

STATE OF WEST VIRGINIA

SUPREME COURT OF APPEALS

FILED

November 16, 2012
RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

JUDITH E. COLEMAN, Petitioner

vs.) **No. 11-0207** (BOR Appeal No. 2044643)
(Claim No. 900044242)

**WEST VIRGINIA OFFICE OF
INSURANCE COMMISSIONER and
BLUE RIDGE FUNERAL HOME, INC., Respondent**

MEMORANDUM DECISION

Petitioner Judith E. Coleman, pro se, appeals the decision of the West Virginia Workers' Compensation Board of Review denying a spinal cord stimulator, psychological screening, and a back brace. The West Virginia Office of Insurance Commissioner, by Jack M. Rife, its attorney, filed a timely response.

This appeal arises from the Board of Review's Final Order dated January 6, 2011, in which the Board affirmed an August 24, 2009, Order of the Workers' Compensation Office of Judges. In its Order, the Office of Judges affirmed the claims administrator's May 4, 2009, order denying a spinal cord stimulator, psychological screening, and back brace. The Court has carefully reviewed the records, written arguments, and appendices contained in the petition, and the case is mature for consideration.

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.

Ms. Coleman sustained a compensable lumbosacral sprain / strain on January 30, 1990, while lifting a casket. Ms. Coleman underwent treatment, but she continued to experience back pain. Her first request for a spinal cord stimulator was denied on December 4, 2003. She again requested a spinal cord stimulator on May 31, 2005. This request was also denied on June 17, 2005. In denying the request, the claims administrator cited to an Office of Medical Management Review conducted by Shirley Smutko, RN, on June 14, 2005. In that review, Ms. Smutko

recommended denying Ms. Coleman's request because no additional nerve conduction tests had been conducted or provided since the earlier denial. Ms. Smutko also noted that Ms. Coleman's claim was, at that time, 15 years old and that nerve blocks had failed. Thus, Ms. Smutko opined that the probability of significant functional improvement is close to zero.

Ms. Coleman subsequently requested transforaminal injections, caudal, epidural, and bilateral facet joint injections. This request was also denied as two separate medical reviews concluded that it was unlikely any further treatment would alleviate Ms. Coleman's pain. Ms. Coleman also submitted to an independent medical evaluation by Dr. ChuanFang Jin. Dr. Jin noted that Ms. Coleman suffers from degenerative lumbar spine disease, which Dr. Jin did not attribute to her January 30, 1990, compensable injury. Rather, Dr. Jin found these degenerative changes to preexist her compensable injury, and Dr. Jin concluded that Ms. Coleman's worsening symptoms are "unlikely the result of the injury in this claim." Dr. Jin also opined that there is no medical rationale to support a spinal cord stimulator because it does not show medical evidence-based efficacy for chronic lower back pain.

The only evidence to support authorization for a spinal cord stimulator and attendant psychological screening is from Dr. Robert Crow. On March 3, 2009, Dr. Crow opined that surgical intervention would be unlikely to provide pain relief to Ms. Coleman; however, Dr. Crow did recommend a dorsal column stimulator or morphine pump. But, Dr. Crow did not perform nerve conduction testing or offer an opinion as to whether the need for a stimulator was due to the compensable injury or to Ms. Coleman's preexisting degenerative lumbar spine disease.

Finding that Ms. Coleman failed to provide any new evidence to support authorization of the spinal cord stimulator and pre-surgical psychological testing, the Office of Judges affirmed the claims administrator's denial of the request. In affirming the claims administrator's denial, the Office of Judges also noted that there was a lack of evidence supporting the medical necessity of a back brace. The Board of Review, in turn, affirmed the Office of Judges.

The Office of Judges' January 6, 2011, Order affirming the denial of these requests should be affirmed. Ms. Coleman has provided no additional evidence supporting the medical necessity of a spinal cord stimulator and pre-surgery psychological screening since her earlier denials. Moreover, she has failed to provide any medical evidence to support the medical necessity of a back brace. Rather, the evidence of record establishes that Ms. Coleman suffers from non-compensable degenerative lumbar spine disease, which is the cause of her current symptoms. Although Dr. Crow recommended a spinal cord stimulator, he failed to relate this recommendation to Ms. Coleman's compensable injury. Moreover, other physician reviews have concluded that Ms. Coleman will not benefit from additional treatment.

For the foregoing reasons, we find that the decision of the Board of Review is not in clear violation of any constitutional or statutory provision, nor is it clearly the result of erroneous conclusions of law, nor is it based upon a material misstatement or mischaracterization of the evidentiary record. Therefore, the decision of the Board of Review is affirmed.

Affirmed.

ISSUED: November 16, 2012

CONCURRED IN BY:

Justice Robin Jean Davis
Justice Margaret L. Workman
Justice Thomas E. McHugh

DISSENTING:

Chief Justice Menis E. Ketchum
Justice Brent D. Benjamin