

STATE OF WEST VIRGINIA

SUPREME COURT OF APPEALS

FILED

JACKIE L. SNODGRASS, Petitioner

February 17, 2012
RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

vs.) No. 101359 (BOR Appeal No. 2044240)
(Claim No. 970051111)

**WEST VIRGINIA OFFICE OF
INSURANCE COMMISSIONER and
KROGER LIMITED PARTNERSHIP, Respondent**

MEMORANDUM DECISION

Petitioner Jackie L. Snodgrass, by Patrick Maroney, his attorney, appeals the decision of the Board of Review. Kroger Limited Partnership, by Sean Harter, its attorney, filed a timely response.

This appeal arises from the West Virginia Workers' Compensation Board of Review's Final Order dated September 22, 2010, in which the Board affirmed a February 18, 2010, Order of the Workers' Compensation Office of Judges. In its Order, the Office of Judges affirmed the claims administrator's July 31, 2009, decision denying authorization for a resistance chair; home health services; and the medications Motrin, Lasix, and Chlon-Con. The Court has carefully reviewed the records, written arguments, and appendices contained in the petition, and the case is mature for consideration.

Pursuant to Rule 1(d) of the Revised Rules of Appellate Procedure, this Court is of the opinion that this matter is appropriate for consideration under the Revised Rules. Having considered the petition and the relevant decision of the lower tribunal, the Court is of the opinion that the decisional process would not be significantly aided by oral argument. Upon consideration of the standard of review, the Court determines that there is no prejudicial error. This case does not present a new or significant question of law. For these reasons, a memorandum decision is appropriate under Rule 21 of the Revised Rules of Appellate Procedure.

In its Order, the Office of Judges held that a resistance chair; home health services; and the medications Motrin, Lasix, and Chlon-Con are not reasonable and medically

necessary treatment in the instant claim. Mr. Snodgrass disputes this finding and asserts, per the opinion of Dr. Loimil, that the requested treatment is necessary, that the requested medications were previously approved, and that Mr. Snodgrass's condition will continue to require these medications as a result of the sequela of myelopathy.

The Office of Judges noted that the only compensable conditions in the claim are cervical and lumbar sprain, and found that these conditions should have resolved long ago. The Office of Judges found that Mr. Snodgrass suffers from cervical myelopathy and degenerative conditions of his cervical and lumbar spine, and that three physicians found that his cervical myelopathy is not the result of the compensable injury. The Office of Judges further found that as the only physician to indicate that Mr. Snodgrass's cervical myelopathy is the result of the compensable injury, Dr. Loimil's opinion is the least persuasive. The Office of Judges then found that Mr. Snodgrass failed to present sufficient evidence to establish a causal connection between the requested treatment and the compensable injury. The Board of Review reached the same reasoned conclusion in its decision of September 22, 2010.

For the foregoing reasons, we find that the decision of the Board of Review is not in clear violation of constitutional or statutory provision, clearly the result of erroneous conclusions of law, or is based upon the Board's material misstatement or mischaracterization of particular components of the evidentiary record. Therefore, the decision of the Board of Review is affirmed.

Affirmed.

ISSUED: February 17, 2012

CONCURRED IN BY:

Chief Justice Menis E. Ketchum

Justice Robin J. Davis

Justice Brent D. Benjamin

Justice Margaret L. Workman

Justice Thomas E. McHugh