Are Washington employers liable after authorization of treatment in the wake of *Maphet v. Clark County*?

By Gina Ko ■ September 4, 2019

To authorize or not to authorize? Authorization of treatment is a tricky issue for Washington self-insured employers trying to strike a balance between restoring an injured worker's function and running afoul of Washington's compensable consequences doctrine, which can hold an employer or insurer responsible for issues stemming from treatments provided under a claim. The Washington Court of Appeals recently made this decision more fraught with the unpublished opinion *Maphet v. Clark County*,[1] which found that, "if a self-insured employer authorizes [treatment], the self-insured employer has accepted the **condition**" and not just consequential treatment.

In *Maphet*, the injured worker sustained a right knee injury while at work. The self-insured employer subsequently authorized eight right knee surgeries. The fifth surgery caused patellofemoral instability. The employer authorized three additional surgeries to correct that instability. When the worker's doctor proposed a ninth surgery (again, to correct patellofemoral instability), the employer contested responsibility. The Department of Labor and Industries ordered the employer to authorize and pay for this procedure. The employer appealed, and a Superior Court jury found that the industrial injury and/or its residuals did not proximately cause the worker's need for a ninth surgery. The Department and injured worker then appealed, arguing that the employer accepted the worker's right knee condition as a matter of law when it authorized the sixth, seventh, and eighth surgeries. The Court of Appeals agreed.

Even in cases where a surgeon performs an authorized procedure negligently, amounting to malpractice, the Court concluded the compensable consequences doctrine mandates the employer remain liable for resulting treatment to correct any issues stemming from the procedure. As such, the Court reasoned that the worker's fifth surgery led directly to her patellofemoral instability and need for subsequent surgeries. Moreover, the employer accepted that this condition was claim-related when it authorized the sixth, seventh, and eight surgeries.

"If a self-insured employer authorizes [treatment], the self-insured employer has accepted the* condition*" and not just consequential treatment.

The Court's reasoning in reaching this determination has potentially broad implications on the decision to authorize any treatment. Based on the definitions of "authorization" and "acceptance" in WAC 296-20-01002, the Court concluded that there must be an "acceptance" before an "authorization."

Continued

Reinisch Wilson Weier PC
LAW OFFICES

OREGON: 10260 SW Greenburg Rd., Suite 1250, Portland, OR 97223 ● T 503-245-1846 / F 503-452-8066
WASHINGTON: 15395 SE 30th Place, Suite 230, Bellevue, WA 98007 ● T 206-622-7940 / F 206-622-5902
www.rwwcomplaw.com

Gina Ko is an attorney at Reinisch Wilson Weier PC. She may be reached at 503.972.9653 or GinaK@rwwcomplaw.com.

Maphet v. Clark County (continued)

Therefore, if a self-insured employer authorizes a treatment, the self-insured employer has accepted the condition. Per the Court, the responsibility should be put on the employer to investigate and challenge treatment before authorization, if there is any question as to whether a treatment should be provided, because injured workers should not be left to guess whether a condition will be covered once treatment is authorized.

This opinion potentially negates any requirement to prove a causal link between a condition and resulting need for treatment to the industrial injury, if the employer previously authorized treatment regarding or involving the same condition. Furthermore, while the facts of this case apply specifically to the resulting need for surgery after numerous surgical procedures, the Court outlined much of its reasoning using the general term "treatment." As a result, it is unclear how far this reasoning will extend. For example, will the employer be found to have accepted preexisting, degenerative arthritis of the knee if it knowingly funds an arthroscopic meniscal repair where the surgeon performs a joint lavage[2]? Will funding epidural steroid injections and mental health prescriptions also be considered de facto acceptances of the underlying conditions treated?

On a bright note, the Court did acknowledge that the employer's payment for a treatment is not necessarily the same as authorizing treatment; however, the line between payment and authorization is not clearly demarcated. The Court does not address whether a self-insured employer's authorization of surgery, based on a Department order, would be considered acceptance of the condition. Nonetheless, the available reasoning may help support an argument against the application of this type of de facto acceptance of a condition to treatments that do not require pre-authorization, or which have been conditionally authorized (i.e. treatments specified as authorized for a condition slowing recovery).

Finally, this opinion is unpublished and, for the time being, does not have binding effect.[3] Therefore, future adjudicators may choose to depart from it. That being said, the Department was aligned with the injured worker in this matter, and is likely to implement the reasoning in *Maphet* at the Department level. Altogether, *Maphet* presents a disconcerting ruling that leaves clear that employers and insurers must take increasing care before authorizing and funding any treatment.

The attorneys at Reinisch Wilson Weier PC are happy to assist with any questions you may have about authorizing treatment or the *Maphet* case. ■

---

[1] Maphet v. Clark County, No. 51170-3-II (Wash. Ct. App. August 6, 2019).

[2] This is a procedure rinsing debris from a joint, sometimes performed after a menisectomy. A lavage may also help relieve osteoarthritis symptoms.

[3] At least one claimants' law firm has made a motion to the Court of Appeals to publish this decision. Publication would make the decision binding precedent