FIRST DISTRICT COURT OF APPEAL
STATE OF FLORIDA

No. 1D21-3405

KELLY GIRARDIN,

Appellant,

v.

AN FORT MYERS IMPORTS, LLC
d/b/a AUTONATION TOYOTA FORT
MYERS/GALLAGHER BASSETT,

Appellees.

On appeal from an order of the Office of the Judges of Compensation Claims.
Jack Adam Weiss, Judge.

Date of Accident: December 19, 2020.

August 10, 2022

PER CURIAM.

Kelly Girardin, a workers' compensation claimant (Claimant) in the proceedings below, argues in this appeal that the Judge of Compensation Claims (JCC) erred by denying her claim for attendant care because she did not provide the employer/carrier (E/C) with a sufficiently specific written prescription pursuant to section 440.13(2)(b)1., Florida Statutes (2020). As explained below, we agree and reverse.

Facts

Claimant's authorized treating doctor (Dr. Wolff) wrote a prescription for a "Home health Evaluation & attendant care, 12 hrs/day 7 days per week." Claimant attached a copy of the prescription to a petition for benefits she filed a few days later. The E/C responded by stating that "attendant care . . . is authorized" and that they would provide "additional details under separate cover." According to the carrier's adjuster, she contacted Dr. Wolff the day she received the prescription to ask for more information. The doctor told her he prescribed the home evaluation because he did not know anything about Claimant's home situation and therefore could not provide any specifics about how much and what type of attendant care Claimant needed based on her physical restrictions. Over the next approximately five months, the E/C retained agencies that conducted three home visits and assessments, with the last occurring just a few days before the final hearing. Additionally, Dr. Wolff gave deposition testimony concerning Claimant's limitations, but again said he would defer to the home health evaluation before he could provide specifics concerning the amount and type of attendant care she required. At no time did the E/C provide Dr. Wolff with the evaluations.

Despite authorizing attendant care and the home evaluations, at the final hearing the E/C took the position that they had offered care for "up to" twelve hours daily, but also maintained that the JCC could not award attendant care because they had not yet received a written prescription that satisfied the statute's specificity requirements. The JCC agreed, rejecting Claimant's argument that the E/C had already authorized attendant care and had all the information they needed, but were nonetheless essentially hiding behind the written prescription requirement to avoid providing the attendant care. In his order, the JCC found that, pursuant to the statute's plain language, the E/C here were not responsible for providing attendant care until Dr. Wolff or another physician "requests in writing attendant care for Claimant that specifies 'the time periods for such care, the level of care required, and the type of assistance required,'" and that Claimant "simply failed" to provide evidence of a written prescription with the requisite specificity. He therefore denied the claim for "authorization and payment of attendant care per Dr.

Wolff for 12 hours per day, 7 days per week to the date of the Final Hearing."

Discussion

Section 440.13(2)(b)1., Florida Statutes (2020), provides, in relevant part:

> The employer shall provide appropriate professional or nonprofessional attendant care performed only at the direction and control of a physician when such care is medically necessary. The physician shall prescribe such care in writing. The employer or carrier shall not be responsible for such care until the prescription for attendant care is received by the employer and carrier, which shall specify the time periods for such care, the level of care required, and the type of assistance required.

The JCC correctly found that this statute requires a written prescription with certain information before an E/C will be responsible for providing attendant care. As this court explained in *James W. Windham Builders, Inc. v. Overloop*, 951 So. 2d 40 (Fla. 1st DCA 2007), however, this does not relieve an E/C of its obligation to "monitor a claimant's injuries and provide needed benefits" or excuse any "attempt to hide behind a wall of willful ignorance." *Id*. at 43.

In *Overloop*, after the claimant underwent compensable surgery, the discharge doctor gave him an oral prescription for attendant care. The claimant's wife provided this care over the next year during which time she was in contact with the carrier and the carrier was in contact with the doctor (about billing), but at no time did the carrier inform the claimant or the doctor about the written prescription requirement. It was not until a year later that the claimant obtained a written memorialization of the oral prescription to seek payment for his wife's services. *Id*. at 42.

This court held that the JCC erred in finding "the oral prescription qualified as proper authorization under the statute" because "it was improper for E/C to require an actual written prescription prior to the time the attendant care was provided," but nonetheless affirmed the award, explaining that "[t]he statute,

by its plain meaning, simply ensures that a doctor will memorialize the medical justification for attendant care; it does not authorize an E/C to willfully ignore an employee's need for treatment by failing to disclose the statutory requirement of the treating physician." *Id*. at 43. The court also rejected the E/C's argument that the attendant care statute "precluded the duty to investigate attendant care until a written prescription is received," finding such an interpretation "would violate section 440.015, Florida Statutes (2004), where the legislature states its intent that workers' compensation law 'be interpreted so as to assure the quick and efficient delivery of disability and medical benefits to an injured worker.'" *Id*.

The facts in Claimant's favor here are at least as compelling. The E/C immediately authorized attendant care based on Dr. Wolff's prescription, informed Claimant that they would provide more details, and initiated the prescribed home health evaluation process only to fail to provide Dr. Wolff with the results of those evaluations so that he could give them written specifics of the amount and type of care Claimant required. Compounding this, they went to trial taking the opposing positions that, on the one hand, they had offered, or were offering, "up to" twelve hours of care daily,* but also denied any obligation to provide attendant care until they received a sufficiently specific written prescription. This was little more than using the statute as a shield absolving them of their duty to "monitor a claimant's injuries and provide needed benefits" and excuse an "attempt to hide behind a wall of willful ignorance." *Overloop*. 951 So. 2d at 43.

Faced with these facts, it is difficult to square the JCC's order denying Claimant's authorization of attendant care with the Legislature's stated intent that the Workers' Compensation Law "be interpreted so as to assure the quick and efficient delivery of . . . medical benefits to an injured worker." § 440.015, Fla. Stat. Therefore, we reverse the order on appeal and remand for proceedings consistent with this opinion.

---

* They also informed the JCC that they had just recently received the third evaluation but disagreed with some of the hours it advised.

REVERSED and REMANDED.

LEWIS, MAKAR, and BILBREY, JJ., concur.

Not final until disposition of any timely and authorized motion under Fla. R. App. P. 9.330 or 9.331.

Martha D. Fornaris, Coral Gables, Amie E. DeGuzman, Jacksonville, for Appellant.

Tiffany Hawks, Coral Gables, for Appellees.