

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

James Bonner, :
 :
 Petitioner :
 :
 v. : No. 1936 C.D. 2010
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 Workers' Compensation Appeal : Submitted: January 7, 2011
 Board (Ullico and Met Regional :
 Council of Carpenters), :
 Respondents :

BEFORE: HONORABLE DAN PELLEGRINI, Judge
HONORABLE MARY HANNAH LEAVITT, Judge
HONORABLE JAMES R. KELLEY, Senior Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
BY SENIOR JUDGE KELLEY

FILED: March 1, 2011

James Bonner (Provider) petitions for review of an order of the Workers' Compensation Appeal Board (Board), which reversed the order of a workers' compensation judge (WCJ) that had granted his Petition for Review of Utilization Review Determination (UR Review Petition) for treatment rendered to Michael Wells (Claimant). We affirm.

Claimant sustained injuries in two separate motor vehicle accidents. The first accident occurred on April 5, 2006 while in the course and scope of his employment with Ullico and Met Regional Council of Carpenters (Employer). The second accident occurred on December 17, 2007; the nature of this accident is unclear from the record.

On July 8, 2008, Provider filed a UR Review Petition requesting a review of the reasonableness and necessity of his treatment of Claimant for the December 17, 2007 injury. Following a hearing, the WCJ found that the treatments under review were reasonable and necessary for the injuries Claimant sustained on December 17, 2007. By decision dated January 2, 2009, the WCJ granted Provider's UR Review Petition.

From this decision, Employer filed an appeal with the Board, which reversed. The Board took judicial notice that on April 16, 2008, Employer filed a Utilization Review Request for treatment provided to Claimant by Provider from February 18, 2008 ongoing and into the future to determine if that treatment in connection with the April 5, 2006 injury was reasonable and necessary. The Board noted that on June 13, 2008, the Utilization Review Officer (URO) issued a Utilization Review Determination (UR Determination) finding that the treatment under review was not reasonable and necessary for Claimant's work-related injuries sustained on April 5, 2006.¹ The Board further noted that the URO addressed the reasonableness and necessity of the treatment only with respect to the April 5, 2006 injury and neither Provider nor Claimant appealed that determination. The Board found that the WCJ made no findings regarding the reasonableness or necessity of the treatments under review in relation to the injuries Claimant sustained in the work-related accident on April 5, 2006. The Board concluded that because the URO had not issued a determination and report based upon the December 17, 2007 injury, the WCJ was without jurisdiction to hear Provider's UR Review Petition to determine

¹ The Utilization Review Request and UR Determination pertaining to the April 5, 2006 injury are not part of the record certified to this Court.

the reasonableness or necessity of medical treatment with regard to the December 17, 2007 injury.

Provider now petitions this Court for review of the Board's order. Provider raises the following issue for our review:

Where Employer makes a utilization review request concerning all medical treatment after a certain date and the URO makes a determination that the treatment is unreasonable and unnecessary and the Provider petitions for review of the UR Determination under the same review number assigned by the Bureau of Workers' Compensation, does the WCJ have jurisdiction to make a determination that the treatment reviewed is reasonable and necessary if the Provider references an incorrect date of injury in his UR Review Petition.

Provider contends the date of injury provided on the UR Review Petition should not be controlling as the UR Review Petition clearly sought review of whether Provider's treatment after February 18, 2008 was reasonable and necessary and that is the treatment which was considered by the WCJ. We disagree.

The utilization review process is the exclusive way to challenge medical bills under the Workers' Compensation Act (Act).² County of Allegheny v. Workers' Compensation Appeal Board (Geisler), 875 A.2d 1222 (Pa. Cmwlth. 2005). "The reasonableness or necessity of all treatment provided by a health care provider under this act may be subject to prospective, concurrent or retrospective utilization review at the request of an employe, employer or insurer." Section 306(f.1)(6)(i) of the Act, 77 P.S. §531(6)(i). The URO shall issue a written report of its findings and conclusions within thirty (30) days of a request. Section 306(f.1)(6)(ii) of the Act, 77 P.S. §531(6)(ii). If the provider, employer, employe or insurer disagrees with the

² Act of June 2, 1915, P.L. 736, as amended, 77 P.S. §§ 1 - 1041.4, 2501-2708.

finding of the URO, a petition for review must be filed within thirty (30) days after receipt of the report. Section 306(f.1)(6)(iv) of the Act, 77 P.S. §531(6)(iv). “The department shall assign the petition to a workers' compensation judge for a hearing” and the “utilization review report shall be part of the record before the workers' compensation judge.” Id. “The workers' compensation judge shall consider the utilization review report as evidence but shall not be bound by the report.” Id.

Disputes regarding reasonableness or necessity of treatment must be resolved through utilization review process under the Act, and for this reason, a WCJ generally lacks subject matter jurisdiction over the issue of reasonableness or necessity of treatment. Martin v. Workers' Compensation Appeal Board (Red Rose Transit Authority), 783 A.2d 384 (Pa. Cmwlth. 2001), petition for allowance of appeal denied, 568 Pa. 710, 796 A.2d 988 (2002). A WCJ is without jurisdiction to act on a UR Review Petition until such time as the URO issues a determination and a report regarding the reasonableness and necessity of medical treatment. County of Allegheny.

Here, Provider filed a UR Review Petition seeking review of medical treatment provided to Claimant in connection with the December 17, 2007 injury, not the April 5, 2006 injury. Since the URO did not issue a determination and a report regarding the reasonableness and necessity of medical treatment for this injury, the WCJ was without jurisdiction to proceed. While Provider claims that the date listed on the UR Review Petition was merely a clerical error, a review of the exhibits filed by Provider supports the WCJ's finding that the treatments were provided in connection with the December 17, 2007 injury. Provider wrote “as a direct result of the motor vehicle accident that occurred on 12/17/07 [Claimant] suffered an exacerbation of his underlying condition with evidence of significant cervical radiculopathy and rotator cuff injury involving the left shoulder.” Provider Exhibit

No. 1 at 2. Provider's planned treatment of the December 17, 2007 injury included x-rays and MRI tests of Claimant's cervical spine and left shoulder, a resumption of outpatient therapy and follow-up evaluations. Id. It is clear from the WCJ's decision that the treatments were reviewed in connection with the December 17, 2007 injury. We, therefore, conclude that the Board properly determined that the WCJ lacked jurisdiction in this regard.

Accordingly, the order of the Board is affirmed.

JAMES R. KELLEY, Senior Judge

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ORDER

AND NOW, this 1st day of March, 2011, the order of the Workers' Compensation Appeal Board, at No. A09-0085, dated August 20, 2010, is AFFIRMED.

JAMES R. KELLEY, Senior Judge