

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS
OFFICE OF THE JUDGES OF COMPENSATION CLAIMS
FORT LAUDERDALE DISTRICT

Tracie Srbovan
Employee/Claimant,

OJCC Case No.: 17-022904IF

vs.

Accident date: 4/24/2017

City of Miramar Fire Rescue and
Gallagher Bassett Services, Inc.
Employer/Servicing Agent,

Judge: Iliana Forte

Davis S. Benn, Esquire, Attorney for the Claimant
Eric L. Stettin, Esquire, Attorney for the Employer/Servicing Agent

**AMENDED FINAL EVIDENTIARY ORDER GRANTING CLAIMANT'S
MOTION TO STRIKE OPINIONS OF DR. THOMAS GOLDSCHMIDT**

This matter came before me, the undersigned Judge of Compensation Claims, on July 30, 2018 for an evidentiary hearing on the Claimant's Motion to Strike Opinions of Dr. Thomas Goldschmidt for Charges in Excess of Workers' Compensation Fee Schedule filed on April 25, 2018. The Employer/Servicing Agent filed their Response in Opposition to Claimant's Motion on May 18, 2018.

DOCUMENTS RECEIVED

Claimant:

1. Composite of Claimant's Motion to Opinions of Dr. Thomas Goldschmidt along with Exhibits and. and Claimant's Addendum to the Motion.
2. Deposition of Chad Bruntrager – Adjuster – Docket ID #42-43.
3. Uniform Pretrial Stipulation – Docket ID #38.
4. Definition of CPT Code 99080 per 2008 Healthcare Reimbursement Manual – Docket ID #41.
5. AMA definitions of applicable CPT Codes – Docket ID #44
6. Composite of excerpts of pages from the Heath Care Provider Reimbursement Manual.

Employer/Carrier:

1. Employer/Carrier's Response in Opposition to Claimant's Motion to Strike Opinions of Dr. Thomas Goldschmidt for Charges in Excess of Workers' Compensation Fee Schedule with Exhibits.

After careful consideration and review of the documentary evidence and argument presented, the following are my findings of ultimate facts and conclusion of law.

1. The Claimant seeks to have the opinion of Dr. Thomas Goldschmidt, the E/SA's authorized psychiatrist, stricken/excluded because Dr. Goldschmidt was paid by the E/SA well in excess of the allowable reimbursement under the F.W.C.H.C.P Reimbursement Manual and in contravention of Fla. Stat. §440.13(13)(b). The Claimant goes on to suggest that by making such payment, the E/SA has sought to procure an unfavorable opinion hurting the injured worker, aimed to "kill the claim" and is inherently biased.

2. The E/SA discounts Claimant's arguments and argues that the extensive and complex work required to conduct the psychiatric testing which took approximately 4-5 hours, a face-to-face evaluation which took approximately 2.25 hours along with independent research

and preparation of a very detailed 25 page Comprehensive Psychiatric Evaluation report merits the payment to Dr. Goldschmidt; which the E/C concedes is above the allowable reimbursement rate. The E/C also argues that the Claimant failed to meet her burden in proving the opinion should be excluded and, additionally, has acquiesced to Dr. Goldschmidt's opinions due to the delay in bringing the instant motion. Lastly, the E/C argues that there was an executed written agreement between the E/C and Dr. Goldschmidt as contemplated by §440.13(13)(b) to allow him to charge fees in excess of the fee schedule.

3. The Claimant is a first responder who has made a claim for post-traumatic stress disorder PTSD. The E/C authorized psychiatrist Dr. Thomas J. Goldschmidt to evaluate and treat the claimant. Dr. Goldschmidt performed his comprehensive psychiatric evaluation of the claimant on June 28, 2017. On June 1, 2017, before the evaluation of the claimant, Dr. Goldschmidt submitted a contract to Donette Powers, the adjuster on the case at the time, essentially setting forth his charges for conducting said evaluation. As a condition for securing the appointment, Ms. Powers was required to accept Dr. Goldschmidt's terms by signing the contract and returning the contract within forty-eight hours of receipt. Ms. Powers signed and dated the contract on 6/5/2017.

4. Dr. Goldschmidt billed and was paid by Gallagher Bassett, \$6,276.25 for the one time evaluation of the Claimant on 6/28/2017. Dr. Goldschmidt billed under three different CPT codes - 99080, 96101 and 99456. CPT code 99080 under the reimbursement manual corresponds to Special insurer requests. A special insurer request is defined under the manual as an insurer's request a physician prepare a special narrative report. Prior to a provider's provision of a special report, the insurer and the provider are required to agree upon reimbursement for completion of the special report. CPT code 96101 under the reimbursement manual corresponds

to 1 hour of psychological testing at a reimbursement rate of \$94.00 per hour. And, CPT code 99456 corresponds to reimbursement for IME.

5. Fla. Stat. §440.13(13)(b) provides:

Fees charged for remedial treatment, care, and attendance, except for independent medical examinations and consensus independent medical examinations, may not exceed the applicable fee schedules adopted under this chapter and department rule. Notwithstanding any other provision in this chapter, if a physician or health care provider specifically agrees in writing to follow identified procedures aimed at providing quality medical care to injured workers at reasonable costs, deviations from established fee schedules may be permitted. Written agreements warranting deviations may include, but are not limited to, the timely scheduling of appointments for injured workers, participating in return-to-work programs with injured workers' employers, expediting the reporting of treatments provided to injured workers, and agreeing to continuing education, utilization review, quality assurance, precertification, and case management systems that are designed to provide needed treatment to injured workers.

6. The E/C argues that the agreement between Ms. Powers and Dr. Goldschmidt satisfies the requirements of §440.13(13)(b) as Dr. Goldschmidt did not perform an ordinary psychiatric evaluation – this evaluation required extensive research, review of medical records, psychological testing, an extensive three-hour evaluation and it all needed to be done on an expedited manner. Alternatively, counsel for the E/C, Mr. Stettin, in response to Claimant's motion, authored a three page letter to Dr. Goldschmidt where he explains to Dr. Goldschmidt why the E/C agreed to the deviation from the fee schedule, he informed Dr. Goldschmidt of the legal challenge being made by the Claimant to strike his opinion, he sets forth the statutory provision being used to challenge the evaluation and then, he sets forth the reasons Dr. Goldschmidt agreed to the deviation. Dr. Goldschmidt agreed to the accuracy of the letter explaining the basis for being paid in excess of the fee schedule by signing same on May 17, 2018.

7. While Mr. Stettin places great emphasis on the language contained in §440.13(13)(b) that deviations are not limited to those situations specifically delineated in the

statute, I do not find that Dr. Goldschmidt was authorized to perform anything other than an ordinary psychiatric evaluation by the E/C and there is no evidence that the evaluation had to be performed in an expedited manner. The contract between Dr. Goldschmidt and Ms. Powers is nothing more than an acknowledgment by Ms. Powers that Dr. Goldschmidt will not accept the allowable reimbursement fee schedule amount for his psychiatric evaluation. The contract does not indicate that Dr. Goldschmidt must conduct the examination in an expedited manner that Dr. Goldschmidt must provide a special report and certainly, he was not authorized to perform an independent medical evaluation of this claimant.

8. However, Dr. Goldschmidt did conclude that the Claimant was malingering and that her eleven diagnosed conditions were not related to her workers' compensation case. Consequently, the E/C has denied the compensability of her case pursuant to the 120 pay-and-investigate provision; and, although the Claimant has been granted a one-time change of psychiatrist – the E/C is not authorizing the treatment recommended by the physician – on reliance of Dr. Goldschmidt's opinion.

9. While this tribunal does not believe that the E/C and Dr. Goldschmidt are involved in some nefarious scheme, it does shock the conscience that a physician is paid \$6,276.00 for a one time psychiatric evaluation with no questions asked. I find that the Claimant has satisfied her burden of proof to strike Dr. Goldschmidt's opinions. I find no merit in E/C's assertion that the Claimant has somehow acquiesced to Dr. Goldschmidt's opinion.

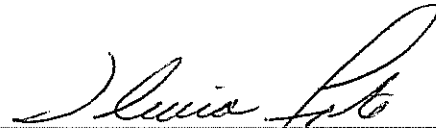
10. In addition to the evidence introduced by the parties, I have also reviewed and considered, persuasive decisions offered by the parties of other fellow JCC's on this issue (there being no case on point from our First DCA). I am again more persuaded by the reasoning of the

JCC's who have excluded these opinions from evidence, than the one order offered by Mr. Stettin that did not exclude the doctors opinion.

WHEREFORE IT IS HEREBY ORDERED AND ADJUDGED that:

1. Claimant's Motion to Strike/Exclude the opinions of Dr. Thomas Goldschmidt is GRANTED.

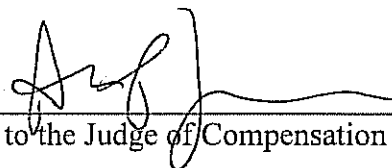
DONE AND ORDERED in Chambers, on August 7, 2018 in Ft. Lauderdale, Broward County, Florida.



Iliana Forte
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the above Order was entered by the Judge of Compensation Claims and a copy was served by electronic transmission on this 7th day of August 2018, to the parties counsel or by mail if parties are unrepresented.



Secretary to the Judge of Compensation Claims

COPIES FURNISHED:

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