

STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS

LARRY DENNIS, Petitioner

**vs.) No. 11-0299 (BOR Appeal No. 2044762
and 2044824)
(Claim No. 2007212843)**

FILED

**December 7, 2011
RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA**

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

MEMORANDUM DECISION

This appeal arises from the West Virginia Workers' Compensation Board of Review Final Orders dated January 10, 2011 and January 11, 2011, in which the Board affirmed a June 7, 2010, Order and a June 28, 2010, Order of the Workers' Compensation Office of Judges. In its June 7, 2010, Order, the Office of Judges affirmed the claims administrator's two January 22, 2010, Orders, which denied left shoulder injections and the medication Percocet by separate orders. In its June 28, 2010, Order, the Office of Judges affirmed the claims administrator's two February 15, 2010, Orders, which also denied left shoulder injections and the medication Percocet by separate orders. The appeal was timely filed by the petitioner, and McElroy Coal Company (now Consolidation Coal Company) filed a response. 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 parties' submissions 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 Office of Judge's Orders, which denied authorization for the medication Percocet and left shoulder injections. Mr. Dennis's request for left shoulder injections was denied due to his physician's failure to receive written authorization for the procedure prior to his administration of the injections. Mr. Dennis argues that his medical records, to the contrary, do request these injections. Mr. Dennis also

argues that the necessity of Percocet is documented in his medical records.

In affirming the denial of left shoulder injections, the Office of Judges cited to W. Va. Code R. § 85-20-9.9, which provides that “[w]ritten authorization must be obtained . . . for the procedures and services listed below Failure to comply with this rule will result in disapproval of the medical vendor’s bill.” (June 7, 2010, Office of Judges Order, p. 6; June 28, 2010, Office of Judges Order, p. 7.) Services and procedures subject to preauthorization are set forth in W. Va. Code R. § 85-20-9.10 and include outpatient pain management procedures such as epidural steroids and facet injections. (June 7, 2010, Order at p. 6; June 28, 2010, Order at p. 7.) Simply, Mr. Dennis’s treating physician did not receive authorization for the injections prior to his administration of them, and regulations require disapproval of the bill. Thus, the Office of Judges affirmed the denial of authorization for the left shoulder injections, and the Board of Review reached the same reasoned conclusion in its Orders of January 10, 2011, and January 11, 2011.

The Office of Judges also noted that there was no medical documentation justifying Mr. Dennis’s need for Percocet. (June 7, 2010, Office of Judges Order, p. 6; June 28, 2010, Office of Judges Order, p. 7.) In fact, subsequent to Mr. Dennis’s treating physician’s request for authorization for Percocet, he switched Mr. Dennis to Lortab and discontinued Percocet. (June 28, 2010, Office of Judges Order, p. 7.) Accordingly, the Office of Judges denied the request for authorization of Percocet due to a lack of medical evidence documenting the need for the medication. The Board of Review reached the same reasoned conclusions in its Orders of January 10, 2011, and January 11, 2011.

For the foregoing reasons, we find that the decisions of the Board of Review are not in clear violation of constitutional or statutory provision, clearly the result of erroneous conclusions of law, or based upon the Board’s material misstatement or mischaracterization of particular components of the evidentiary records. Therefore, the denials of authorization for left shoulder injections and for the medication Percocet are affirmed.

Affirmed.

ISSUED: December 7, 2011

CONCURRED IN BY:

Chief Justice Margaret L. Workman

Justice Robin Jean Davis

Justice Brent D. Benjamin

Justice Thomas E. McHugh

DISSENTING:

Justice Menis E. Ketchum