying to move the hand in any way at all."

Moreover, applicant's spouse's unrebutted and unimpeached trial testimony established that she in fact performed various home health care services for applicant. Thus, we conclude that applicant provided a prescription from Dr. Lee dated November 11, 2011 as required by section 4600(h), and that applicant sustained his burden of proof to show that home health care services were reasonable and necessary.

III.

Nevertheless, a conclusion that applicant sustained his burden of proof does not mean that defendant is liable for 24-hour home health care retroactive to August 3, 2011 and up to November 4, 2012, as found by the WCJ. (Finding 2, Award (a).)

First, section 4600(h) provides: "The employer shall not be liable for home health care services that are provided more than 14 days prior to the date of the employer's receipt of the physician's prescription." Here, the November 11, 2011 prescription was not served until November 28, 2011, but there is no evidence as to when defendant *received* the prescription. Hence, the record must be further developed to determine the date that defendant *received* the prescription, in order to determine when the liability period begins.

Moreover, there is no evidence in the record that applicant had even been discharged from the hospital by August 3, 2011 or that, once he was discharged, he was continually home until November 4, 2012. Although applicant's spouse testified that applicant was in the hospital for twenty two days and defendant apparently concedes this fact in its Petition, the September 17, 2012 report of the AME, Dr. Leonard, refers to a history from Dr. Diaz that applicant "was hospitalized for over a month." Dr. Leonard's September 17, 2012 report reflects that applicant had two further surgeries on September 19 and December 20, 2011, but it is unclear whether applicant was re-hospitalized on either of those occasions.

Furthermore, Dr. Lee's November 11, 2011 statement that applicant "has needed constant care from his wife Adriana Bayona" since July 11, 2011 is ambiguous and needs clarification. And, it specifically refers to the period from July 11, 2011 to November 11, 2011. Although the WCJ interpreted "constant" as meaning "all day, 24 hours per day," there are other reasonable definitions of "constant care" that do not equate to 24/7 care, such as "regular" or "regularly recurrent" care. Dr. Lee then recommends "continuous care" with reference to ongoing care, again without further explanation, and, it is not clear how long Dr. Lee contemplates that applicant will need continuous care or some other level of care. It may be that applicant's discharge records from St. Mary's Medical Center would further explain the type of care applicant required, but that evidence is not in the record. In his report of November 5, 2012, Dr. Gordon concluded that there was no "particular need for skilled nursing as at this time there are no bandages or unusual care that is needed, and this would be at the unskilled level," but Dr. Gordon does not comment on what type of care applicant may have needed previously. Consequently, it is unclear how many hours of care and the type of care that Dr. Lee recommended, and the record requires further development on that issue.

Moreover, at trial applicant's wife testified that she was "required to spend all day long" with applicant following his release from the hospital, "but that level of involvement has lessened since then." While applicant's spouse testified as to the duties she currently performs, the evidence in the record as to the type of care that she provided up to the time of Dr. Gordon's report of November 5, 2012 is sparse at best.

Additionally, section 5307.8 was also added by SB 863 and, therefore, is applicable in this case for the same reasons discussed above with respect to the applicability of section 4600(h). Section 5307.8 provides in pertinent part that: "No fees shall be provided for any services, including any services 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."

Here, applicant's spouse testified that before applicant's injury, she worked full time during the week and she provided some testimony that she made dinner sometimes and took care of the house on weekends. She also testified that before his injury, applicant did his own shopping, did his own laundry, and prepared his own breakfast and lunch, and that applicant cooked dinner the rest of the time and took care of the cars and the yard. But, taken as a whole, the evidence in the record is slim as to what duties applicant performed and what duties applicant's spouse performed prior to applicant's injury, and we do not see there is sufficient evidence to satisfy section 5307.8. Thus, the record must be further developed as to that issue.

Accordingly, we cannot see that applicant would be entitled to home health care beginning on August 3, 2011, since the prescription would have been received several months after that. And, without more evidence, although we agree that applicant was entitled to care as set forth in Dr. Gordon's November 5, 2012 report, we are unable to determine what amount of care applicant would have been entitled to up to the time of Dr. Gordon's letter of November 5, 2012.

IV.

Finally, we observe that while section 4603.2(b)(1) states in pertinent part that "[a]ny provider of services provided pursuant to Section 4600, including, but not limited to ... home health care services, shall submit its request for payment with an itemization of services provided and the charge for each service ...", section 4603.2(b)(1) does not specify *when* the itemized billing must be submitted. Moreover, section 4603.2(b)(2) merely specifies when payment must be made after receipt of the itemized billing, and again does not specify when the itemized billing must be submitted. Therefore, an itemized billing for home health care services may be submitted to defendant as appropriate, assuming that the parties are unable to informally resolve the home health care services issue.

Thus, we grant reconsideration, rescind the F&A, and return the matter for further development of the record as discussed above and a new decision by the WCJ.

For the foregoing reasons,

IT IS ORDERED that the Petition for Reconsideration by defendant of the Findings and Award of May 30, 2013 by a workers' compensation administrative law judge is **GRANTED**.

IT IS FURTHER ORDERED as the Decision After Reconsideration of the Workers' Compensation Appeals Board that the Findings and Award issued by the workers' compensation administrative law judge on May 30, 2013 is **RESCINDED** and the matter is **RETURNED** to the workers' compensation administrative law judge for further proceedings as appropriate and a new decision from which any aggrieved party may timely seek reconsideration.

WORKERS' COMPENSATION APPEALS BOARD

ALFONSO J. MORESI

I CONCUR,

RONNIE G. CAPLANE

DEPUTY

NEIL P. SULLIVAN

WORKERS' COMPENSATION APPEALS BOARD SEAL

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA AUG 12 2013

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

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AS/jp