

STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS

LARRY DENNIS, Petitioner

vs.) **No. 100985 (BOR Appeal No. 2044036)**
(Claim No. 2007212843)

FILED

June 14, 2012
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

Petitioner, Larry Dennis, by M. Jane Glauser, appeals the Board of Review Order discontinuing authorization for Trazodone, discontinuing psychiatric treatment, and discontinuing the medication Vicodin. McElroy Coal Company, by Edward M. George, its attorney, filed a timely response.

This appeal arises from the West Virginia Workers' Compensation Board of Review Final Order dated July 9, 2010, in which the Board affirmed a December 28, 2009, Order of the Workers' Compensation Office of Judges. In its Order, the Office of Judges affirmed the claims administrator's June 18, 2009, Orders, which discontinued authorization for the medication Trazodone, discontinued psychiatric treatment, and discontinued the medication Vicodin. 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 briefs, and the record presented, the Court finds that 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 Order, which affirmed discontinuation of psychotherapy and the medications Trazodone and Vicodin. Mr. Dennis argues that his treating physician and psychologist have both attested to the necessity and reasonableness of the psychotherapy and medications. He submits that, as his treating physicians, they are in the best position to determine needed treatment. In short, Mr. Dennis argues that depression is a compensable component of his claim, and psychotherapy and the requested medications are needed to prevent worsening of his condition.

The Office of Judges noted first that Mr. Dennis's treating physician, Dr. Michael Shramowait, indicated that Mr. Dennis did not do well with the side effects of Trazodone. Thus, Dr. Shramowait did not include it in his treatment plan. Additionally, Mr. Dennis's Vicodin was discontinued due to his inability to take his opiates as prescribed. Dr. Richard Vaglianti advised against long-term opiates for Mr. Dennis due to his inability to manage his medications. Because Mr. Dennis could not tolerate the side effects of Trazodone and it was not included in his treating physician's treatment plan, and because Mr. Dennis failed to take Vicodin as prescribed, the Office of Judges affirmed the discontinuation of these medications. The Board of Review reached the same reasoned conclusion in affirming the Office of Judges in its decision dated July 9, 2010.

For the foregoing reasons, we find that the decision of the Board of Review with respect to the discontinuation of Trazodone and Vicodin is 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 record. Therefore, the discontinuation of these medications is affirmed.

The claims administrator, however, also discontinued psychotherapy despite the addition of depression as a compensable component and the recommendation from Mr. Dennis's treating physician that he undergo psychotherapy. Mr. Dennis appealed this decision, but the Office of Judges failed to provide justification or explanation for its affirmation of the claims administrator's denial. The Board of Review, in turn, affirmed the Office of Judges without explanation. For these reasons, the issue of Mr. Dennis's entitlement to continued psychotherapy should be reversed and remanded for full consideration.

Affirmed, in part, and reversed and remanded, in part.

ISSUED: June 14, 2012

CONCURRED IN BY:

Chief Justice Menis E. Ketchum

Justice Robin Jean Davis

Justice Thomas E. McHugh

DISSENTING:

Justice Margaret Workman

Justice Brent D. Benjamin not participating