

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
relevant to the employee's current medical condition produced within the
described six month period by any prior treating physician or referring physician.

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

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

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

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

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

19 8. The NOARFI sent to the claims administrator, shall state that, pursuant to
20 Labor Code section 4610.5(i), in addition to any other fines, penalties, and other remedies
21 available to the Administrative Director, the failure to comply with 8 C.C.R. section
22 9792.10.5 could result in the assessment of administrative penalties up to \$5,000.00.

23 9. 8 C.C.R. section 9792.10.5(a)(2) provides that concurrently with the
24 claims administrator providing Maximus with the documents set forth under 8 C.C.R.
25 section 9792.10.5(a)(1), the claims administrator shall also forward to the employee or
26 the employee's representative, a notification that lists all of the documents submitted to
27 Maximus. With this notification, the claims administrator shall provide to the employee
28

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).

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.

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 sections 9792.12(c) and 9792.14.
26
27
28

1 **FACTUAL ALLEGATIONS**

2 13. On October 20, 2014, A.G., the “Injured Worker” in the present case, filed
3 an Application for Independent Medical Review with Maximus, seeking review of a
4 September 23, 2014 UR decision by the claims administrator, Chubb Services, 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. CM14-0173087.
9

10 14. The injured worker’s IMR Application named Chubb Services as the
11 claims administrator with an address of P.O. Box 66043, Dallas, TX 75266. (Shields
12 Declaration, paragraphs 7 and 8, and Exhibit A of Shields Declaration.)

13 15. IMR Case No. CM14-0173087 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 10).
16

17 16. On October 23, 2014, Maximus sent via U.S. Mail a NOARFI in IMR
18 Case No. CM14-0173087 to Chubb Insurance Los Angeles, P.O. Box 660403, Dallas, TX
19 75266. This was the address listed by the claims administrator on the IMR application.
20 The NOARFI listed the category of documents to be submitted by the claims
21 administrator in the case within 15 days of the date of the NOARFI and advised that the
22 failure to submit the documents would subject the claims administrator to an assessment
23 of administrative penalties. (Shields Declaration, paragraphs 14 and 15, and Exhibit B of
24 Shields Declaration.)
25

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

1 Maximus in response to the NOARFI, by November 7, 2014, 15 days from the date of the
2 NOARFI. (Shields Declaration, paragraphs 16 and 17.)

3 18. Subsequent to the September 23, 2014 UR decision by Chubb, Gallagher
4 Bassett, a third party administrator of workers compensation claims, assumed
5 responsibility from Chubb for administering the claim in IMR Case No. CM14-0173087.
6 (Shields Declaration, paragraph 18.)

7
8 19. On January 7, January 13, January 20, and January 26, 2015, Maximus
9 sent the claims administrator Gallagher Bassett, by secure email, addressed to
10 Drenee_Miners@gbtpa.com, additional notifications in IMR Case No. CM14-0173087
11 that the documents required by 8 C.C.R. section 9792.10.5(a) had not been received by
12 Maximus. (Shields Declaration, paragraphs 19 and 20.)

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

18
19 21. Beginning with the email message sent January 7, 2015, and each
20 subsequent email referenced in paragraph 19, above, identified the attached table to the
21 email as an “[U]pdated Manifest of IMR’s with Mission Medical Records past their 15
22 day submission window.” (Shields Declaration, paragraphs 21 and 22.)

23
24 22. Claims administrator Gallagher Bassett failed to timely submit the
25 documents required by 8 C.C.R. section 9792.10.5(a) to Maximus in IMR Case No.
26 CM14-0173087.

27 23. Maximus did not receive any of the documents required by 8 C.C.R.
28 section 9792.10.5(a) for IMR case CM14-0173087 until March 16, 2015, at which time

1 Maximus received a facsimile submission of documents required by for the instant case
2 from claims administrator Gallagher Bassett, by means of Kopy Kat litigation support
3 service. (Shields Declaration, paragraph 23.)

4 24. The March 16, 2015, submission of the documents which had been required
5 by 8 C.C.R. section 9792.10.5(a) for IMR Case No. CM14-0173087, was 129 days
6 beyond November 7, 2014, the date which was 15 days from the date the NOARFI was
7 issued, and the date mandated in 8 C.C.R. section 9792.10.5(a) that Maximus was to
8 receive the information from the claims administrator. (Shields Declaration, paragraph
9 24.)

11 25. The March 16, 2015, submission of the documents which had been required
12 by 8 C.C.R. section 9792.10.5(a) for IMR Case No. CM14-0173087, was 53 days beyond
13 January 22, 2015, the date which was 15 days from the date Maximus began sending to
14 claims administrator Gallagher Bassett, by secure email, addressed to
15 Drenee_Miners@gbtpa.com, additional notifications in IMR Case No. CM14-0173087,
16 that the documents required by 8 C.C.R. section 9792.10.5(a) had not been received by
17 Maximus. (Shields Declaration, paragraph 19.)

19
20 **ORDER TO SHOW CAUSE**

21 **IT IS HEREBY ORDERED** that Gallagher Bassett appear before the
22 Administrative Director, or a designee appointed by the Administrative Director, to
23 show cause, if any they have, why the Administrative Director should not assess
24 administrative penalties in the amount of five hundred dollars (\$500.00) for each day
25 the response has been untimely, up to a maximum of five thousand dollars (\$5,000.00)
26 under 8 C.C.R. sections 9792.12(c)(6) and 9792.14. As of June 24, 2015, total
27 administrative penalties are: \$5,000.00.
28

1 The assessment of administrative penalties and compliance requirements
2 would be based upon a showing that Gallagher Bassett failed to comply with the
3 requirements of 8 C.C.R. section 9792.10.5(a) by failing to timely submit the
4 documents required by that section in IMR Case No. CM14-0170797, as more fully
5 explained in this Order to Show Cause and in the attached Declaration of Lou W.
6 Shields.

7
8 **NOTICE OF RIGHT TO HEARING**

9 Pursuant to California Code of Regulations, title 8, sections 9792.11 and
10 9792.15, Gallagher Bassett may stipulate to the allegations set forth in this Order to
11 Show Cause and pay the assessed penalties within thirty calendar days after service of
12 this Order to Show Cause.

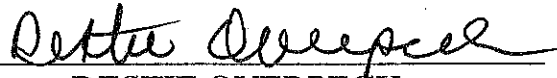
13 Alternatively, within thirty calendar days, Gallagher Bassett may file an
14 answer as the respondent with the Administrative Director pursuant to California Code
15 of Regulations, title 8, section 9792.15(d), to contest these violations and penalties and
16 to request a hearing.

17
18 Gallagher Bassett shall file and serve the original and copies of the answer
19 as required by California Code of Regulations, title 8, section 9792.15(g). The address
20 of the administrative director is: Administrative Director, Division of Workers'
21 Compensation, Department of Industrial Relations, 1515 Clay Street, 18th floor,
22 Oakland, California 94612. The address of the investigating unit is: Division of
23 Workers' Compensation, Legal Unit, Department of Industrial Relations, 1515 Clay
24 Street, 18th floor, Oakland, California 94612.

25
26 Within sixty calendar days of the issuance of the Order to Show Cause Re:
27 Assessment of Administrative Penalty, the Administrative Director shall issue the
28 notice of the time, date and place of hearing. The date of the hearing shall be at least

1 ninety calendar days from the date of the service of the notice. The notice shall be
2 served personally or by registered or certified mail. Continuances will not be allowed
3 without a showing of good cause.
4
5

6 Date: June 26, 2015



7 DESTIE OVERPECK
8 Administrative Director
9 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

Respondent

No. AD-IMR15-03
IMR Case No.
CM14-0173087

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 A.G., the "Injured Worker" in the present case.

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 20, 2014, the Injured Worker filed an Application for Independent
6 Medical Review seeking review of a decision by the claims administrator dated September 23,
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 claims administrator was
9 Chubb Services – Los Angeles, CA, with an address of P.O. Box 66043, Dallas, TX 75266. The
10 Injured Worker's Application for IMR was assigned the IMR Case No. of CM14-0173087.
11 Attached and incorporated herein as Exhibit A is a copy of the Injured Worker's Application for
12 IMR.
13

14 8. That the Injured Worker's Application for IMR included a Utilization Review
15 Notification of Denial dated September 23, 2014 (the UR Notification of Denial), that was issued
16 by CorVel, as Utilization Review Agent. The UR Notification of Denial identified Chubb
17 Services – Los Angeles, CA as the Insured and as the Carrier/TPA, and stated that CorVel
18 Corporation had been asked to review noted treatment requests for medical necessity and
19 appropriateness.
20

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

1 10. The Administrative Director found that the disputed medical treatment in IMR
2 Case No. CM14-0173087 was eligible for IMR, and the Injured Worker's Application for IMR
3 was referred to MAXIMUS, to conduct IMR.
4

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

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

19 13. For the notification provided to the claims administrator, 8 C.C.R. section
20 9792.10.4(b)(5) requires that the NOARFI must include a statement that, pursuant to Labor Code
21 section 4610.5(i), in addition to any other fines, penalties, and other remedies available to the
22 Administrative Director, the failure to comply with 8 C.C.R. section 9792.10.5 could result in the
23 assessment of administrative penalties up to \$5,000.00.
24

25 14. On October 23, 2014, MAXIMUS sent via U.S. Mail a NOARFI in IMR Case
26 No. CM14-0173087 to Chubb Insurance Los Angeles, CA, P.O. Box 660403, Dallas, TX 75266.
27 This was the address listed by the claims administrator on the IMR Application. The NOARFI
28

1 listed the categories of documents to be submitted by the claims administrator in the case within
2 15 days of the date of the NOARFI and advised that the failure to submit the documents would
3 subject the claims administrator to an assessment of administrative penalties. The notice
4 MAXIMUS sent to the claims administrator pursuant to 8 C.C.R. section 9792.10.5(a)(1) stated
5 that that within fifteen (15) days following the mailing of the NOARFI, MAXIMUS must
6 receive from the claims administrator all of the following documents:
7

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

16 (B) A copy of the written Application for Independent Medical Review, DWC Form
17 IMR, that was included with the written determination, issued under section
18 9792.9.1(e)(5), which notified the employee that the disputed medical treatment was
19 denied, delayed or modified. Neither the written determination nor the application's
20 instructions should be included.

21 (C) Other than the written determination by the claims administrator issued under section
22 9792.9.1(e)(5) , a copy of all information, including correspondence, provided to the
23 employee by the claims administrator concerning the utilization review decision
24 regarding the disputed treatment.

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

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

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

1 15. Attached and incorporated herein as Exhibit B is a true and accurate copy of the
2 NOARFI that MAXIMUS sent to the claims administrator via U.S. Mail on October 23, 2014.

3 16. That the MAXIMUS IMR Project case workflow tracking system reflects that in
4 IMR Case No. CM14-0173087, MAXIMUS did not receive the documents required by 8 C.C.R.
5 section 9792.10.5(a) in response to the NOARFI, by November 7, 2014, 15 days from the date of
6 the NOARFI.
7

8 17. That the MAXIMUS IMR Project case workflow tracking system reflects that in
9 IMR Case No. CM14-0173087, MAXIMUS did not otherwise receive communications from the
10 claims administrator in response to the NOARFI, by November 7, 2014, 15 days from the date of
11 the NOARFI.
12

13 18. Upon information and belief, Gallagher Bassett, a third party administrator of
14 workers compensation claims, provided claims administration services for Chubb Services – Los
15 Angeles, CA on the claim in IMR Case No. CM14-0173087. Subsequent late receipt of
16 requested documents confirmed Gallagher Bassett was claims administrator.
17

18 19. On January 7, 2015, January 13, 2015, January 20, 2015, and January 26, 2015,
19 MAXIMUS sent Gallagher Bassett, by secure email, additional notification that included IMR
20 Case No. CM14-0173087 among a list of cases for which the documents required by 8 C.C.R.
21 section 9792.10.5(a) had not been received by MAXIMUS. Each such email was addressed to
22 Drene Miners at the email address Drene_Miners@gbtpa.com.
23

24 20. Upon information and belief, Drene Miners is an Assistant Vice President at
25 Gallagher Bassett.
26

27 21. Each of the email messages referenced in paragraph “19”, above, took the form of
28 an email message with an attached table in Microsoft Excel Workbook format. Each table

1 included IMR case numbers and associated IMR case information for IMR cases for which the
2 documents required by 8 C.C.R. section 9792.10.5(a) had not been received by MAXIMUS.

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

7 23. That MAXIMUS did not receive any of the documents required by 8 C.C.R.
8 section 9792.10.5(a) for IMR Case No. CM14-0173087 until March 16, 2015, on which date
9 MAXIMUS received a submission of documents from the claims administrator by means of
10 Kopy Kat litigation support service.
11

12 24. That March 16, 2015, the date of delivery of documents required by 8 C.C.R.
13 section 9792.10.5(a) for IMR Case No. CM14-0173087, was 129 days beyond November 7,
14 2014, the date which was 15 days from the date the NOARFI was issued.
15

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

19 6/15/15

20 Date

21 
22 Lou W. Shields
23
24
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28