ISSUES

1. Whether Respondents' failure to fully comply with the requirements of Rule 16-7-2, WCRP, shall be deemed authorization of the disputed bilateral hip replacement surgery.

FINDINGS OF FACT

1. On May 10, 2023, Claimant's authorized treating physician, Dr. White, submitted a request for prior authorization for bilateral hip replacement surgery. Respondents received the request on May 11, 2023.

2. On May 18, 2023, Respondents sent a response to Dr. White advising that the request for prior authorization was denied pending an independent medical examination scheduled with Dr. Timothy O'Brien, which had been scheduled to take place on July 13, 2023, sixty-three days from the date of the request for prior authorization. There had been no order extending the time limit for the IME beyond sixty days.

3. Dr. O'Brien issued a report on July 31, 2023, and concluded that the hip replacement surgery was related. However, in that report, he did not address whether the surgery requested by Dr. White was reasonable and necessary.

4. Dr. O'Brien did not send a copy of his July 31, 2023, report to all parties concurrently. Instead, he sent it only to Respondents' counsel on August 4, 2023. By the time Dr. O'Brien provided his report to Respondents, twenty-two days had already passed from the date the IME was performed. Dr. O'Brien did not serve his July 31, 2023 report to all parties within twenty days of the July 13, 2023 exam as required by Rule 16-7-2(E)(2), WCRP (2023).

5. Respondents' counsel exchanged Dr. O'Brien's report with Claimant's counsel on August 8, 2023.

CONCLUSIONS OF LAW

Generally

The purpose of the Workers' Compensation Act of Colorado, §§ 8-40-101, C.R.S., et seq., is to assure the quick and efficient delivery of disability and medical benefits to injured workers at a reasonable cost to employers, without the necessity of litigation. *See* § 8-40-102(1), C.R.S. Claimant shoulders the burden of proving entitlement to benefits by a preponderance of the evidence. *See* § 8-43-201, C.R.S. A preponderance of the evidence is that which leads the trier-of-fact, after considering all of the evidence, to find that a fact is more probably true than not. *Page v. Clark*, 592 P.2d 792 (Colo. 1979). The facts in a workers' compensation case must be interpreted neutrally; neither in favor of the rights of the claimant, nor in favor of the rights of respondents; and a workers' compensation claim shall be decided on the merits. § 8-43-201, C.R.S.

Assessing weight, credibility, and sufficiency of evidence in Workers' Compensation proceeding is the exclusive domain of the administrative law judge. *University Park Care Center v. Industrial Claim Appeals* Office, 43 P.3d 637 (Colo.App.2001). Even if other evidence in the record may have supported a contrary inference, it is for the ALJ to resolve conflicts in the evidence, make credibility determinations, and draw plausible inferences from the evidence. *Id*. at 641. When determining credibility, the fact finder should consider, among other things, the consistency or inconsistency of the witness's testimony and actions; the reasonableness or unreasonableness (probability or improbability) of the testimony and actions; the motives of the witness; whether the testimony has been contradicted; and bias, prejudice, or interest. *Prudential Insurance Co. v. Cline*, 57 P.2d 1205 (Colo. 1936); *Bodensieck v. Industrial Claim Appeals Office*, 183 P.3d 684 (Colo.App.2008). The weight and credibility to be assigned expert testimony is a matter within the discretion of the ALJ. *Cordova v. Industrial Claim Appeals Office*, 55 P.3d 186 (Colo.App.2002). To the extent expert testimony is subject to conflicting interpretations, the ALJ may resolve the conflict by crediting part or none of the testimony. *Colorado Springs Motors, Ltd. v. Industrial Commission*, 441 P.2d 21 (Colo. 1968).

The ALJ's factual findings concern only evidence and inferences found to be dispositive of the issues involved; the ALJ has not addressed every piece of evidence or every inference that might lead to conflicting conclusions and has rejected evidence contrary to the above findings as unpersuasive. *Magnetic Engineering, Inc. v. Industrial Claim Appeals Office*, 5 P.3d 385 (Colo.App.2000).

"Deemed Authorization"

Claimant argues that the prior authorization for her bilateral hip replacement surgery should be deemed automatically authorized pursuant to Rule 16-7-2(E) because Respondents failed to fully comply with all required timing provisions, including scheduling and report deadlines for the IME. She contends that compliance with only the initial scheduling and notification step is insufficient, as the rule mandates full and timely

compliance with all subparts, including an IME within sixty days, and a timely and simultaneous exchange of the IME report.

Respondents in turn argue that because they scheduled an IME and notified Dr. White of the IME within ten days of the request for prior authorization, there exists an exception to the "deemed authorization" provision contained in Rule 16-7-2(E).

Rule 16-7-2, WCRP (2023), as it was in effect at the time of the request for prior authorization, read in relevant part:

> *. . . (B) The payer shall have 10 days from the date of the appeal to issue a final decision and provide documentation of that decision to the provider and parties.*
>
> *. . .*
>
> *(E) Failure of the payer to timely comply in full with all Prior Authorization requirements outlined in this rule shall be deemed authorization for payment of the requested treatment unless the payer has scheduled an [IME] and notified the requesting provider of the IME within the time prescribed for responding.*
>
> *1. The IME must occur within 30 days, or upon first available appointment, of the Prior Authorization request, not to exceed 60 days absent an order extending the deadline.*
> *2. The IME physician must serve all parties concurrently with the report within 20 days of the IME.*
> *3. The payer shall respond to the Prior Authorization request within 10 days of the receipt of the IME report.*
> *4. If the injured worker does not attend or reschedules the IME, the payer may deny the Prior Authorization request pending completion of the IME.*
> *5. The IME shall comply with Rule 8 as applicable.*

In other words, Rule 16-7-2 plainly established that failure to comply in full with all prior authorization requirements is not deemed authorization if the respondents otherwise schedule an IME and notify the requesting physician of the IME within ten days of his request for prior authorization. Therefore, so long as respondents schedule an IME and notify the requesting physician within ten days of the request, failure to comply in full with all prior authorization requirements is not "deemed authorization." Indeed, such a reading is consistent with the purpose of Rule 16, as it affords the provider adequate notice that payment is not guaranteed. *See Bekkouche v. Riviera Electric*, W.C. No. 4-514-998 (2007)("The purpose of Rule 16 is to offer protection to an authorized treating physician from providing treatment that the insurer later challenges as non-compensable.")

Here, Respondents scheduled an IME with Dr. O'Brien and provided Dr. White notice of the IME within ten days of the request for prior authorization. Therefore, Respondents' failure to obtain the IME within sixty days or to timely exchange the IME

report, while perhaps a valid basis for monetary penalties, is not “deemed authorization” pursuant to Rule 16-7-2.

The Court therefore concludes that Dr. White’s request for prior authorization is not deemed authorized by virtue of Respondents’ failure to fully comply with Rule 16-7-2.

ORDER

It is therefore ordered that:

1. Dr. White’s request for prior authorization is not deemed authorized by virtue of Respondents’ failure to fully comply with Rule 16-7-2.

2. All matters not determined herein are reserved for future determination.

If you are dissatisfied with the Judge's order, you may file a Petition to Review the order with the Denver Office of Administrative Courts, 1525 Sherman St., 4th Floor, Denver, CO 80203. You must file your Petition to Review within twenty (20) days after mailing or service of the order, as indicated on certificate of mailing or service; otherwise, the Judge's order will be final. You may file the Petition to Review by mail, as long as the certificate of mailing attached to your petition shows: (1) That you mailed it within twenty (20) days after mailing or service of the order of the Judge; and (2) That you mailed it to the above address for the Denver Office of Administrative Courts. For statutory reference, see section 8-43-301(2), C.R.S. For further information regarding procedures to follow when filing a Petition to Review, see Rule 26, OACRP. You may access a petition to review form at: http://www.colorado.gov/dpa/oac/forms-WC.htm.

DATED: April 11, 2025.

Stephen J. Abbott
Administrative Law Judge
Office of Administrative Courts
1525 Sherman Street, 4th Floor
Denver, Colorado, 80203