

STATE OF WEST VIRGINIA

SUPREME COURT OF APPEALS

**MARTHA D. NEELY,
Claimant Below, Petitioner**

FILED
March 22, 2016
RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

vs.) No. 15-0489 (BOR Appeal No. 2049799)
(Claim No. 2013022944)

**WEST VIRGINIA UNITED HEALTH SYSTEM,
Employer Below, Respondent**

MEMORANDUM DECISION

Petitioner Martha D. Neely, by M. Jane Glauser, her attorney, appeals the decision of the West Virginia Workers' Compensation Board of Review.

This appeal arises from the Board of Review's Final Order dated April 28, 2015, in which the Board affirmed an August 26, 2014, Order of the Workers' Compensation Office of Judges. In its Order, the Office of Judges affirmed the claims administrator's March 27, 2014, decision denying a request for payment of medical services rendered by David Lynch, M.D. The Court has carefully reviewed the records, written arguments, and appendices contained in the briefs, and the case is mature for consideration.

This Court has considered the parties' briefs and the record on appeal. The facts and legal arguments are adequately presented, and the decisional process would not be significantly aided by oral argument. Upon consideration of the standard of review, the briefs, and the record presented, the Court finds no substantial question of law and no prejudicial error. For these reasons, a memorandum decision is appropriate under Rule 21 of the Rules of Appellate Procedure.

Ms. Neely was injured on February 25, 2013, while transporting a very large patient. On March 7, 2013, Ms. Neely's claim for workers' compensation benefits was held compensable for cervical, thoracic, and lumbar sprains. A cervical disc protrusion/herniation was later added as a compensable component of the claim. In the instant appeal, Ms. Neely is requesting payment for services rendered by Dr. Lynch for the apparent treatment of a cervical sprain/strain.

On March 27, 2014, the claims administrator denied Ms. Neely's request for payment of the services rendered by Dr. Lynch based upon its finding that on September 12, 2013, Bill

Hennessey, M.D., evaluated Ms. Neely and concluded that she was not in need of any further treatment. The Office of Judges affirmed the claims administrator's decision in an Order dated August 26, 2014. The Board of Review affirmed the reasoning and conclusions of the Office of Judges in its Order dated April 28, 2015.

Ms. Neely has not submitted any medical evidence to this Court in support of her appeal from the Board of Review's Order. Interestingly, the Office of Judges noted that although Ms. Neely submitted a very large volume of medical evidence before that tribunal, almost none of it was relevant to the issue at bar. In reaching its decision, the Office of Judges found that Ms. Neely did not introduce any relevant evidence contradicting Dr. Hennessey's conclusion that she requires no further treatment. As Dr. Lynch's treatment notes and request for authorization of the treatment he rendered were not submitted to this Court for review, it is unclear what specific condition Dr. Lynch was attempting to treat. Although the March 27, 2014, claims administrator's decision indicated that Dr. Lynch was providing treatment for a cervical sprain/strain, on appeal to this Court Ms. Neely asserts that she was actually receiving treatment for a herniated nucleus pulposus at C5-6, which was previously added as a compensable component of the claim. However, as was previously discussed, Ms. Neely has failed to introduce any medical evidence supporting this assertion.

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: March 22, 2016

CONCURRED IN BY:

Chief Justice Menis E. Ketchum
Justice Robin J. Davis
Justice Brent D. Benjamin
Justice Margaret L. Workman
Justice Allen H. Loughry II