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Office of Appeals, NYS Workers Compensation
328 State Street
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Re: WCB: 2770-9381. CC: 011250770993WAGNER. DOI: 3-10-77
Virtual Hearing ID: 24390930913 10 a.m. 6-21-23. Judge Arif Khan

DIAGNOSIS: Spinal Cord Injury.	Intercostal Neuritis
Severe Autonomic Dysfunction	Occipital Neuralgia
Cervical Myelopathy.	Post Traumatic Neuropathy
Trigeminal Neuralgia.	Ischemic Optic Neuropathy
Ophthalmic Migraine.	Post Traumatic T7-10 Sclerosis
Costochondritis	Cervical, Thoracic, L-S Radiculopathy

Please accept my Appeal and review this case by reading my letter to Chair Rodriguez.

It contains specific information and witnesses, to support the 3 issues. Supporting documents were enclosed with the letter at Hearing. The WCB Website says I can't resubmit them.

REASON FOR APPEAL: Judge Khan said he has "no legal authority to rule" on all three of the issues I presented and there are **absolutely no exceptions**, even for catastrophic injury. He did not believe Interventional Pain Management is not an option. **There was no chance of my case being heard or resolved.** The judge was not disrespectful.

Mr. Gourley just used it as an opportunity to put into the record that I am "disparaging" CHUBB, and "Her primary issue is nefarious carrings on by the carrier," she "misconstrued" the issues, and to totally **trash my orthopedist**. Judge Khan told Mr. Gourley to go back and ask CHUBB if they will agree to continue the non-workers compensation neurologist Agreement. The next day Mr. Gourley called me and said **he knows CHUBB will NOT agree** to let me continue going to a non-workers comp neurologist. **Then he offered me a bad-faith settlement.**

The three unresolved issues are:

>CHUBB claims a hearing judge must tell them that they can continue their Agreement of 1987 that I can go to a non-workers compensation doctor for my Workers Compensation injury. They told me, **if he rules, they will comply.**

>Severe Autonomic Dysfunction is not covered by the Medical Treatment Guidelines Law. This condition is atypical, assaultive, unpredictable, and extremely complex, and **CANNOT BE CODIFIED**. It requires **URGENT** care and customized treatment for atypical and abnormal multi-system symptoms and exacerbations.

>The new Medication Formulary Portal is not considering the special needs of my severe autonomic dysfunction. They are **denying** my medications, **withholding** them for months, **cutting** the prescriptions in half, and **ignoring** the documentation of my physicians. I am receiving **no pain medications** for months at a time, even though my doctor is prescribing them. Due to this, my neurological condition is **extremely reactive**. Interventional Pain Management is **life threatening** for my autonomic dysfunction, so those doctors consistently **refuse to treat me**.

I had a remote hearing on 6-21-23 at which Judge Khan **was neither able nor willing to address the issues** for which the Hearing was convened. Therefore, I had **no chance** of having my petition heard, much less ruled on. I need a ruling on the issues in order to take them to the state Supreme Court if they are denied by Workers Compensation. Judge Khan scheduled a hearing for July 18 for Mr. Gourley, CHUBB'S attorney, to respond on the 1987 non-workers compensation neurologist **Agreement**. Judge Khan very clearly stated that **the July 18 hearing is only on the issue of a non-worker compensation neurologist**. I was told if I do not appeal his **lack of action** on the Medical Treatment Guidelines and Medication Formulary Portal issues, they will become Final. Therefore I am Appealing.

Judge Khan very clearly told me that he is **"unable to force" Chubb** Group of Insurance Companies to allow me to continue to go to a non-worker's compensation doctor as they had allowed by their own Agreement made in 1987 "because of the nature of my diagnosis," and honored by Chubb for 37 years, until my Neurologist Dr. Alan Mazurek retired. Judge Khan stated that it **is legal** for CHUBB to **allow** it, and that it is **"up to the discretion of CHUBB to permit me to continue"** going to a non-workers compensation doctor. He also said they can stop at any time they please and he can't do anything about it. I told Judge Khan that CHUBB has insisted for two years that they **can not** allow me to go to a non-workers comp doctor **unless a judge "orders them to do it."** Judge Khan said that Chubb knows very well that they can allow it and he doesn't know why they would tell me that a judge must decide.

Judge Khan told CHUBB's attorney to go back and ask CHUBB if they will **agree to continue allowing** me to go to a non-workers comp doctor. Mr. Gourley was told to return on July 18 with an answer. However, **Mr. Gourley called me on June 22 and told me that he had not spoken to CHUBB yet, but that he is "certain THEY WILL NOT ALLOW IT."** He also told me that **he was "NOT INTERESTED in the medical issues. I am only here for a settlement offer,"** when I tried to explain that recent cataract surgery on my eyes had discovered that **my corneas were torn in the fall at work on March 10, 1977**, and that my corneas are **scarred**. I wondered why CHUBB sent an attorney professing total indifference to the medical aspects of my case, when the stated purpose of this hearing was "Authorization for Medical Care."

Mr. Gourley asked the judge for my phone number saying, "This is a settlement case." He called me and said, "the most important term" is that 73% of the offer "or whatever is left when you **DIE, must be returned to CHUBB. CHUBB will never agree to any offer without that clause.**"

*[Note: Mr. Gourley is never to speak to me alone. He was a heartless bullying smart aleck. If CHUBB has a **legitimate, good faith** settlement offer, let them present it. Laurie Saldutti and Susan Clark told me on the first settlement CHUBB offered (2021): "**then you can go to the doctor of your choice.**" (A settlement should include allowance for the "full-time nurse," that a three-Judge BOARD Panel awarded on 3/2/2006 and Chubb consistently refused to comply)]*

In addition, Judge Khan told me that he is **unable to rule** on the second and third issue: **special needs consideration in the Medical Treatment Guidelines Law and in the Medication Formulary Portal.** He stated that they are **State laws, legislation, and he cannot rule on them.** He said Legislators won't help me because the law is "under the jurisdiction of WCB and "these are the rules." He said **there are No Exceptions.**

I went to my Senator, Congressman, Labor Department, Commissioner Joyner, Governor Hochul, President Biden, Human Rights, Civil Liberties, Department of Justice, NYS Legislature. The consensus is that these are State Law, Workers Compensation Legislation, and that a Hearing Judge **can "interpret"** them.

I AM BEING HELD TO A STANDARD by the Medical Treatment Guidelines Law and the Medication Formulary Portal **THAT IS INAPPROPRIATE FOR MY MEDICAL CONDITION.** These laws are for people who are **normal**, to implement procedures that expedite **fast recovery** and **return to work.** None of those conditions apply to my injury. I just want to get back to where I was when Dr. Mazurek retired: before Chubb terminated their Neurologist Agreement, before the Medication Portal started playing Russian Roulette with my medications.

I have Spinal Cord Injury with severet autonomic dysfunction and 11 related diagnoses: a **catastrophic injury** with "grave consequences" that is the result of **my spinal cord BLEEDING for 41/2 years after a fall at work, damaging the central, autonomic (parasympathetic and sympathetic) and peripheral nervous systems, the 5th cranial nerve and brain stem and tearing my corneas.** I am in excruciating pain 24/7, with **atypical and critical autonomic symptoms, responses, reactions and vitals.**

All I am asking is that **the documentation on my injury GUIDE the medical responses** in this case. **Severe autonomic dysfunction CANNOT BE CODIFIED. My symptoms, responses, reactions, vitals, are erratic, atypical, abnormal, and unpredictable.** The **urgent and critical** need of **medical response** to exacerbations of my autonomic dysfunction and it's **multi-system** symptoms does not allow for time delays for variances and state nurses (who are refusing medication for excruciating pain now.) (The **time frame** for a variance decision is 15 days. The carrier is allowed an IME within 30 days.) Dr. Mazurek stated, "**Exposure to practitioners unfamiliar with her condition. and the medical consequences, or to medications incompatible with her sensitivities, is life-threatening.**" (12-11-18)

The Medication Formulary Portal is ignoring the **special circumstances of my severe autonomic dysfunction: denying** my pain medications level after level on a regular basis, **cutting** my prescriptions in half, approving them **sporadically** or not at all, and attempting to make me take **different medications** or ones that I have reacted to. Judge Khan said the Portal **chooses** medications that are **effective**. The Portal is not validating **atypical** reactions and conditions. I have had over 30 very severe medication reactions, including multiple anaphylaxis, from treatment for this injury, and I have very severe stomach problems because of those reactions. **Changing my medication is not an option.** I react **atypically** to medication because of the autonomic dysfunction. I can react entirely the **opposite, or with response/reaction aberrations**. My throat swells closed. I lose consciousness. Also, according to department heads at three hospitals (St. Francis Hospital, Columbia Presbyterian Neurological Institute and Memorial Sloan Kettering), **"The most important factor in your case is to control the pain."** The constant intense pain stresses my immune system to overreact, causing inflammation and medical crises: intense spinal spasms break my bones and tear muscles.

I am told that the new Medication Guidelines require physicians to refer their patients to Pain Management for pain control. These practitioners all specialize in **INTERVENTIONAL techniques**: injections and procedures. **I can't take pain management procedures because of severe autonomic dysfunction. Responses and reactions can never be prepared for, anticipated or predicted, which makes every procedure a hazard, for me and for the physician, every time.** This is documented by pain management specialists, hospitals and anesthesiologists. These practitioners refuse to treat me. I have called and visited lists of them that Dr. Feder and WCB gave me. They tell me, "You are a giant red flag. I won't touch you." Judge Khan expressed unshakeable doubt that these doctors will not treat me.

I require oral medication: the prescriptions that I can take in the doses I can take, on a regular basis. From lists of Pain Management doctors, we have found none who gives oral medication. **"Her medications must be monitored and prescribed with extreme caution, and must always be Brand, dispensed as written, not generic." (4-27-2015, Dr. Mazurek)** It is only the medications that must go through the Portal that are being impacted: all of the pain medications. I am not getting donnatal at all and I am only getting enough dilaudid for emergencies, because I am forced to pay out of pocket. The lidoderm is being authorized by the Portal sporadically and denied at all levels. The baclofen, the Portal either denies or authorizes half of the prescription. My condition has deteriorated dramatically because of disruption of my medication. The Medication Portal is tying the hands of physicians who have been treating me for 30 years: who know my condition and what I can tolerate. Mr Gourley went into a litany of what my orthopedist was doing wrong on meds, **all of which he made up.** He kept saying "the carrier" was denying my meds because we "aren't following the rules." I thought the Portal denied them, not CHUBB.

Judge Khan kept repeating, "This is a 17-minute hearing." I had a 15-minute defense prepared, so he cut me off before I was finished saying CHUBB's attorney needs to talk. I protested that I

only had a few minutes left. He ended with, "This was a 17 minute hearing and we spent 41 minutes." Obviously, he was running in front of time frames that were unrealistic for a complicated case with complex issues.

After the hearing I reviewed the **Medical Treatment Guidelines FAQ on the WCB website**. Judge Khan was mistaken that there are "No Exceptions." There are notations on the WCB website of individual differences and special circumstances: **Emergencies**, and **Urgent**, unforeseeable, un-covered **circumstances**, and ADA compliance in **Programs and Services**. These apply to my case, and were not addressed by Judge Khan. **He believed that he could do nothing, so he did not try to resolve the special needs of my case.**

In 1977 multiple judges told me, **"YOUR CASE FALLS BETWEEN ALL THE CRACKS IN THE SYSTEM."** This hearing came **FULL CIRCLE**: it was 1977 all over again!

For people with a catastrophic injury, Workers Compensation is a CATCH 22. Workers comp doctors **don't want to treat** catastrophic injury. They say, "You are way over my head. Please get dressed and leave." CHUBB is **withholding** the non-workers compensation physician "Accommodation" they honored for 37 years. A Workers Comp claimant is **not allowed** to use private health insurance for an on the job injury. I cannot go to a physician for the work-related injury and **pay** him, because workers comp **won't honor his prescriptions** for medication, treatment, tests or medical equipment. It is a Catch 22!

For Chubb to send Mr. Gourley to communicate with me on legal strategies for me to die, but not for me to live, is abuse of power and harassment. Chubb **terminated** the medical Agreement that they made in 1987 on a non-workers comp neurologist **for no rational reason**, saying, **"Now that Dr. Mazurek retired you have to follow the rules."** "John Jaronsky is coming down hard on your case." Then they paid Susan Clark to write a defense of CHUBB'S decades-long application of Management's Neurologist Agreement. CHUBB told me for two years that I had to get a Hearing and **have a Judge rule** that they could continue the Agreement. **"Then we will comply."** Judge Khan says they delayed my treatment for two years knowingly. It was always at their discretion to continue: they were not being prevented by WCB. Their brutality is unfathomable! They say, "What someone told you verbally means nothing. You have nothing in writing." It was written down somewhere. Every person who touched my case for 37 years honored the agreement without question.

CHUBB is trying to force me into a **bad-faith settlement**. **Mr. Gourley called me and offered a settlement, closed on my side and open on theirs: I lose all of my legal rights pertinent to this injury for the rest of my life, but "anything that's left of the settlement when I die," "CHUBB gets it all back."** Mr. Gourley said the only settlements he will offer will be with the **CHUBB death clause**. CHUBB is confident that I will die of an autonomic storm before I regain the right to a non-workers comp neurologist. CHUBB is well aware of the hazards they are putting me under, informed by Dr Mazurek for decades.

By CHUBB stopping me from going to a qualified neurologist willing to treat me, and withholding my medications, they have caused me great harm. And, their actions guarantee that there is no recent documentation on the severe autonomic dysfunction. So Mr. Gourley declares, "She is quoting from an 8-year-old report by a doctor who is retired." CHUBB keeps telling me Dr. Mazurek's reports are not relevant anymore because he is retired. Dr. Mazurek's reports are 33 years of medical documentation for a permanent catastrophic on the job injury. Mr. Gourley declared: "She's only authorized for the head and back." **He can't dismiss diagnoses, with body parts! There are 12 diagnoses** from the spinal, head and neck trauma **that CHUBB has paid physicians to treat for 46 years.**

All I ask for is continuation of the reasonable "Accommodation" (Susan Clark 7-15-22) CHUBB afforded me based on the nature of, degree of my injury ("I am aware of Ms. Wagner's difficulty finding a physical therapist to treat her due to the severity of her condition and the fact that she loses consciousness during treatment," Nora Strobert 1-27-05,) that CHUBB honored for 37 years: for eleven years after the MTG Law passed. The Medical Treatment Guidelines Law and Medication Formulary are **not appropriate** for my case because of the **degree** and **extent of my injury, the severity** and **multisystem** nature of the autonomic dysfunction, and the **need for immediate urgent care** and the fact that my **autonomic dysfunction cannot be codified. I am being held to a standard that is inappropriate for my medical condition.** And Mr. Gourley is committing Age Discrimination on behalf of CHUBB.

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Enc. Letter to Chair Rodrieguez (11-1-22)

Enc. Fax 1-27-05 from Nora Strobert.

Enc. WCB Website statement on Reasonable Accommodation to Programs and Services for Disabled Individuals

The following are quotes from the WCB Website FAQ Page which reference **special circumstances**:

>"Are the Medical Treatment Guidelines mandatory for all work-related injuries or illnesses?"

"Use of the guidelines is mandatory for treatment rendered **for conditions for which there is a final effective medical treatment guideline.**"

>"Do the guidelines apply if the patient needs emergency treatment?"

"The medical treatment guidelines outline the best standard of care but cannot anticipate every emergency clinical scenario. Therefore, **if care is needed on an emergency/urgent basis, and is not covered in the medical treatment guidelines,** then the assumption is that the **most appropriate clinical care** will be rendered."

>"What should a healthcare provider do if they believe the patient needs treatment that is not consistent with the guidelines?"

"It is recognized there are legitimate reasons for exceptions to the Medical Treatment Guidelines:

Extend duration of treatment when a patient is continuing to show objective functional improvement.

Individual circumstances, such as other medical conditions, may delay an individual response to treatment, or make certain treatment appropriate.

Actual treatment is **not addressed by the guidelines**.

Peer-reviewed studies may provide evidence supporting new alternative treatments.

In such cases, the treating healthcare provider may submit a **variance PAR.**"

>"If the medical treatment guidelines clearly indicate that a certain procedure is not recommended, is a request for a variance appropriate?"

"Yes. The regulations state,"**When a treating healthcare provider determines that medical care that varies from the Guidelines, such as when a treatment procedure or test is not recommended by the Medical Treatment Guidelines, is appropriate for the patient, he/ she shall request of variance from the insurance carrier or special fund.** The healthcare provider must meet the Burden of Proof when seeking a variance."

>"Can a patient pay a healthcare provider for medical treatment that is not recommended in medical treatment guidelines?" **"No** patients cannot pay for medical treatment for workers, compensation, injuries, or illnesses."

>Orders of the Chair

"When an employer or its insurance carrier fails to timely approve or object to a request submitted by a claimant's treating health care provider for authorization for special medical services (including certain surgeries), or for treatment which varies from the Board's Medical Treatment Guidelines, the Board may issue an Order of the Chair approving the special services or variance. An Order of the Chair may not be appealed."