

STATE OF WEST VIRGINIA

SUPREME COURT OF APPEALS

**APPALACHIAN REGIONAL HEALTHCARE, INC.,
Employer Below, Petitioner**

FILED

September 13, 2019
EDYTHE NASH GAISER, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

vs.) **No. 18-0807** (BOR Appeal No. 2052822)
(Claim No. 2017017162)

**SEBRENIA CHILDERS,
Claimant Below, Respondent**

MEMORANDUM DECISION

Petitioner Appalachian Regional Healthcare, Inc., by H. Dill Battle III, its attorney, appeals the decision of the West Virginia Workers' Compensation Board of Review. Sebrenia Childers, by Reginald D. Henry, her attorney, filed a timely response.

The issues on appeal are medical benefits, additional compensable conditions, and temporary total disability benefits. The claims administrator denied a request for physical therapy on June 1, 2017. On June 22, 2017, it denied authorization for transforaminal epidural steroid injections. On July 5, 2017, the claims administrator closed the claim for temporary total disability benefits. The claims administrator denied the addition of lumbar disc protrusion, lumbar radiculitis, and retrolisthesis to the claim on July 18, 2017. On August 16, 2017, it denied a reopening of the claim for temporary total disability benefits. The Office of Judges reversed the June 1, 2017; June 22, 2017; and July 5, 2017, decisions in its March 23, 2018, Order. In that Order, it also affirmed the July 18, 2017, decision, in part, and reversed the decision, in part, and found that the August 16, 2017, claims administrator's decision was moot. The Order was affirmed by the Board of Review on August 17, 2018.

The Court has carefully reviewed the records, written arguments, and appendices contained in the briefs, and the case is mature for consideration. 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. Childers, a nurse, was injured in the course of her employment on January 7, 2017. The Employees' and Physicians' Report of Injury indicates Ms. Childers injured her lower back

when she lifted a patient off of the floor and put her back into her bed. The physician's section was completed by Hassan Jafary, M.D., who diagnosed low back sprain. Treatment notes by Dr. Jafary indicate Ms. Childers was treated from January 9, 2017, through December 19, 2017, for back pain. Dr. Jafary's diagnoses were lumbar and cervical radiculopathy, lower back pain, lumbar intervertebral disc displacement, and congenital spondylolisthesis. On October 16, 2017, Ms. Childers reported numbness and tingling in her legs.

A lumbar MRI was performed on January 19, 2017, and showed a disc protrusion at L1-2 with mild central canal stenosis. At L4-5 there were narrowed disc spaces with disc degeneration and a right paracentral disc protrusion with stenosis. At L5-S1 there was a right lateral disc protrusion with stenosis. The claim was held compensable for sprain of lumbar ligaments on January 30, 2018, and Ms. Childers was granted temporary total disability benefits from January 9, 2017, through January 30, 2017.

Ms. Childers was treated by Rajesh Patel, M.D., for lower back, right hip, and leg pain. On February 15, 2017, he assessed retrolisthesis at L4-5, stenosis at L4-5, a disc protrusion at L4-5, a disc protrusion at L5-S1, lumbar facet arthropathy, scoliosis, and lumbar sprain. Ms. Childers reported that she had a history of mild back pain prior to the compensable injury. She reported weakness in her mid-back, right leg, and hip as well as numbness in her right leg. X-rays showed disc degeneration with retrolisthesis of L4-L5. Dr. Patel opined that the compensable injury developed into an L4-5 disc protrusion. On April 26, 2017, Ms. Childers reported that trigger point and epidural injections had provided some pain relief. However, on June 26, 2017, she stated that her pain was severe and had worsened. Dr. Patel again recommended injections and conservative treatment for L4-5 and L5-S1 disc protrusions on September 25, 2017, and stated that if conservative measures failed, surgery should be considered.

Treatment notes from WV Pain Institute indicate Ms. Childers was treated for lumbar spinal stenosis, lumbar disc displacement, lumbosacral disc displacement, lumbar disc degeneration, lumbosacral disc degeneration, lumbar radiculopathy, and lumbar spondylosis. On March 28, 2017, she reported numbness and pain in her right leg. Dr. Patel recommended an L4-5 epidural steroid injection. Andrew Thymius, D.O., with the Pain Institute, stated that Ms. Childers's examination findings and MRI correlate, therefore epidural steroid injections should be used. Ms. Childers had an injection at L4-5 on April 25, 2017. On June 6, 2017, she reported that she got about 20% pain relief from the injection and that her leg numbness had reduced. The claims administrator authorized physical therapy from April 30, 2017, through June 30, 2017.

Joseph Grady, M.D., performed an independent medical evaluation on May 24, 2017, in which he noted that a January 9, 2017, CT scan showed diffuse degenerative osteophyte formation and degenerative disc disease at L4-5. No acute findings were noted. Ms. Childers reported that she had lower back problems prior to the compensable injury and had received a 14% permanent partial disability award for her prior lower back claim. Dr. Grady assessed lumbar sprain superimposed on multilevel spondylosis. He found that she had reached maximum medical improvement and assessed 5% impairment.

On June 1, 2017, the claims administrator denied physical therapy for a lumbar sprain. Dr. Grady wrote a letter on June 4, 2017, opining that any functional limitations Ms. Childers still has are likely the result of her preexisting structural abnormalities for which she has permanent impairment. The claims administrator denied authorization of transforaminal epidural steroid injections on June 22, 2017. On July 5, 2017, it closed the claim for temporary total disability benefits. The claims administrator denied the addition of lumbar disc protrusion, lumbar radiculitis, and retrolisthesis as compensable conditions in the claim on July 18, 2017.

Dr. Jafary completed a reopening application for temporary total disability benefits on August 1, 2017, in which he opined that Ms. Childers currently has no capacity for gainful employment. He stated that based on his examination, she has lower back pain, lumbar radiculopathy, cervical radiculopathy, lumbar disc displacement, lumbar sprain, lumbosacral radiculopathy, and congenital spondylolisthesis. Dr. Jafary stated that she had sustained no aggravation or progression since her compensable injury. The claims administrator denied a reopening of the claim for temporary total disability benefits on August 16, 2017.

In its March 23, 2018, Order, the Office of Judges affirmed the July 18, 2017, claims administrator decision insofar as it denied the addition of retrolisthesis to the claim, but reversed the remainder of the decision and added L4-5 lumbar disc protrusion and radiculopathy to the claim. It found that Ms. Childers reported pain, numbness, and tingling in her right leg to Drs. Jafary, Patel, and Thymius and that her symptoms are corroborated by the medical evidence. The January 19, 2017, lumbar MRI showed a disc protrusion with stenosis at L4-5. Dr. Patel found on examination that Ms. Childers had decreased range of motion and decreased sensation on the right at L4-5. He diagnosed lumbar disc protrusion and radiculopathy. Drs. Jafary and Thymius diagnosed lumbar disc displacement and radiculopathy. The Office of Judges concluded that the evidence shows Ms. Childers has a disc protrusion at L4-5 causing nerve root compression. Dr. Grady's report finding no lumbar radiculopathy was determined to be unreliable. The Office of Judges also determined that L4-5 disc protrusion and radiculopathy are the result of the compensable injury. Dr. Patel requested that the conditions be added to the claim and opined that the compensable injury caused the development of a disc protrusion at L4-5 on the right side which is the cause of Ms. Childers's lower back pain. The Office of Judges concluded that his opinion was supported by multiple diagnoses of a disc protrusion and radiculopathy and the verification of Ms. Childers's symptoms by diagnostic and clinical evidence. The Office of Judges next found that retrolisthesis is not a compensable component of the claim. X-rays taken by Dr. Patel on February 15, 2017, showed retrolisthesis at L4-5; however, Dr. Patel offered no opinion regarding its origin. Additionally, no other physician of record has diagnosed the condition, and there is no other diagnostic evidence in support.

In regard to the claims administrator's June 1, 2017, denial of physical therapy, the Office of Judges determined that physical therapy should be authorized. Physical therapy was previously authorized from April 30, 2017, through June 30, 2017. The claims administrator's order at issue closed the claim as of June 1, 2017, based on Dr. Grady's finding that Ms. Childers had reached maximum medical improvement. However, the Office of Judges noted that it found L4-5 disc protrusion and radiculopathy to be compensable conditions, therefore rendering Dr. Grady's determination of maximum medical improvement unreliable. The Office of Judges therefore

authorized physical therapy from June 1, 2017, through June 30, 2017, and further as substantiated by the medical evidence.

The Office of Judges next found that transforaminal epidural steroid injections at L4-5 should be authorized. It noted that a WV Pain Institute treatment note states that epidural steroid injections would be tried if Ms. Childers found no long term relief from L4-5 intralaminar injections. She underwent an intralaminar injection on April 25, 2017, and reported 20% pain relief for ten to fourteen days. When she returned to Dr. Patel on June 26, 2017, she reported severe pain, and Dr. Patel opined that conservative treatment should be exhausted before surgery is considered. The Office of Judges therefore found that Ms. Childers has not found long term pain relief with intralaminar injections, which prompted the request for L4-5 epidural steroid injections. It noted that the claims administrator's denial was based on Dr. Grady's finding that she had reached maximum medical improvement and that no further treatment was necessary for the compensable lumbar sprain. Since additional conditions have been added to the claim, including L4-5 disc protrusion and radiculopathy, the Office of Judges concluded that transforaminal epidural steroid injections at L4-5 are medically necessary and reasonably required treatment.

Regarding the July 5, 2017, closure of the claim for temporary total disability benefits, the Office of Judges found that at the time of the closure, the only compensable injury in the claim was lumbar sprain. Since L4-5 disc protrusion and radiculopathy were added to the claim, the Office of Judges held that closure of the claim for temporary total disability benefits was improper because it was not based on all of the compensable conditions in the claim. Lastly, the Office of Judges found the reopening request for temporary total disability benefits to be moot since the claim remains open for such benefits. The Board of Review adopted the findings of fact and conclusions of law of the Office of Judges and affirmed its Order on August 17, 2018.

After review, we agree with the reasoning and conclusions of the Office of Judges as affirmed by the Board of Review. The Office of Judges committed no reversible error in finding Dr. Patel's opinion, that Ms. Childers suffered an L4-5 disc herniation and radiculopathy as a result of the compensable injury, to be more reliable than that of Dr. Grady. Dr. Patel's opinion is supported by a preponderance of the medical evidence. Since the condition is a compensable component of the claim, physical therapy and transforaminal epidural steroid injections are medically necessary and reasonably required treatment. The Office of Judges was also correct to reopen the claim for temporary total disability benefits since benefits had previously been authorized until June 30, 2017, and the evidence shows Ms. Childers was unable to work during that period due to a compensable condition.

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: September 13, 2019

CONCURRED IN BY:

Chief Justice Elizabeth D. Walker

Justice Margaret L. Workman

Justice Tim Armstead

Justice Evan H. Jenkins

Justice John A. Hutchison