

STATE OF WEST VIRGINIA

SUPREME COURT OF APPEALS

FILED

April 12, 2012

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

EDSEL W. DICKENS, Petitioner

**vs.) No. 101608 (BOR Appeal No. 2044545)
(Claim No. 2006207116)**

**WEST VIRGINIA OFFICE OF
INSURANCE COMMISSIONER and
EASTERN ASSOCIATED COAL, LLC, Respondent**

MEMORANDUM DECISION

Petitioner Edsel W. Dickens, by Samuel Hanna, his attorney, appeals the decision of the Board of Review. Eastern Associated Coal, LLC, 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 13, 2010, Order of the Workers' Compensation Office of Judges. In its Order, the Office of Judges affirmed the claims administrator's April 17, 2008, decision denying Mr. Dickens's request for fourteen additional chiropractic and physical medicine treatments. 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.

In its Order, the Office of Judges held that Mr. Dickens is not entitled to fourteen additional chiropractic and physical medicine treatments. Mr. Dickens disputes this finding and asserts that the record indicates that the treatments are reasonable and necessary.

The Office of Judges relied on West Virginia Code of State Rules § 85-20-4.1 (2006), which states in part that "the treatments and limitations on treatment set forth in this Rule are presumed to be medically reasonable and treatments in excess of those set forth in this Rule are presumed to be

medically unreasonable. A preponderance of evidence, including but not limited to, detailed and documented medical findings, peer reviewed medical studies, and the elimination of causes not directly related to a compensable injury or disease, must be presented to establish that treatments in excess of those provided for in this Rule are medically reasonable.” The Office of Judges also relied on West Virginia Code of State Rules § 85-20-35.5 *et seq.* (2006), which provides that the duration of care for cervical and lumbar sprains is not to exceed eight weeks, and that a sprain exceeding the eight-week period requires detailed re-evaluation.

The Office of Judges found that the claim was only held compensable for a cervical and lumbar sprain that occurred on October 27, 2005. The Office of Judges found that no evidence has been introduced to justify an exception to the treatment guidelines contained in West Virginia Code of State Rules § 85-20-35.5 *et seq.* The Board of Review reached the same reasoned conclusion 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 decision of the Board of Review is affirmed.

Affirmed.

ISSUED: April 12, 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