

STATE OF WEST VIRGINIA

SUPREME COURT OF APPEALS

FILED

March 22, 2016

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

MARTHA D. NEELY,
Claimant Below, Petitioner

vs.) **No. 15-0967** (BOR Appeal No. 2050281)
(Claim No. 2013022944)

WEST VIRGINIA UNITED HEALTH SYSTEM,
Employer Below, Respondent

MEMORANDUM DECISION

Petitioner Martha D. Neely, by M. Jane Glauser, her attorney, appeals the decision of the West Virginia Workers' Compensation Board of Review.

This appeal arises from the Board of Review's Final Order dated September 4, 2015, in which the Board affirmed a February 9, 2015, Order of the Workers' Compensation Office of Judges. In its Order, the Office of Judges affirmed the claims administrator's July 23, 2014, decision denying a request for authorization of the medication Lyrica. 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. Neely was injured on February 25, 2013, while transporting a very large patient. On March 7, 2013, Ms. Neely's claim for workers' compensation benefits was held compensable for cervical, thoracic, and lumbar sprains. A cervical disc protrusion/herniation was later added as a compensable component of the claim. In the instant appeal, Ms. Neely is requesting authorization for the medication Lyrica.

On July 23, 2014, the claims administrator affirmed its prior denial of a request from Ms. Neely's treating physician, David Lynch, M.D., for authorization of the medication Lyrica for

use in the treatment of cervical, thoracic, and lumbosacral sprains. The Office of Judges affirmed the July 23, 2014, claims administrator's decision. In its Order dated September 4, 2015, the Board of Review affirmed the reasoning and conclusions of the Office of Judges.

At the outset, we note that the record clearly demonstrates that Dr. Lynch was prescribing Lyrica for the treatment of cervical, thoracic, and lumbosacral sprains. However, on appeal Ms. Neely cites to her compensable diagnosis of a herniated nucleus pulposus at C5-6 as grounds for her ongoing need for treatment with Lyrica. In its Order, the Office of Judges noted that Ms. Neely has submitted numerous prior requests for authorization of the medication Lyrica, which have been denied. However, the Office of Judges did note in its prior Orders that the use of the medication Lyrica should only be authorized if a pain management specialist recommended its ongoing use as part of Ms. Neely's treatment regimen.¹ The Office of Judges found that Ms. Neely's most recent consultation with a pain management specialist was performed by Richard Vaglienti, M.D., on April 11, 2014. Dr. Vaglienti recommended the use of epidural steroid injections for the treatment of the herniated nucleus pulposus at C5-6 and C6 radiculopathy. Additionally, he prescribed the medication Zanaflex for muscle spasms. Although he noted that Ms. Neely was taking Lyrica, along with various other medications, he did not render an opinion on its continued use in relation to the compensable injury. In conclusion, we note once again that Dr. Lynch requested authorization for the medication Lyrica for use in the treatment of cervical, thoracic, and lumbosacral sprains. However, Dr. Vaglienti only discussed treatment addressing symptoms arising from a herniated C5-6 disc in the treatment notes stemming from his pain management consultation with Ms. Neely.

¹ None of the prior denials for authorization of the medication Lyrica were appealed to this Court.

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: March 22, 2016

CONCURRED IN BY:

Chief Justice Menis E. Ketchum

Justice Robin J. Davis

Justice Brent D. Benjamin

Justice Margaret L. Workman

Justice Allen H. Loughry II