

**STATE OF WEST VIRGINIA**

**SUPREME COURT OF APPEALS**

**FILED**

**April 13, 2012**

**RORY L. PERRY II, CLERK  
SUPREME COURT OF APPEALS  
OF WEST VIRGINIA**

**DAVID L. CLAY, Petitioner**

**vs.) No. 101586 (BOR Appeal No. 2044568)  
(Claim No. 930032278)**

**WEST VIRGINIA OFFICE OF  
INSURANCE COMMISSIONER and  
PEABODY COAL COMPANY, Respondent**

**MEMORANDUM DECISION**

Petitioner David L. Clay, pro se, appeals the West Virginia Workers' Compensation Board of Review's Order denying the requested medical benefits. Peabody Coal Company, by Robert Busse, its attorney, filed a timely response.

This appeal arises from the West Virginia Workers' Compensation Board of Review's Final Order dated November 22, 2010, in which the Board affirmed an April 23, 2010, Order of the Workers' Compensation Office of Judges. In its Order, the Office of Judges affirmed the claims administrator's April 16, 2009, Order denying the requested medical benefits. The Court has carefully reviewed the records, written arguments, and appendices contained in the petition, and the case is mature for consideration.

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.

The Board of Review affirmed the holding that the requested medical benefits were not medically reasonable as contemplated under West Virginia Code of State Rules § 85-20. Mr. Clay disputes this finding and asserts that the evidence established he was entitled to further treatment of his psychiatric condition.

In its Order affirming the claims administrator's denial of medical benefits for the petitioner's psychiatric condition, the Office of Judges found the preponderance of the evidence did not establish that the requested medical benefits were medically reasonable. The Office of Judges noted that the

requested medications were outside the limits of care established by West Virginia Code of State Rules §85-20-53.14 (2006). Further, it noted that Mr. Clay did not provide evidence to establish that his case was “extraordinary” as contemplated by West Virginia Code of State Rules § 85-20-4.1 (2006). The Board of Review reached the same reasoned conclusions in affirming the Office of Judges in its decision of November 22, 2010.

For the foregoing reasons, we find that the decision of the Board of Review is not in clear violation of any constitutional or statutory provision, nor is it clearly the result of erroneous conclusions of law, nor is it based upon a material misstatement or mischaracterization of the evidentiary record. Therefore, the November 22, 2010, Order of the Board of Review is affirmed.

Affirmed.

**ISSUED: April 13, 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