

1           **IN THE COURT OF APPEALS OF THE STATE OF NEW MEXICO**

2 Opinion Number: \_\_\_\_\_

3 Filing Date: May 28, 2015

4 **NO. 32,413**

5 **MARGARET M.M. TRACE,**

6           Worker-Appellee,

7 v.

8 **UNIVERSITY OF NEW MEXICO**

9 **HOSPITAL, Self-Insured,**

10           Employer/Insurer-Appellant.

11 **APPEAL FROM THE WORKERS' COMPENSATION ADMINISTRATION**

12 **Gregory D. Griego, Workers' Compensation Judge**

13 Margaret M. McNamara Trace

14 Albuquerque, NM

15 Pro Se Appellee

16 Paul L. Civerolo, LLC

17 Paul L. Civerolo

18 Albuquerque, NM

19 for Appellant

1 **OPINION**

2 **VIGIL, Judge.**

3 {1} This is a workers' compensation case which presents us with a question of first  
4 impression: whether the appointment of a case manager for ongoing coordination of  
5 health care services by a workers' compensation judge (WCJ) constitutes a "litigation  
6 expense" in connection with a proceeding before the Workers' Compensation  
7 Administration (WCA), thereby exempting the case manager's fee from the  
8 Procurement Code. We conclude that such services do not constitute a "litigation  
9 expense" and reverse the order of the WCJ to the contrary.

10 **I. BACKGROUND**

11 {2} Worker was a registered nurse, working the night shift at University of New  
12 Mexico Hospital when she injured her back while lifting and turning a patient on  
13 October 5, 1994. On September 1, 1995, Worker filed a claim with the WCA against  
14 University of New Mexico Hospital and its insurer, New Mexico Risk Management  
15 (collectively Employer). From the beginning the case was combative. There was  
16 disagreement regarding the compensable injuries, allegations that the employer  
17 unilaterally changed treating physicians, that Employer improperly refused payment  
18 for necessary medical services, that Employer's agent interfered with the doctor-

1 patient relationship, that medical services were unjustifiably curtailed or terminated,  
2 and that compensation benefits were improperly curtailed.

3 {3} Trial was finally held on May 7-8, 1996, before WCJ Wiltgen, who entered a  
4 compensation order on June 3, 1996, concluding that as a direct and proximate result  
5 of the October 1994 accident, “Worker suffered an injury to her low back with  
6 additional effects on her shoulder, elevated blood pressure and emotional overlay.”  
7 WCJ Wiltgen further found that “Worker’s present condition and disability are  
8 permanent” and that Worker had “continuing need for medical care of her job-related  
9 injuries including psychological treatment.”

10 {4} Worker asserts that after entry of the compensation order, Employer’s adjuster  
11 “continued to deny various treatments and medications” and that “Worker had  
12 increasing pain; some symptoms related to the previous injuries, and other new  
13 symptoms.” Worker asserts that there were disputes between Worker’s attorney and  
14 Employer’s adjuster and the nurse case manager, as well as a number of claims, for  
15 exacerbations or new injuries “due to the denial of care and medical bills,” and  
16 complaints for a “pattern of bad faith and unfair claims processing.” Consequently,  
17 there were additional mediation conferences and hearings before the WCA, with the  
18 result that on October 27, 1999, WCJ Wiltgen appointed Ms. St. Martin as

1 “independent nurse case manager” to “coordinate future medicals and treatment and  
2 act as nurse case manager.”

3 {5} Additional claims, responses, and motions followed, and issues remained  
4 unresolved. Following another mediation conference in December 2003, the parties  
5 agreed that Ms. St. Martin would pick a physician to conduct an independent medical  
6 examination. Following the independent medical examination and Ms. St. Martin’s  
7 review, she determined that an independent medical panel should be convened. WCJ  
8 Wiltgen retired, and the case was reassigned to WCJ Griego in January 2004.

9 {6} Worker filed an amended complaint on April 27, 2004. Following additional  
10 hearings, discovery, and the independent medical panel review, a final hearing on the  
11 April 27, 2004 amended complaint was set. The final compensation order, filed on  
12 February 22, 2006, determined that Worker suffered multiple injuries as a result of  
13 the 1994 accident, and that medical treatment, treatment modalities, and alternative  
14 therapies “may be necessary in the future,” which “will be authorized in collaboration  
15 with the treating physician and nurse case manager.” The compensation order further  
16 ordered that “Ms. . . . St. Martin shall continue to act as the court ordered nurse case  
17 manager concerning [Worker’s] work related injuries[.]”

18 {7} In 2012, Employer moved that Ms. St. Martin be discontinued from serving as  
19 the court-appointed nurse case manager because her employer’s contract with the

1 WCA had expired, and Employer asserted, her continued appointment violated the  
2 Procurement Code. WCJ Griego denied the motion, on the basis that the Procurement  
3 Code “does not apply to Administrative/Court Ordered Decrees.” Employer moved  
4 for reconsideration, and at the hearing WCJ Griego expressed his understanding that  
5 because Ms. St. Martin’s appointment was court ordered, it qualified as a litigation  
6 exemption under the Procurement Code. WCJ Griego therefore denied the motion in  
7 a memorandum opinion reasoning:

8           Services can be directed to be paid by Risk Management under  
9 the Workers’ Compensation Act to providers who have not entered into  
10 a contract with State Risk Management under the procurement code. For  
11 example, professional services to a worker from an attorney or a  
12 physician can be ordered paid by court order. It is not necessary for  
13 those services to be provided under a contract under the procurement  
14 code.

15           There is no question that the procurement code would be  
16 applicable if State of New Mexico were voluntarily providing services  
17 without intervention of the administration. However, the distinguishing  
18 characteristic here is that the services being provided are by direction by  
19 court order and not being voluntarily provided by Risk Management.

20 Employer appeals.

## 21 **II. DISCUSSION**

22 {8} Employer makes two arguments on appeal: First, the WCA has a statutorily and  
23 administratively created system of case management and a WCJ cannot unilaterally  
24 order case management by circumventing the system. Second, the WCJ’s order

1 exceeds the WCJ’s authority and violates the Procurement Code because the code  
2 requires a contract for professional services.

3 {9} In response, Worker argues that Employer did not preserve the issues on  
4 appeal. Worker reasons that Employer has complied with Ms. St. Martin being the  
5 court-appointed case manager for fifteen years without incident, and this appeal is the  
6 first time Appellants have raised the issue. Worker also argues that the WCJ’s order  
7 falls within the Procurement Code’s litigation exemption.

8 {10} We first address Worker’s preservation concerns, then we examine the WCA  
9 and the Procurement Code.

10 **A. Preservation**

11 {11} “To preserve a question for review it must appear that a ruling or decision by  
12 the [tribunal] was fairly invoked[.]” Rule 12-216(A) NMRA. The principal purpose  
13 of this rule is to alert the trial judge to the claimed error, giving the trial court an  
14 opportunity to correct the matter. *Madrid v. Roybal*, 1991-NMCA-068, ¶ 7, 112 N.M.  
15 354, 815 P.2d 650. Worker argues that Employer failed to invoke a ruling by the WCJ  
16 in order to preserve its argument on appeal. We disagree.

17 {12} Following the initial August 29, 2012 order, Employer made a motion to  
18 reconsider the order continuing St. Martin as the nurse case manager. In its motion,  
19 Employer asserted that the appointment of St. Martin without a contract violates the

1 Procurement Code. WCJ Griego then held a hearing to address the controversy of St.  
2 Martin’s status as the nurse case manager. All parties had the opportunity to address  
3 their concerns at the hearing. After hearing Employer’s argument again that the  
4 August 29, 2012 order violates the Procurement Code, WCJ Griego disagreed and  
5 reaffirmed his ruling.

6 {13} We therefore conclude that Employer alerted the WCJ to the asserted error it  
7 now argues on appeal and that the issue was properly preserved for appellate review.

8 **B. Standard of Review**

9 {14} Our review requires us to examine the Workers’ Compensation Act, NMSA  
10 1978, §§ 52-1-1 to -70 (1929, as amended through 2013), NMSA 1978, § 52-4-3  
11 (1990), regarding case management for health care services, and NMSA 1978, § 13-  
12 1-30 (2005) and NMSA 1978, § 13-1-98 (2013), of the Procurement Code. “We apply  
13 de novo review to interpret the meaning of a statute.” *Jones v. Holiday Inn Express*,  
14 2014-NMCA-082, ¶ 10, 331 P.3d 992. “When engaging in statutory construction, our  
15 primary concern is to determine and give effect to legislative intent.” *Id.* (internal  
16 quotation marks and citation omitted). “In discerning the Legislature’s intent, we are  
17 aided by classic canons of statutory construction, and we look first to the plain  
18 language of the statute, giving the words their ordinary meaning, unless the  
19 Legislature indicates a different one was intended.” *Faber v. King*, 2015-NMSC-\_\_\_\_,

1 ¶ 9, \_\_\_ P.3d \_\_\_ (Nos. 34,204 and 34,194, Mar. 12, 2015) (alteration, internal  
2 quotation marks, and citation omitted). We also consider the statute’s function in the  
3 comprehensive legislative scheme. *Id.*

#### 4 **C. Workers Compensation Act**

5 {15} The Act requires the WCA to establish a “case management” system providing  
6 for “the ongoing coordination of health care services provided to an injured or  
7 disabled worker[.]” Section 52-4-3(A)-(B). Thus, in providing ongoing coordination  
8 of health care services, case managers may be used for developing a treatment plan,  
9 monitoring the treatment, and the injured worker’s progress, determining whether  
10 other health services are appropriate and cost-effective, and formulating a plan for the  
11 injured worker to return to work. Section 52-4-3(B).

12 {16} Further, the Act directs that the WCA “shall contract with an independent  
13 organization” to assist with the administration of the case management system.  
14 Section 52-4-3(C). The administrative rules of the WCA define a “contractor” as “any  
15 organization that has a legal services agreement currently in effect with the [WCA]  
16 for the provision of utilization review or case management[.]” 11.4.7.7(L) NMAC  
17 (12/31/2011). When case management is required, “The WCA will assign cases to its  
18 contractor for case management, as provided by the contract in effect.”



1 11.4.7.14(G)(1)(a) NMAC (01/14/2005)<sup>1</sup> and when the WCA refers a case to a case  
2 manager, “the WCA shall pay for the case management services pursuant to the  
3 contract.” 11.4.7.14(G)(1)(e)(i) NMAC (01/14/2005).

4 {17} The plain language of the statute demonstrates that the Legislature intended the  
5 case manager to be a contractor with a contract in effect. The administrative rules  
6 implement this intent by creating a framework requiring case managers to be  
7 contractors who are paid as provided in the contract. In this case, the contract with  
8 Ms. St. Martin’s employer expired. We now turn to whether WCJ Griego could order  
9 that Ms. St. Martin continue as Worker’s case manager in the absence of a contract  
10 under the Procurement Code.

11 **D. Procurement Code**

12 {18} The Procurement Code applies to all expenditures by state agencies for the  
13 procurement of goods and services from private entities, unless the Procurement Code  
14 itself provides otherwise. Section 13-1-30. Here, the WCA requires a contract for case  
15 management services and the Procurement Code requires a contract for any services,  
16 unless otherwise provided. The only exception which the Worker asks us to consider,

---

17 <sup>1</sup>11.4.7.14 NMAC was amended in 2013. We apply the administrative rules that  
18 were in effect when the order was entered in 2012.

1 and the only exception relied on by WCJ Griego is the litigation exemption under

2 Section 13-1-98(R). This provision of the Procurement Code exempts:

3 contracts and expenditures for legal subscription and research services  
4 and litigation expenses in connection with proceedings before  
5 administrative agencies or state or federal courts, including experts,  
6 mediators, court reporters, process servers and witness fees, but not  
7 including attorney contracts[.]”

8 Section 13-1-98(R).

9 {19} We are therefore asked to conclude that the fee of a case manager, responsible  
10 for the ongoing coordination of health care services provided to an injured or disabled  
11 worker, constitutes a litigation expense in connection with a WCA proceeding  
12 because the case manager is appointed by a WCJ. We decline the invitation on the  
13 basis that the services provided by a case manager under the WCA are not incurred  
14 “in connection with” litigation. Rather, such fees are incurred following a  
15 determination that a worker is injured or disabled and entitled to benefits under the  
16 WCA, and ongoing coordination of the healthcare services is required. Stated another  
17 way, while a case manager’s fee may be the consequence of litigation, such fees are  
18 not an expense of litigation.

19 {20} In this case, Ms. St. Martin has served as Worker’s case manager since 1999,  
20 and she has acquired substantial knowledge about Worker’s case, her issues, and her  
21 medical history. Continuing her services seems to be the most efficient means for

1 coordinating Worker's future care. In addition, we note that since Ms. St. Martin  
2 became involved as Worker's case manager, the disputes between Worker, Employer,  
3 Employer's insurance adjusters, and Worker's medical providers seem to have  
4 significantly resolved. This may very well be the reason why WCJ Griego wished that  
5 her services continue. These are all excellent reasons for seeking an amendment to  
6 the appropriate statutes. However, that is not our prerogative. Nor can a WCJ exceed  
7 his statutory authority. *See Jones*, 2014-NMCA-082, ¶ 9 (stating that workers'  
8 compensation courts are tribunals of limited and special jurisdiction and have only  
9 such authority as has been conferred on them by statute).

10 {21} For the foregoing reasons, we reverse the WCJ's order appointing Ms. St.  
11 Martin to continue as Worker's case manager.

12 **CONCLUSION**

13 {22} The order of the WCJ is reversed.

14 {23} **IT IS SO ORDERED.**

15

16

---

**MICHAEL E. VIGIL, Chief Judge**

1 **WE CONCUR:**

2

3 \_\_\_\_\_  
3 **MICHAEL D. BUSTAMANTE, Judge**

4

5 \_\_\_\_\_  
5 **J. MILES HANISEE, Judge**