

STATE OF WEST VIRGINIA

SUPREME COURT OF APPEALS

FILED

October 7, 2015

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

**ALICE A. PROFFITT,
Claimant Below, Petitioner**

vs.) **No. 14-1277** (BOR Appeal No. 2049610)
(Claim No. 2001056099)

**WEST VIRGINIA OFFICE OF
INSURANCE COMMISSIONER,
Commissioner Below, Respondent**

and

**COMMUNITY HEALTH ASSOCIATION,
Employer Below, Respondent**

MEMORANDUM DECISION

Petitioner Alice A. Proffitt, by Edwin H. Pancake, her attorney, appeals the decision of the West Virginia Workers' Compensation Board of Review. The West Virginia Office of the Insurance Commissioner, by Noah A. Barnes, its attorney, filed a timely response.

This appeal arises from the Board of Review's Final Order dated November 17, 2014, in which the Board affirmed a July 3, 2014, Order of the Workers' Compensation Office of Judges. In its Order, the Office of Judges affirmed the claims administrator's September 4, 2013, decision denying a request for Percocet. The Court has carefully reviewed the records, written arguments, and appendices contained in the briefs, and the case is mature for consideration.

This Court has considered the parties' briefs and the record on appeal. The facts and legal arguments are adequately presented, and 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 no substantial question of law and no prejudicial error. For these reasons, a memorandum decision is appropriate under Rule 21 of the Rules of Appellate Procedure.

Ms. Proffitt, a registered nurse, sustained a leg contusion on February 21, 2001, when an intravenous pole fell on her leg. The claim was also eventually held compensable for reflex sympathetic dystrophy by a January 22, 2008, Office of Judges' Order. Paul Bachwitt, M.D., performed an independent medical evaluation of Ms. Proffitt on October 26, 2012. He opined that the diagnosis of lower leg contusion is correct; however, he disagreed with the Office of Judges' decision to add reflex sympathetic dystrophy to the claim. Dr. Bachwitt stated that he found no evidence of reflex sympathetic dystrophy on examination. He stated that Ms. Proffitt has problems with vestibular neuronitis and back pain which interfere with her gait. He opined that neither condition is related to the compensable injury. He found that she was at maximum medical improvement and required no further treatment. Dr. Bachwitt stated that there is no indication for narcotic medication. Ms. Proffitt was treated by Gregory D'Eramo, M.D., who indicated in a June 11, 2013, treatment note that she was taking Percocet for her left hip and leg pain. On July 20, 2013, Dr. D'Eramo noted that there was no change in her condition. He requested authorization of Percocet to treat reflex sympathetic dystrophy.

The claims administrator denied the request for Percocet on September 4, 2013. On July 3, 2014, the Office of Judges affirmed the decision. It found that the treatment guidelines outlined in West Virginia Code of State Rules § 85-20-4.1 (2006) allow for extraordinary cases that require treatment in excess of the limitations set forth. In order to obtain treatment in excess of the guidelines it must be shown that the requested treatment is medically reasonable to treat the compensable injury. The Office of Judges concluded based on the evidentiary record that Ms. Proffitt failed to show that Percocet is medically necessary and reasonably required to treat a compensable injury in the claim. The Office of Judges stated that although reflex sympathetic dystrophy is a compensable condition, the evidence indicates that the condition has resolved and no longer requires ongoing treatment. The Office of Judges found that though Dr. D'Eramo's letter of medical necessity indicates that Percocet is medically required to treat reflex sympathetic dystrophy, there are no clinical findings or other evidence from Dr. D'Eramo to support an ongoing diagnosis of reflex sympathetic dystrophy or to refute Dr. Bachwitt's finding that Ms. Proffitt's reflex sympathetic dystrophy has resolved.

The Office of Judges further stated that West Virginia Code of State Rules § 85-20-60 (2006) provides that the claims administrator shall continue to pay for opioid treatment if it is directly related to a compensable injury, there is substantial reduction in the patient's pain, and there is continuing substantial improvement in the patient's function. Once the worker's condition has reached maximum medical improvement, opioid treatment should not be authorized. Treatment past the first three months without documentation of substantial and progressive continuing improvement is presumed to be neither proper nor necessary. The Office of Judges found that in this case, the request for opioid medication was made thirteen years after the compensable injury occurred. Further, Ms. Proffitt has been found to be at maximum medical improvement, and Dr. D'Eramo's treatment notes show that her pain and function have not improved with opioid medication. The Office of Judges therefore found that Dr. D'Eramo's request for opioid pain medication does not meet the guidelines set forth in West Virginia Code of State Rules § 85-20-60 for continued treatment. The Board of Review adopted the findings of fact and conclusions of law of the Office of Judges and affirmed its Order on November 17, 2014.

On appeal, Ms. Proffitt argues that the requested medication is necessary to treat her compensable reflex sympathetic dystrophy. She asserts that the Office of Judges relied on Dr. Bachwitt's report, which was completed nearly ten months prior to the medication request, and West Virginia Code of State Rules § 85-20-61 (2006). She argues that neither the report nor the administrative rule is sufficient to sustain the denial of medication. The West Virginia Office of the Insurance Commissioner asserts that Ms. Proffitt has failed to submit evidence showing she continues to experience reflex sympathetic dystrophy, the condition for which the medication was requested. It also argues that she failed to submit documentation that would justify the authorization of a Schedule II narcotic more than two weeks after the date of the initial injury as is required under West Virginia Code of State Rules § 85-20-61.

After review, we agree with the reasoning of the Office of Judges and the conclusions of the Board of Review. Ms. Proffitt has failed to meet the requirements set forth in West Virginia Code of State Rules § 85-20-60 for the continued use of opioid medication. Dr. D'Eramo's treatment notes show no improvement in pain or function. Further, Dr. Bachwitt found no evidence of reflex sympathetic dystrophy when he performed his independent medical evaluation. The request for authorization of Percocet was therefore properly denied.

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: October 7, 2015

CONCURRED IN BY:

Chief Justice Margaret L. Workman
Justice Robin J. Davis
Justice Brent D. Benjamin
Justice Allen H. Loughry II

DISSENTING:

Justice Menis E. Ketchum