

STATE OF CALIFORNIA
DEPARTMENT OF INDUSTRIAL RELATIONS
DIVISION OF WORKERS' COMPENSATION
BEFORE THE ADMINISTRATIVE DIRECTOR



COPY

In Re:

GALLAGHER BASSETT
P.O. BOX 85013
SAN DIEGO, CA 92186-5013

Respondent

No. AD-IMR15-01
IMR Case No.
CM 14-0165336

ORDER TO SHOW CAUSE
RE: ASSESSMENT OF ADMINISTRATIVE PENALTY,
[Labor Code § 4610.5, 8 C.C.R. § 9792.12, 8 C.C.R. § 9792.15]

JURISDICTION AND PARTIES

1. Gallagher Bassett is a claims administrator as defined by California Code of Regulations, title 8 ("8 C.C.R."), section 9792.6.1(b).
2. Labor Code section 4610.5 provides that any dispute over a utilization review decision issued pursuant to Labor Code section 4610 must be resolved through the independent medical review (IMR) procedure as set forth in section 4610.5.
3. Labor Code section 4610.5(f) and 8 C.C.R. section 9792.9.1(e)(5) provide that a written decision modifying or denying a request for medical treatment must include an Application for Independent Medical Review, DWC Form IMR, with all fields of the form, except for the signature of the employee, to be completed by the claims administrator.
4. Labor Code section 4610.5(k) and 8 C.C.R. section 9792.10.3 provide that upon receipt of the Application for Independent Medical Review, the Administrative

1 Director shall determine whether the disputed medical treatment identified in the
2 application is eligible for IMR. 8 C.C.R. section 9792.6.1(h) defines “disputed medical
3 treatment” as medical treatment that has been modified, or denied by a utilization review
4 decision.

5 5. Labor Code section 4610.5(k) and 8 C.C.R. section 9792.10.4 provide that
6 upon finding that the disputed medical treatment is eligible for IMR, the Independent
7 Medical Review Organization delegated the responsibility by the Administrative Director
8 to conduct IMR pursuant to Labor Code section 139.5, currently Maximus Federal
9 Services, Inc. (“Maximus”), shall notify the claims administrator, employee, the
10 employee’s attorney, if the employee is represented by an attorney, and the physician
11 requesting the medical treatment in writing that the medical treatment dispute has been
12 assigned to that organization for IMR. The written notice sent by Maximus to the parties
13 in an IMR case is called the “Notice of Assignment and Request for Information”
14 (NOARFI).
15

16 6. 8 C.C.R. section 9792.10.4 provides that the NOARFI sent by Maximus to
17 the parties must include, for a regular review (i.e., one that does not require an expedited
18 review due to an injured workers’ serious health condition), a statement that within
19 fifteen (15) calendar days of the date designated on the NOARFI, Maximus must receive
20 from the claims administrator, all of the injured worker’s relevant medical records and
21 other categories of documents, listed in 8 C.C.R. section 9792.10.5.
22

23 7. 8 C.C.R. section 9792.10.5(a)(1) provides that within fifteen (15) days
24 following the mailing of the NOARFI, Maximus must receive from the claims
25 administrator all of the following documents:
26

27 (A) A copy of all reports of the physician relevant to the employee’s current
28 medical condition produced within six months prior to the date of the request for

1 authorization, including those that are specifically identified in the request for
2 authorization or in the utilization review determination. If the requesting physician
3 has treated the employee for less than six months prior to the date of the request
4 for authorization, the claims administrator shall provide a copy of all reports
5 relevant to the employee's current medical condition produced within the
6 described six month period by any prior treating physician or referring physician.

7 (B) A copy of the written Application for Independent Medical Review, DWC
8 Form IMR, that was included with the written determination, issued under section
9 9792.9.1(e)(5), which notified the employee that the disputed medical treatment
10 was denied, delayed or modified. Neither the written determination nor the
11 application's instructions should be included.

12 (C) Other than the written determination by the claims administrator issued under
13 section 9792.9.1(e)(5), a copy of all information, including correspondence,
14 provided to the employee by the claims administrator concerning the utilization
15 review decision regarding the disputed treatment.

16 (D) A copy of any materials the employee or the employee's provider submitted to
17 the claims administrator in support of the request for the disputed medical
18 treatment.

19 (E) A copy of any other relevant documents or information used by the claims
20 administrator in determining whether the disputed treatment should have been
21 provided, and any statements by the claims administrator explaining the reasons
22 for the decision to deny, modify, or delay the recommended treatment on the basis
23 of medical necessity.

24 (F) The claims administrator's response to any additional issues raised in the
25 employee's application for independent medical review.

26 8. The NOARFI sent to the claims administrator, shall state that, pursuant to
27 Labor Code section 4610.5(i), in addition to any other fines, penalties, and other remedies
28 available to the Administrative Director, the failure to comply with 8 C.C.R. section
9792.10.5 could result in the assessment of administrative penalties up to \$5,000.00.

9 9. 8 C.C.R. section 9792.10.5(a)(2) provides that currently with the claims
10 administrator providing Maximus with the documents set forth under 8 C.C.R. section
11 9792.10.(5)(a)(1), the claims administrator shall, also forward to the employee or the
12 employee's representative, a notification that lists all of the documents submitted to
13 Maximus. With this notification, the claims administrator shall provide to the employee

1 or the employee's representative, copies of all documents that were not previously
2 provided to the employee or the employee's representative.

3 10. Labor Code section 4610.5(i) provides that an employer shall not engage
4 in any conduct that has the effect of delaying IMR. Engaging in that conduct or failing to
5 promptly comply with any requirements of section 4610.5 is a violation of the section
6 and, in addition to any other fines, penalties, and other remedies available to the
7 Administrative Director, the employer shall be subject to an administrative penalty in an
8 amount determined pursuant to regulations, not to exceed five thousand dollars (\$5,000)
9 for each day that proper notification to the employee is delayed. For the purpose of
10 applying this section, "employer" means the employer, the insurer of an insured
11 employer, a claims administrator, or a utilization review organization, or other entity
12 acting on behalf of any of them. Labor Code section 4610.5(c)(4).
13

14 11. 8 C.C.R. section 9792.12(c)(6) provides that for a claims administrator's
15 failure to timely provide all information required by 8 C.C.R. section 9792.10.5(a), the
16 administrative penalty to be assessed is \$500.00 for each day the response is untimely up
17 to a maximum of \$5,000.00.
18

19 12. 8 C.C.R. section 9792.10.6(i) provides that upon receipt of credible
20 information that the claims administrator has failed to comply with its obligations under
21 the IMR requirements set forth in Labor Code sections 4610.5 or in sections 9792.6
22 through 9792.10.8, the Administrative Director shall, concurrent or subsequent to the
23 issuance of a final IMR determination issued by Maximus, issue an order to show cause
24 under section 9792.15 for the assessment of administrative penalties against the claims
25 administrator under section 9792.12(c).
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1 **FACTUAL ALLEGATIONS**

2 13. On October 7, 2014, J.N., the “Injured Worker” in the present case, filed
3 an Application for Independent Medical Review with Maximus, seeking review of a
4 September 22, 2014 UR decision by the claims administrator, Gallagher Bassett, that
5 denied a request by the injured worker’s treating physician for work conditioning
6 treatment. See the accompanying Declaration Lou W. Shields, Senior Vice President,
7 Maximus, (hereinafter “Shields Declaration”), paragraph 7. The request was assigned as
8 IMR Case No. CM14-0165336.
9

10 14. The injured worker’s IMR Application named Gallagher Bassett as the
11 claims administrator with an address of P.O. Box 85013, San Diego, California 92186-
12 5013. (Shields Declaration, paragraphs 7-9, and Exhibit A of Shields Declaration.)

13 15. IMR Case No. CM14-0165336 was deemed eligible for review under
14 Labor Code section 4610.5(k) and 8 C.C.R. section 9792.10.3. (Shields Declaration,
15 paragraph 11).
16

17 16. On October 10, 2014, Maximus sent via U.S. Mail a NOARFI in IMR
18 Case No. CM14-0165336 to Gallagher Bassett/ ATTN: Nanette Plummer, P.O. Box
19 85013, San Diego, California 92186-5013. This was the address listed by the claims
20 administrator on the IMR application. The NOARFI listed the category of documents to
21 be submitted by the claims administrator in the case within 15 days of the date of the
22 NOARFI and advised that the failure to submit the documents would subject the claims
23 administrator to an assessment of administrative penalties. (Shields Declaration,
24 paragraphs 15 and 16, and Exhibit B of Shields Declaration.)
25

26 17. The claims administrator did not submit the documents required by 8
27 C.C.R. section 9792.10.5(a) to Maximus, or otherwise communicate with Maximus in
28

1 response to the NOARFI, by October 25, 2014, 15 days from the date of the NOARFI.
2 (Shields Declaration, paragraphs 17 and 18.)

3 18. On December 3, 2014, December 10, 2014, December 15, 2014, January
4 7, 2015, January 14, 2015, January 20, 2015 and January 26, 2015, Maximus sent the
5 claims administrator, by secure email, additional notifications in IMR Case No. CM14-
6 0165336 that the documents required by 8 C.C.R. section 9792.10.5(a) had not been
7 received by Maximus. (Shields Declaration, paragraphs 19 and 20.)

8 19. Each of the email messages referred to in paragraph 17 above, took the
9 form of an email message with an attached table in Microsoft Excel Workbook format.
10 Each table included IMR case numbers and associated IMR case information for IMR
11 cases for which the documents required by 8 C.C.R. section 9792.10.5(a) had not been
12 received by Maximus.
13

14 20. Beginning with the email message sent January 7, 2015, and each
15 subsequent email referenced in paragraph 18, above, identified the attached table to the
16 email as an '[U]pdated Manifest of IMR's with Mission Medical Records past their 15
17 day submission window.'" (Shields Declaration, paragraph 22.)

18 21. The claims administrator failed to timely submit the documents required
19 by 8 C.C.R. section 9792.10.5(a) to Maximus in IMR Case No. CM14-0165336.
20

21 22. Maximus did not receive any of the documents required by 8 C.C.R.
22 section 9792.10.5(a) for IMR case CM14-065336 until February 12, 2015, at 11:25 p.m.,
23 at which time Maximus received a facsimile submission of documents required by for the
24 instant case from Dionne Sparks, IMR Coordinator at Coventry Workers Comp Services.
25 (Shields Declaration, paragraph 23.)
26

27 23. The February 12, 2015 facsimile submission of the documents which had
28 been required by 8 C.C.R. section 9792.10.5(a) for IMR Case No. CM14-0165336, was

1 110 days beyond October 25, 2014, the date which was 15 days from the date the
2 NOARFI was issued, and the date mandated in 8 C.C.R. section 9792.10.5(a) that
3 Maximus was to receive the information from the claims adjuster. (Shields Declaration,
4 paragraph 24.)

5 **ORDER TO SHOW CAUSE**

6 **IT IS HEREBY ORDERED** that Gallagher Bassett appear before the
7 Administrative Director, or a designee appointed by the Administrative Director, to
8 show cause, if any they have, why the Administrative Director should not assess
9 administrative penalties in the amount of five hundred dollars (\$500.00) for each day
10 the response has been untimely, up to a maximum of five thousand dollars (\$5,000.00)
11 under 8 C.C.R. section 9792.12(c)(6). As of June 3, 2015, total administrative penalties
12 are: \$5,000.00.

13
14 The assessment of administrative penalties and compliance requirements
15 would be based upon a showing that Gallagher Bassett failed to comply with the
16 requirements of 8 C.C.R. section 9792.10.5(a) by failing to timely submit the
17 documents required by that section in IMR Case No. CM14-0165336, as more fully
18 explained in this Order to Show Cause and in the attached Declaration of Lou W.
19 Shields.
20

21 **NOTICE OF RIGHT TO HEARING**


22 Pursuant to California Code of Regulations, title 8, sections 9792.11 and
23 9792.15, the claims administrator may stipulate to the allegations set forth in this Order
24 to Show Cause and pay the assessed penalties within thirty calendar days after service
25 of this Order to Show Cause.
26

27 Alternatively, within thirty calendar days, the claims administrator may
28 file an answer as the respondent with the Administrative Director pursuant to California

1 Code of Regulations, title 8, section 9792.15(d), to contest these violations and
2 penalties and to request a hearing.

3 Within sixty calendar days of the issuance of the Order to Show Cause Re:
4 Assessment of Administrative Penalty, the Administrative Director shall issue the
5 notice of the time, date and place of hearing. The date of the hearing shall be at least
6 ninety calendar days from the date of the service of the notice. The notice shall be
7 served personally or by registered or certified mail. Continuances will not be allowed
8 without a showing of good cause.
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12 Date: June 4, 2015


13 DESTIE OVERPECK
14 Administrative Director
15 Division of Workers' Compensation
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**STATE OF CALIFORNIA
DEPARTMENT OF INDUSTRIAL RELATIONS
DIVISION OF WORKERS' COMPENSATION
BEFORE THE ADMINISTRATIVE DIRECTOR**

In Re:

GALLAGHER BASSETT
P.O. BOX 85013
SAN DIEGO, CA 92186-5013

No. AD-IMR15-01
IMR Case No.
CM 14-0165336

Respondent

I, Lou W. Shields, declare:

1. I am over the age of 18 and not a party to this proceeding.
2. I am a Senior Vice President – Technology for MAXIMUS Federal Services, Inc. (MAXIMUS).
3. My business address is 625 Coolidge Drive, Suite 150, Folsom, California 95630.
4. The Administrative Director of the Department of Industrial Relations, Division of Workers' Compensation (the Administrative Director), has delegated to MAXIMUS, as an Independent Medical Review Organization (IMRO), the responsibility to conduct Independent Medical Review (IMR) upon a finding by the Administrative Director that a disputed medical treatment is eligible for IMR.
5. That I am a Senior Vice President with MAXIMUS and am responsible for the California DWC IMR Project (the IMR Project) operation, and in that capacity I am familiar with and know of the IMR process related to the Application for IMR of J.N., the "Injured Worker" in the present case, AD-IMR15-01.

1 6. That IMR process documentation and case flow information for the Injured
2 Worker's Application for IMR is tracked, recorded and retained in the ordinary course of
3 business in a case workflow tracking system by the IMR Project.

4
5 7. On October 7, 2014, the Injured Worker filed an Application for Independent
6 Medical Review seeking review of a decision by the claims administrator dated September 22,
7 2014, that denied a request by the injured worker's treating physician for work conditioning
8 treatment. The Injured Worker's Application for IMR stated that the address for the claims
9 administrator was P.O. Box 85013, San Diego, CA 92186-5013. The Injured Worker's
10 Application for IMR was assigned the IMR Case No. of CM14-0165336. Attached and
11 incorporated herein as Exhibit A is a copy of the Injured Worker's Application for IMR.

12
13 8. That the Injured Worker's Application for IMR included a Utilization Review
14 Notification of Denial dated September 22, 2014 (the UR Notification of Denial), that was issued
15 by Coventry Workers' Comp Services, as Utilization Review Agent. The UR Notification of
16 Denial stated that Gallagher Bassett had received a request for the disputed treatment, and that
17 Coventry Workers' Comp Services was providing physician advisor review as part of the
18 Utilization Review process.

19
20 9. Upon information and belief, Gallagher Basset is the claims administrator for the
21 Injured Worker's Application for IMR, with an address of P.O. Box 85013, San Diego, CA
22 92186-5013.

23
24 10. Labor Code section 4610.5(k) requires the administrative director to review
25 requests and notify the employee and employer in writing if the request for an independent
26 medical review has been approved. If the administrative director finds that independent medical
27 review is approved, the employee and employer are notified that an independent medical review
28

1 organization has been assigned to do the independent medical review. (Labor Code section
2 4610.5(l).)

3 11. The Administrative Director found that the disputed medical treatment in IMR
4 Case No. CM14-0165336 was eligible for IMR, and the Injured Worker's Application for IMR
5 was referred to MAXIMUS, to conduct IMR.
6

7 12. MAXIMUS is required by 8 C.C.R. section 9792.10.4(b) to notify the claims
8 administrator, employee, the employee's attorney if the employee is represented, and the
9 physician requesting the medical treatment, in writing, that the medical treatment dispute has
10 been assigned to MAXIMUS for IMR. The written notice sent by MAXIMUS to the parties and
11 individuals indicated above in an IMR case is referred to as a Notice of Assignment and Request
12 for Information (NOARFI).
13

14 13. Under 8 C.C.R. section 9792.10.4(b)(5), the NOARFI sent to the parties by
15 MAXIMUS must include, for a regular review (i.e., one that does not require an expedited
16 review due to an injured workers' serious health condition), a statement that within fifteen (15)
17 calendar days of the date designated on the NOARFI, MAXIMUS must receive the injured
18 worker's relevant medical records as well as five additional categories of documents, as
19 expressly listed in 8 C.C.R. section 9792.10.5(a)(1).
20

21 14. For the notification provided to the claims administrator, 8 C.C.R. section
22 9792.10.4(b)(5) requires that the NOARFI must include a statement that, pursuant to Labor Code
23 section 4610.5(i), in addition to any other fines, penalties, and other remedies available to the
24 Administrative Director, the failure to comply with 8 C.C.R. section 9792.10.5 could result in the
25 assessment of administrative penalties up to \$5,000.00.
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1 15. On October 10, 2014, MAXIMUS sent via U.S. Mail a NOARFI in IMR Case
2 No. CM14-0165336 to Gallagher Bassett/ ATTN: NANETTE PLUMMER at PO BOX 85013,
3 SAN DIEGO, CA 92186-5013. This was the address listed by the claims administrator on the
4 IMR Application. The NOARFI listed the categories of documents to be submitted by the claims
5 administrator in the case within 15 days of the date of the NOARFI and advised that the failure
6 to submit the documents would subject the claims administrator to an assessment of
7 administrative penalties. The notice MAXIMUS sent to the claims administrator pursuant to 8
9 C.C.R. section 9792.10.5(a)(1) stated that that within fifteen (15) days following the mailing of
10 the NOARFI, MAXIMUS must receive from the claims administrator all of the following
11 documents:
12

13 (A) A copy of all reports of the physician relevant to the employee's current medical
14 condition produced within six months prior to the date of the request for authorization,
15 including those that are specifically identified in the request for authorization or in the
16 utilization review determination. If the requesting physician has treated the employee for
17 less than six months prior to the date of the request for authorization, the claims
18 administrator shall provide a copy of all reports relevant to the employee's current
19 medical condition produced within the described six month period by any prior treating
20 physician or referring physician.

21 (B) A copy of the written Application for Independent Medical Review, DWC Form
22 IMR, that was included with the written determination, issued under section
23 9792.9.1(e)(5), which notified the employee that the disputed medical treatment was
24 denied, delayed or modified. Neither the written determination nor the application's
25 instructions should be included.

26 (C) Other than the written determination by the claims administrator issued under section
27 9792.9.1(e)(5), a copy of all information, including correspondence, provided to the
28 employee by the claims administrator concerning the utilization review decision
regarding the disputed treatment.

(D) A copy of any materials the employee or the employee's provider submitted to the
claims administrator in support of the request for the disputed medical treatment.

1 (E) A copy of any other relevant documents or information used by the claims
2 administrator in determining whether the disputed treatment should have been provided,
3 and any statements by the claims administrator explaining the reasons for the decision to
4 deny, modify, or delay the recommended treatment on the basis of medical necessity.

5 (F) The claims administrator's response to any additional issues raised in the employee's
6 application for independent medical review.

7 16. Attached and incorporated herein as Exhibit B is a true and accurate copy of the
8 NOARFI that MAXIMUS sent to the claims administrator via U.S. Mail on October 10, 2014.

9 17. That the MAXIMUS IMR Project case workflow tracking system reflects that in
10 IMR Case No. CM14-0165336, MAXIMUS did not receive the documents required by 8 C.C.R.
11 section 9792.10.5(a) in response to the NOARFI, by October 25, 2014, 15 days from the date of
12 the NOARFI.

13 18. That the MAXIMUS IMR Project case workflow tracking system reflects that in
14 IMR Case No. CM14-0165336, MAXIMUS did not otherwise receive communications from
15 Gallagher Basset in response to the NOARFI, by October 25, 2014, 15 days from the date of the
16 NOARFI.

17 19. On December 3, 2014, December 10, 2014, December 15, 2014, January 7, 2015,
18 January 13, 2015, January 20, 2015, and January 26, 2015, MAXIMUS sent Gallagher Basset,
19 by secure email, additional notification that included IMR Case No. CM14-0165336 among a list
20 of cases for which the documents required by 8 C.C.R. section 9792.10.5(a) had not been
21 received by MAXIMUS. Each such email was addressed to Drenee Miners at the email address
22 Drenee_Miners@gbtpa.com.
23

24 20. Upon information and belief, Drenee Miners is an Assistant Vice President at
25 Gallagher Bassett.
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1 21. Each of the email messages referenced in paragraph "19", above, took the form of
2 an email message with an attached table in Microsoft Excel Workbook format. Each table
3 included IMR case numbers and associated IMR case information for IMR cases for which the
4 documents required by 8 C.C.R. section 9792.10.5(a) had not been received by MAXIMUS.

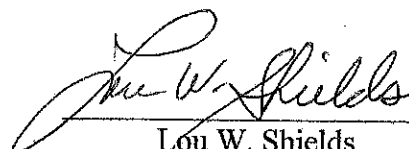
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6 22. Beginning with the email message sent on January 7, 2015, each of the email
7 messages referenced in paragraph "19", above, identified the attached table as an, "[U]pdated
8 Manifest of IMR's with Missing Medical Records past their 15 day submission window."

9
10 23. That MAXIMUS did not receive any of the documents required by 8 C.C.R.
11 section 9792.10.5(a) for IMR Case No. CM14-0165336 until February 12, 2015, at 11:25 p.m, at
12 which time MAXIMUS received a facsimile submission of documents from Dionne Sparks, IMR
13 Coordinator, at Coventry Workers Comp Services.

14 24. That February 12, 2015, the date of facsimile submission of documents required
15 by 8 C.C.R. section 9792.10.5(a) for IMR Case No. CM14-0165336, was 110 days beyond
16 October 25, 2014, the date which was 15 days from the date the NOARFI was issued.

17
18 I declare under penalty of perjury under the laws of the State of California that the
19 foregoing is true and correct:

20
21 5/29/15
22 Date

23 
24 Lou W. Shields

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PROOF OF SERVICE BY MAIL
(CCP 1013 (a), 2015.5)

I am employed in the City of Oakland, County of Alameda; I am over the age of eighteen years and not a party to the within entitled action; my business address is 1515 Clay Street, 18th Floor, Oakland, California 94612.

On **June 5, 2015**, I served the following document:

ORDER TO SHOW CAUSE & DECLARATION OF LOU W. SHIELDS

on the following parties appearing in this action by placing a true copy thereof enclosed in a sealed envelope with postage fully prepaid thereon, for delivery – certified mail – by the U.S. Postal Service, addressed as follows:

Drenée Miners
Assistant Vice President-Governmental Affairs
Gallagher Bassett
P.O. Box 255397
Sacramento, CA 95865-5397

I declare under penalty of perjury that the foregoing is true and correct, and that this declaration was executed at Oakland, California, on **June 5, 2015**.


Robrielle Beverly