

STATE OF WEST VIRGINIA

SUPREME COURT OF APPEALS

FILED

PAMELA S. HARDING, Petitioner

February 17, 2012
RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

vs.) No. 101396 (BOR Appeal No. 2044400)
(Claim No. 2004036795)

**WEST VIRGINIA OFFICE OF
INSURANCE COMMISSIONER and
MAYFLOWER VEHICLE SYSTEMS, INC., Respondent**

MEMORANDUM DECISION

Petitioner Pamela S. Harding, by Patrick Maroney, her attorney, appeals the decision of the Board of Review. The West Virginia Office of Insurance Commissioner, by Jack Rife, its attorney, filed a timely response.

This appeal arises from the West Virginia Workers' Compensation Board of Review's Final Order dated October 4, 2010, in which the Board affirmed a March 17, 2010, Order of the Workers' Compensation Office of Judges. In its Order, the Office of Judges modified the claims administrator's April 14, 2009, decision denying Ms. Harding's request for chiropractic treatments based on the opinion of Dr. Ramesh, a finding of degenerative disease, the filing of an intervening claim for a back injury, and W.Va. Code R. § 85-20-46.8 (2006) and W. Va. Code § 23-5-3 (2009). The Office of Judges held that Ms. Harding's request for chiropractic treatments is denied on the basis that the treatment is not medically related to the 2004 compensable injury and because it exceeds the treatment guidelines set forth in W.Va. Code R. § 85-20-37.5 (2006). 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 petition 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 Court determines that there is no prejudicial error. This case does not present a new or significant question of law. For these reasons, a

memorandum decision is appropriate under Rule 21 of the Revised Rules of Appellate Procedure.

In its Order, the Office of Judges held that Ms. Harding is not entitled to the requested chiropractic treatment for her 2004 compensable injury because her current symptoms are not medically related to her 2004 compensable injury. The Office of Judges further held that Ms. Harding is not entitled to the requested chiropractic treatment because she was found to be at maximum medical improvement and required no further treatment on October 20, 2005. Ms. Harding disputes this finding and asserts that she still suffers numbness, tingling, and a loss of range of motion as a direct result of her 2004 compensable injury.

W.Va. Code R. § 85-20-46.8, provides that reimbursement for medical expenses is not allowed after a claimant reaches maximum medical improvement, unless expressly allowed by the rule. The Office of Judges found that on October 20, 2005, Dr. Ramesh found that Ms. Harding was at maximum medical improvement and recommended no additional treatment. The Office of Judges then found that Ms. Harding had exceeded the treatment guidelines for a back sprain/strain set forth in W.Va. Code R. § 85-20-37.5. Finally, the Office of Judges found that Ms. Harding had not received ongoing treatment for her 2004 compensable injury, that she had an intervening back injury in 2006, and that the 2006 injury is more likely to be causing Ms. Harding's recent back pain than the 2004 injury. The Board of Review reached the same reasoned conclusion in its decision of October 4, 2010.

For the foregoing reasons, we find that the decision of the Board of Review is not in clear violation of constitutional or statutory provision, clearly the result of erroneous conclusions of law, or is based upon the Board's material misstatement or mischaracterization of particular components of the evidentiary record. Therefore, the decision of the Board of Review is affirmed.

Affirmed.

ISSUED: February 17, 2012

CONCURRED IN BY:

Chief Justice Menis E. Ketchum

Justice Robin J. Davis

Justice Brent D. Benjamin

Justice Margaret L. Workman

Justice Thomas E. McHugh