

STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS

ACNR Resources, Inc.,
Employer Below, Petitioner

vs.) **No. 22-0299** (BOR Appeal No. 2057391)
(JCN: 2004036287)

Eugene Saunders Sr.,
Claimant Below, Respondent

MEMORANDUM DECISION

Petitioner ACNR Resources, Inc., appeals the decision of the West Virginia Workers' Compensation Board of Review ("Board of Review").¹ The issue on appeal is the claims administrator's denial of a request for seventeen chiropractic treatments, which was reversed by the Workers' Compensation Office of Judges ("Office of Judges") and the treatment was authorized. The Order was affirmed by the Board of Review on March 18, 2022. This Court may not reweigh the evidentiary record, but must give deference to the findings, reasoning, and conclusions of the Board of Review, and when the Board's decision effectively represents a reversal of a prior order of either the Workers' Compensation Commission or the Office of Judges, we may reverse or modify that decision only if it is in clear violation of constitutional or statutory provisions, is clearly the result of erroneous conclusions of law, or is so clearly wrong based upon the evidentiary record that even when all inferences are resolved in favor of the Board's findings, reasoning, and conclusions, there is insufficient support to sustain the decision. *See W. Va. Code §§ 23-5-15(c) & (e)*. We apply a de novo standard of review to questions of law. *See Justice v. W. Va. Off. Ins. Comm'n*, 230 W. Va. 80, 83, 736 S.E.2d 80, 83 (2012). Upon our review, we determine that oral argument is unnecessary and that a memorandum decision affirming the Board of Review's decision is appropriate. *See W. Va. R. App. P. 21*.

Mr. Saunders, a coal miner, suffered a severe injury in February of 2004, when his right leg was crushed in an accident that occurred in a mine owned and operated by petitioner, his employer. The injury required amputation of Mr. Saunders's leg below the knee. Following the amputation, Mr. Saunders developed back pain for which he sought treatment from Duane Miller, D.C. In a January 13, 2005, treatment note, Dr. Miller opined that Mr. Saunders's low back pain resulted from his right leg amputation, for which he requested four weeks of chiropractic treatment. The claims administrator held the claim compensable for traumatic amputation of the leg, non-allopathic lumbar lesion, and lower limb crush injury on February 3, 2005. Based on requests by

¹Petitioner, ACNR Resources, Inc., is represented by Aimee M. Stern. Respondent, Eugene Saunders Sr., did not file a response.

Dr. Miller, the claims administrator incrementally approved numerous sessions for physical therapy and chiropractic treatment between February 2005 and February 2021.

The claims administrator requested that Ronald Fadel, M.D., perform a utilization review, and in his February 20, 2021, report, Dr. Fadel noted that Mr. Saunders had undergone numerous chiropractic treatment sessions for the compensable diagnosis of non-allopathic lumbar lesions. Dr. Fadel opined that there is little evidence to support chiropractic care for the condition for this many years. Dr. Fadel explained that chiropractic care can result in treatment dependence with no long-term benefit, which appears to be the case for Mr. Saunders. Dr. Fadel opined that continued chiropractic treatment was not necessary or reasonable for the compensable injury and should not be authorized going forward.

Shortly after Dr. Fadel provided his report, Dr. Miller submitted an authorization request stating that Mr. Saunders continued to suffer from exacerbations and aggravations of his compensable conditions related to his left knee replacement and right prosthetic leg. Dr. Miller explained that the prosthesis alters Mr. Saunders's gait, causing frequent back pain and exacerbations. Dr. Miller opined that Mr. Saunders would require this treatment for six months. The claims administrator denied the request based on Dr. Fadel's utilization review. Mr. Saunders protested the decision.

Mr. Saunders submitted an undated letter from Dr. Miller as evidence to the Office of Judges in which Dr. Miller explained that while Mr. Saunders's prosthetic leg allows him to walk, it places a great deal of strain and stress on his attaching limbs, joints, and muscles. Dr. Miller opined that the compensable injury and resulting amputation resulted in accelerated lumbar and pelvic degenerative changes and caused the need for a left knee replacement in 2011. Dr. Miller further opined that Mr. Saunders suffered almost daily exacerbations of his spinal degenerative process and that without chiropractic treatment, he would likely eventually require surgery and aggressive drug therapy. Dr. Miller requested approval of continued physical therapy in the best interest of Mr. Saunders.

After considering the evidence submitted, the Office of Judges reversed the claims administrator's denial of chiropractic treatment. Though petitioner argued that the authorization request did not conform with the guides set forth in West Virginia Code of State Rules § 85-20-46.1, which provides for a maximum of twenty treatments for work-related flare-ups for injuries within fourteen months of an injury, and that further medical treatment should not be authorized because Mr. Saunders reached maximum medical improvement, the Office of Judges concluded that Dr. Miller's report detailing the causal connection between Mr. Saunders's amputation and pelvic degenerative changes was the most reliable of record. The Board of Review adopted the findings of fact and conclusions of law of the Office of Judges and affirmed its order on March 18, 2022.

Petitioner argues a single assignment of error on appeal, that the treatment authorizations described above are excessive in light of the guidelines set forth in West Virginia Code of State Rules § 85-20-46.1. After review, we agree with the reasoning and conclusions of the Office of Judges as affirmed by the Board of Review. West Virginia Code § 23-4-3(a)(1) states that the

claims administrator must provide medically related and reasonably required sums for healthcare services, rehabilitation services, durable medical and other goods, and other supplies. A finding that a claimant has reached maximum medical improvement does not preclude authorization of maintenance treatment. Further, West Virginia Code of State Rules § 85-20-4.1 provides that:

The provisions of this Rule are not intended to strictly dictate results and it is recognized that there may be extraordinary cases that require treatments in addition to the treatments set forth in this Rule. However the treatments and limitations on treatments 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. To receive reimbursement from the Commission, insurance commissioner, self-insured employer or private carrier, whichever is applicable, for treatment in excess of that provided for in this Rule, all providers must thoroughly document and explain the action taken and the basis for the deviation from this Rule and shall receive authorization before providing said treatment.

In this case, Mr. Saunders suffered a severe injury resulting in a right leg amputation below the knee. Mr. Saunders has been treated by Dr. Miller for lower back and pelvic issues that developed as a result of his altered gait. Dr. Miller provided a well-reasoned, detailed explanation of how Mr. Saunders's altered gait affects other parts of his body, specifically his back, pelvis, and left knee, resulting in the need for maintenance treatment. Mr. Miller opined that without such treatment, Mr. Saunders would require further surgery. The requested chiropractic treatment is medically related and reasonably necessary treatment as a result of Mr. Saunders' compensable injury. Further, this is an extraordinary case, *see* W. Va. Code R. § 85-20-4.1, that requires treatment in excess of the West Virginia Code of State Rules § 85-20 guidelines.

Affirmed.

ISSUED: January 25, 2024

CONCURRED IN BY:

Chief Justice Tim Armstead
Justice Elizabeth D. Walker
Justice John A. Hutchison
Justice William R. Wooton
Justice C. Haley Bunn