

[Cite as *In re N.H.*, 2016-Ohio-8607.]

IN RE: N. H.

Case No. 2016-00029-VI

LARRY HILL

Magistrate Daniel R. Borchert

PATTY HILL

DECISION OF THE MAGISTRATE

Applicants

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{¶1} On April 23, 2015, applicants Larry and Patty Hill, filed a compensation application based upon injuries sustained by their minor grandchild, N.H. On August 7, 2016, the Attorney General issued a finding of fact and decision denying an award for reparations since insufficient documentation has been submitted to evidence a loss.

{¶2} On August 21, 2015, applicants submitted a request for reconsideration. On December 16, 2015, the Attorney General rendered a Final Decision finding no reason to modify the initial decision. Furthermore, the Attorney General determined that while applicants knew N.H. had coverage under UnitedHealth Care/Medicaid (“UHC”), they used providers outside UHC network.

{¶3} On January 12, 2016, applicants filed a notice of appeal from the December 16, 2015 Final Decision of the Attorney General. Hence, a hearing was held before this magistrate on April 4, 2016, at 10:00 a.m. Applicants, Larry and Patty Hill appeared with their attorney, Mark Poole, while the state of Ohio was represented by Assistant Attorney General Robin Mathews.

{¶4} Applicants related N.H. was a victim of sexual abuse. While initially in-network counselors were sought, however due to their unavailability and the immediate needs of N.H., a non-network counselor was enlisted. Accordingly, applicants’ request for an award for counseling and related mileage expenses should be granted.

{¶5} The Attorney General countered in this case applicants had knowledge that N.H. was eligible for Medicaid but chose a counselor who was not in-network.

Accordingly, the applicants' decision to use a provider outside of the network should result in a denial of applicants' case pursuant to R.C. 2743.60(D)&(H).

{¶6} Applicants called Patty Hill to testify. Ms. Hill related she is the grandmother of N.H. Initially, applicants obtained an ex-parte custody order on April 17, 2015, which became a full custody order on January 29, 2016. Custody of N.H. became necessary when N.H. informed her on March 9, 2015, that he was a victim of sexual abuse by a family member. However, N.H.'s mother took no preventative measures when informed so the applicants took action to protect N.H. from further sexual abuse by contacting Children Services' personnel. However, due to N.H.'s unfamiliarity with the surroundings and personnel he did not disclose the sexual abuse.

{¶7} Applicants obtained temporary custody of N.H. on April 17, 2015, and requested counseling information from the attorney who handled their custody case. Based upon this advice, Ms. Hill contacted three counselors. One who accepted UHC, but said it would be a six months before N.H. could be seen. Ms. Hill stated that N.H. needs could not wait six months so a search was conducted to locate a counselor who could provide the necessary services on an expedited basis. Accordingly, L. Darlene Compton, an out-of-network provider was contacted due to her expertise in the field of child sexual abuse.

{¶8} Ms. Hill was presented with Applicant's Exhibit 1, a letter from L. Darlene Compton, MSW, LISW-S, dated October 10, 2015, which revealed Ms. Compton does not take UHC, but due to the necessity to deal with the trauma experienced by N.H., she was able to treat him on an immediate basis.

{¶9} Ms. Hill noted that other doctors and dentists seen by N.H. are in the UHC network.

{¶10} Ms. Hill stated she made the choice to take N.H. to an out-of-network counselor due to the urgency of the situation. Furthermore, she attempted to locate an in-network provider to no avail. Ms. Hill did not believe N.H.'s mental health could wait

until an in-network provider could be found who could provide the counseling N.H. required.

{¶11} Currently N.H. is covered by CareSource, so now all his counseling expenses are covered. N.H. received CareSource through his grandparents. However, the counseling expenses from March 2015 through the middle of January 2016, are not covered by insurance. Ms. Hill was presented with Applicant's Exhibit 2, an itemized bill for services rendered to N.H. by L. Darlene Compton from March 28, 2015 through January 16, 2016, which totaled \$5,880.00, and additional sessions from January 26, 2016 through March 7, 2016. Ms. Hill noted all sessions occurring on or after January 26, 2016, are currently covered under their insurance.

{¶12} Upon cross-examination, Ms. Hill acknowledged that the advice of their custody attorney was used to select a counselor for N.H. One of the providers on the list was a Medicaid provider, upon speaking with this individual, Ms. Hill was informed that the counselor was not taking new patients and in the provider's opinion it would take six to eight months before N.H. could see a Medicaid approved provider.

{¶13} Ms. Hill acceded that she was not familiar with Medicaid and took the advice of experts in the field with the proviso that N.H. needed treatment in an expeditious manner.

{¶14} Upon re-direct examination, Ms. Hill identified Jennifer Amos as the attorney who provided her information about sex abuse counselors. Ms. Amos' practice concerns domestic relations and custody matters, therefore, Ms. Hill considered her a good source of information to locate a sexual abuse counselor.

{¶15} Whereupon, the testimony of Ms. Hill concluded. Applicant made a motion to move Applicant's Exhibits 1 and 2 into evidence, hearing no objection from the Attorney General, Applicant's Exhibits were moved into evidence. Applicants' rested their case and the Attorney General did also.

{¶16} In closing, applicants argue that given the circumstances of being confronted with a five-year-old who was asserting he was a victim of sexual abuse, they acted in a reasonable manner to gain custody of their grandson, and see that he received the mental health counseling he needed. They relied on the expert opinion of their attorney who practiced in the area of domestic relations law, to provide a list of qualified counselors in their area. While they attempted to retain a counselor who took UHC, their search was unproductive since the counselors they contacted had long waiting periods before they were able to see N.H. Due to the mounting demand for their grandson to receive the treatment he needed, they contacted L. Darlene Compton, an out-of-network provider who could quickly and expertly start treating their grandson. N.H. is currently in counseling and has significantly improved since the initial session.

{¶17} Furthermore, applicants knew that N.H. was covered under UHC so all doctor and dentist appointments were made with in-network providers. However, since no UHC counselor could immediately see N.H., applicants chose an out-of-network provider who could expeditiously and competently treat N.H.

{¶18} Accordingly, applicants argue the Attorney General's decision should be reversed and an award should be granted in their favor for counseling expenses incurred between March 28, 2015 through January 16, 2016, plus related mileage expenses.

{¶19} The Attorney General countered that the applicants only contacted one provider in the UHC network, they should have conducted a more exhaustive search. Furthermore, applicants did not provide information concerning the names of counselors contacted and supply documentation showing that an extensive search for a network provider was conducted. Accordingly, the Attorney General's decision was lawful and reasonable and it should be affirmed.

{¶20} Applicants stated that in a time of trauma involving a five-year-old victim, the Attorney General expects applicants to conduct a thorough search for all eligible

UHC providers in the area. However, applicants acted reasonably in this situation balancing the mental well-being of their grandson against waiting six to eight months for a UHC provider. Accordingly, applicants proceeded with the best interest of N.H. at heart. Whereupon, the hearing concluded.

{¶21} R.C. 2743.60(D) in pertinent part states:

{¶22} “(D) The attorney general or the court of claims shall reduce an award of reparations or deny a claim for an award of reparations that is otherwise payable to a claimant to the extent that the economic loss upon which the claim is based is recouped from other persons, including collateral sources . . .”

{¶23} R.C. 2743.60(H) states:

{¶24} “(H) If a claimant unreasonably fails to present a claim timely to a source of benefits or advantages that would have been a collateral source and that would have reimbursed the claimant for all or a portion of a particular expense, the attorney general or the court of claims may reduce an award of reparations or deny a claim for an award of reparations to the extent that it is reasonable to do so.”

{¶25} Pursuant to *In re Cardinal*, V94-45526tc (9-29-95), a claimant who is eligible for health care benefits may seek treatment from non-network providers where necessary services are not available within the network and the claimant has made reasonable efforts to avail herself of readily available medical benefits. See also, *In re Griffith*, V90-47761tc (1-28-94).

{¶26} R.C. 2743.52(A) places the burden of proof on an applicant to satisfy the Court of Claims Commissioners that the requirements for an award have been met by a preponderance of the evidence. *In re Rios*, 8 Ohio Misc. 2d 4, 455 N.E.2d 1374 (Ct. of Cl. 1983).

{¶27} From review of the claim file and with full and careful consideration given to the testimony of applicant, Patty Hill, and the arguments of the parties, I find the applicants acted reasonably and expeditious in finding a counselor and getting their

grandson involved in treatment. I find applicants initially attempted to find a provider in the UHC network, however, due to long delays in providing services to their grandson, they sought the services of L. Darlene Compton. I find the applicants satisfied the requirements contained in *Cardinal*, and accordingly, I recommend the Attorney General's decision of December 16, 2015, be REVERSED and the claim be remanded to the Attorney General to calculate counseling expenses incurred by the applicants for the period March 28, 2015 through January 16, 2016, and related mileage expenses.

*{¶28} A party may file written objections to the magistrate's decision within 14 days of the filing of the decision, whether or not the court has adopted the decision during that 14-day period as permitted by Civ.R. 53(D)(4)(e)(i). If any party timely files objections, any other party may also file objections not later than ten days after the first objections are filed. A party shall not assign as error on appeal the court's adoption of any factual finding or legal conclusion, whether or not specifically designated as finding of fact or conclusion of law under Civ.R. 53(D)(3)(a)(ii), unless the party timely and specifically objects to that factual finding or legal conclusion within 14 days of the filing of the decision, as required by Civ.R. 53(D)(3)(b).*

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DANIEL R. BORCHERT  
Magistrate