

STATE OF WEST VIRGINIA

SUPREME COURT OF APPEALS

FILED

BARBARA RENNER, Petitioner

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

vs.) No. 11-0173 (BOR Appeal No. 2044661)
(Claim No. 2008011134)

WEST VIRGINIA OFFICE OF
INSURANCE COMMISSIONER and
WEST VIRGINIA DEPARTMENT OF CORRECTIONS,
Respondent

MEMORANDUM DECISION

Petitioner Barbara Renner, by George Zivkovich, her attorney, appeals the West Virginia Workers' Compensation Board of Review's Order denying the requested medical benefits. The West Virginia Department of Corrections, by H. Dill Battle III, its attorney, filed a timely response.

This appeal arises from the West Virginia Workers' Compensation Board of Review's Final Order dated January 6, 2011, in which the Board affirmed a May 21, 2010, Order of the Workers' Compensation Office of Judges. In its Order, the Office of Judges affirmed the claims administrator's February 12, 2009, decision denying additional chiropractic treatment. 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.

Ms. Renner was working for the West Virginia Department of Corrections when she injured her back. The claims administrator held the claim compensable for a lumbar sprain/strain on September 24, 2007. Ms. Renner received extensive care and treatment for the injury, including surgical treatment by spinal fusion. On February 12, 2009, the claims administrator denied a request from Dr. Folwell for additional chiropractic treatment.

The Office of Judges, in affirming the claims administrator's decision to deny the requested chiropractic treatment, noted that not only had Ms. Renner been found to be at maximum medical improvement, but that Dr. Folwell had previously found chiropractic treatment would not be beneficial. On appeal, Ms. Renner disagrees and asserts that the evidence shows she is entitled to the requested benefits, with Dr. Folwell's request being the best evidence. The West Virginia Department of Corrections argues that the evidence demonstrates that the requested benefits are not medically necessary and reasonably required in the treatment of Ms. Renner's compensable condition. In November 2008 Dr. Folwell released Ms. Renner from his chiropractic care, finding that further treatment would not change her current condition in regards to this claim. A month later, Dr. Folwell requested an additional twelve chiropractic treatments. The Office of Judges noted that Dr. Amores, Dr. Bachwitt, and Dr. Guberman all agreed that no further treatment would likely improve her impairment related to this claim.

In reaching the conclusion that the requested chiropractic treatment is not medically necessary and reasonably required to treat Ms. Renner's compensable condition, the Office of Judges considered the reports of Dr. Folwell, Dr. Amores, Dr. Bachwitt, and Dr. Guberman. It was determined that the preponderance of the evidence did not establish that Ms. Renner is entitled to additional chiropractic treatment. The Board of Review reached the same reasoned conclusions in its decision of January 6, 2011.

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 Board of Review Order is affirmed.

Affirmed.

ISSUED: July 17, 2012

CONCURRED IN BY:

Chief Justice Menis E. Ketchum

Justice Robin J. Davis

Justice Margaret L. Workman

Justice Thomas E. McHugh

Justice Brent D. Benjamin not participating