

THE FIRST DCA HELD THAT THE FAILURE OF A CARRIER TO RESPOND TO A REQUEST FOR AUTHORIZATION OF TREATMENT IS CONSENT TO ITS MEDICAL NECESSITY

Elmer v. Southland Corporation, 34 Fla. L. Weekly D446a
(Fla. 1st DCA February 27, 2009)

A referral was made for pain management. The Employer/Carrier did not initially respond to this referral at all but later responded to a Petition for Benefits denying the referral claiming it was not medically necessary. The JCC denied the award for a pain management, agreeing with the Employer/Carrier.

The First DCA held that pursuant to *Fla. Stat.* § 440.13(3)(d), a carrier must respond, by telephone or in writing, to a request for authorization by the close of the third business day after receipt of the request. However, they also cited *Fla. Stat.* § 440.13(3)(i) which reads that a claim for a specialist consultation is not valid "...unless the carrier has failed to respond within 10 days to a written request for authorization..."

This does not require an Employer/Carrier to authorize a referral request by an authorized treating physician within the time specified, just that the Employer/Carrier respond. If there is no response, the court read the statute to provide that the Employer/Carrier has consented to the medical necessity of the treatment and forfeits their right to contest whether the referral is reasonably and medically necessary. A response that the request is being investigated should suffice and can be made by telephone or in writing.

The question is whether the response must be made within three or ten days per the above-cited statute sections. According to 440.13(3)(i), if the cost of the test or procedure is more than \$1,000, you must respond within 10 days. There is no language in regard to the cost of procedures in 440.13(3)(d). As such, if the cost of the treatment/procedure/test is less than \$1,000, it appears that you must respond within three days.

NOTE: This case states what you forfeit by not responding is the ability to challenge "medical necessity." Other defenses, such as major contributing cause, should arguable remain in tact.

REPLY TO: Tampa

TAMPA POST OFFICE BOX 3300 • TAMPA, FLORIDA 33601 • PHONE: 813.272.1400 • FAX: 813.272.1401

LAKELAND 336 WEST HIGHLAND DRIVE • SUITE 336 • LAKELAND, FLORIDA 33813 • PHONE: 863.644.9911 • FAX: 863.644.9904

FORT MYERS 13180 NORTH CLEVELAND AVENUE, SUITE 321 • NORTH FORT MYERS, FLORIDA 33903 • PHONE: 239.656.8617 • FAX: 239.656.8618

www.sponslerbennett.com