Limiting *Maphet* in Washington

By Sara K. Wong ■ May 3, 2022

The Board of Industrial Insurance Appeals recently released its list of 2021 significant decisions, and the list includes two decisions limiting *Maphet* and providing employer tools to limit claim exposures. *Clark County v. Maphet*, 10 Wn. App. 2d 420 (2019) is a 2019 Washington Court of Appeals Division II decision that holds an employer is responsible for conditions for which it authorizes treatment. This decision significantly changed day-to-day claims administration in Washington, and left employers with multiple questions regarding how the Board and the Courts would interpret *Maphet*.

Now, three years after *Maphet* issued, we are beginning to see answers to those issues via various cases making their way through the Board and the Courts. The two recent Board significant decisions interpreting Maphet provide two concepts to keep in mind when administering claims.

First, payment for treatment does not equate to acceptance of the underlying condition treated. In *In re Samuel Peña*, BIIA Dec., 19 14287 (2021) claimant argued that a Department payment for mental health medications equated to a Department determination that the treatment was proper and necessary treatment of an accepted condition. The Board disagreed and was explicit that the fact pattern in *Maphet* "involve[d] more than just payment for treatment – it involve[d] [the employer] authorizing the surgeries." The Board concluded "the holding in *Maphet* was not simply that payment equals acceptance."

This decision is helpful for employers, and explicitly counters claimant arguments that simple payment for treatment equals acceptance of the underlying medical condition treated. This decision specifically addressed employer payment for medication, but the holding leaves the door open to apply this rationale to fact patterns involving payment for other types of treatment.

Second, when issuing treatment authorization letters, be specific regarding the medical condition and/or purpose for which you are authorizing treatment. In I*n re Jeremy Carrigan*, BIIA Dec., 20 12899 (2021) the employer authorized and paid for two epidural steroid injections under the claim. Claimant alleged that under *Maphet*, authorization of the injections constituted acceptance of claimant's L5-S1 disc protrusion and multi-level

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lumbar spine degenerative conditions. During litigation, the third party administrator testified the only conditions allowed under the claim were a lumbar strain and temporary aggravation of a preexisting strain. There was no testimony as to the existence or contents of any Treatment Decision letters.

The Board concluded the record (seemingly via the testimony of the third party administrator) established the employer authorized injections to treat a lumbar strain, and therefore the employer did not accept the conditions of L5-S1 disc protrusion or multi-level lumbar spine degenerative conditions when it authorized injections. In dicta, the Board several times referenced testimony that injections can be diagnostic or therapeutic.

This decision is also extremely helpful for employers, and demonstrates that employers can reduce claim exposures by being specific regarding the medical condition for which they are authorizing treatment. As a best practice tip, employers should use Treatment Decision letters[1] and be deliberate and specific when noting the medical condition for which they are authorizing treatment. For example, if an employer is authorizing an injection, the employer should note whether the injection is authorized to treat a lumbar sprain versus underlying lumbar degenerative disc disease. This decision also indicates the Board will consider whether treatment was authorized as a diagnostic tool rather than authorized to treat a condition directly. An employer note in the Treatment Decision letter that treatment is authorized on a diagnostic basis or a condition inhibiting recovery, if supported by the facts, may also help employers limit future exposure. Finally, we may start seeing more testimony from claims examiners specifying the medical condition for which they authorized treatment.

The post-*Maphet* world is constantly evolving, and recent Board decisions give the employer tools to limit the impact of *Maphet*. Feel free to reach out to any of the attorneys at Reinisch Wilson Weier with questions you may have on how to navigate the post-landscape. ■

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[1] https://lni.wa.gov/insurance/self-insurance/about-self-insurance/forms-publications