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

Starcher, J., concurring:

I concur with the conclusion reached in the majority opinion that West Virginia 85 CSR § 1-13.1 “is void because it does not reflect the intention of the legislature as expressed in West Virginia Code § 23-4-16(a)(4), especially as the rule has been administered since promulgation. . . .” Syllabus Point 7, in part. I also concur with the mandate set out in the majority opinion that

[e]ither by procedural rule or other proper means, each claimant whose claim has been subjected to administrative closure under the purported authority of West Virginia 85 CSR § 1-13 and whose claim remains active under the five-year rule of West Virginia Code § 23-4-16(a)(4) should be notified in writing that the claim has not been closed and that the standard evidence indicating that a requested authorization is medically necessary and reasonably required will justify continued action on the claim if appropriate under West Virginia Code § 23-4-16(a)(4).

_____ W.Va. at _____, _____ S.E.2d at _____ (Slip Op. at 10).

I write separately to discuss the mandate that requires the Commissioner and other proper parties to notify all claimants affected by the administrative closure of a claim. A common sense reading of the holding suggests that a reopening application made following an administrative closure should not be counted as one of the two permissible reopening applications as set forth in *W.Va. Code*, 23-4-16(a)(1) and (2).

Recognizing that claimants have a limited number of opportunities to apply for a reopening of a claim, the holding of the majority – and the mandate therein stated – must be tightly construed against the Commissioner or the agency. Therefore, the notice required by the mandate of the holding in this appeal should clearly include specific notice to claimants who had to use one or more of the two reopening applications permitted by *W.Va. Code*, 23-4-16(a)(1) and (2), that such reopening applications are redesignated as a request for benefits and will not otherwise be counted as a reopening application for purposes of *W.Va. Code*, 23-4-16(a)(1) and (2).