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MINUTES

WORKERS' COMPENSATION BOARD

STATE OF NEW YORK

Hearing Point: Garden City, New York

Date of Hearing: June 21, 2023

WENDY WAGNER Claimant

BABLEY PUBLISHING Employer Case No. 27709381
CORP.

FEDERAL INSURANCE Carrier
COMPANY CHUB GROUP OF
INSURANCE

HEARING BEFORE THE WORKERS' COMPENSATION BOARD

PRESENT: ARIF KHAN, WCL JUDGE

VIRTUAL HEARING AUDIO RECORDING

APPEARANCES:

Claimant present, Pro Se
D. Gourley, Esq., attorney for the employer and carrier

WITNESS

PAGE

1 (Off the record discussion)

2 CASE DULY CALLED

3 THE JUDGE: That was Ms. Wagner I believe the
4 claimant. Ms. Wagner, are you connected to the
5 hearing? I was getting your voicemail.

6 THE CLAIMANT: Yes.

7 THE JUDGE: Okay, very good. Hello, Mr.
8 Gourley.

9 MR. GOURLEY: Hello, Judge.

10 THE JUDGE: Okay, very good l, let's begin the
11 hearing. Ms. Wagner, if you would state your name for
12 the record.

13 THE CLAIMANT: My name is a Wendy Wagner.

14 MR. GOURLEY: And I am Declan Gourley from the
15 Lois Law Firm on behalf of the insurance carrier.

16 THE JUDGE: Okay, good morning everyone. Okay,
17 this case is for an accident occurring in 1977. It's
18 quite an old case. Um, what is the issue today in
19 this matter?

20 THE CLAIMANT: There are 3 issues. Um, the
21 first issue is that they are all about medical care.
22 The first issue is the continuation of a non Worker's
23 Compensation neurologist. The second one is that the
24 medical treatment guidelines, um, law doesn't cover

1 autonomic function. The third one is that the
2 medication formulary portal is not validating special
3 needs in catastrophic injuries.

4 THE JUDGE: One second. I'm reading your
5 letter to the Chair dated December 21 of 2022. One
6 second.

7 THE CLAIMANT: Right.

8 MR. GOURLEY: Judge, I do have things to say,
9 but I don't want to cut off your reading.

10 THE CLAIMANT: I would like to go through the
11 letter, um, with you if you don't mind.

12 THE JUDGE: Um, don't read it line for line.
13 Just if there is something that you would like to
14 highlight.

15 THE CLAIMANT: I'm not reading it line by line,
16 but there are certain excerpts.

17 THE JUDGE: Go ahead, certainly.

18 THE CLAIMANT: All right, um, first of all, um,
19 we all know that I was hurt in 1977 to the head and
20 the back. I had amnesia and a miscarriage. After 4
21 and a half years I was diagnosed at Columbia
22 Presbyterian Hospital and my spinal chord was still
23 bleeding and that was why I have such devastating
24 autonomic dysfunction. My, um, central nervous

1 system, and my autonomic nerve nervous system, and my
2 parasympathetic, and my sympathetic, and my peripheral
3 nervous systems, and the intercranial nerves, and
4 brain stem were all damaged and, um, the Worker's
5 Compensation gave me a permanent total, um, in, um, a
6 disability with medical for life and physical therapy
7 for life. Um, okay, the pertinent issue is that, um,
8 the medical treatment guidelines were never applied to
9 my case by the insurance companies. I was told
10 multiple times by Norris Strobber my claims examiner
11 that management had a meeting and decided that they
12 would not apply the medical treatment guidelines law
13 to my case because of the nature of my diagnosis. Um,
14 in 2018 Michelle Lopa, the claims supervisor, was
15 assigned to review my case because my location
16 changed. I was in a, um, Hotel because I lost my house
17 during Super Storm Sandy and I put in multiple visits
18 for Dr. Mazurek and that was why they changed it. So
19 Michelle Lopa was assigned to investigate and she came
20 back and she told me nothing would change and that
21 everything will go on as it has all along. And
22 Christine Guilt sent me a letter which said please
23 continue to submit your future receipts and medical
24 notes as you have been doing and that once we receive

1 and review we will reimburse you accordingly. So
2 since, um, 1987 Chub Group of insurance companies
3 honored an agreement they made with me that I could go
4 to a non Worker's Compensation neurologist for my
5 compensable injury. Um, and they honored that
6 agreement and that was until March 20 of 2021, um,
7 when Dr. Mazurek retired. Okay, um, now in 2021 I
8 told Tara Stero, who was my claims adjuster at that
9 time, that I was having trouble getting a doctor who
10 would treat me because Dr. Mazurek had retired and she
11 said to me you can go to a doctor as you have been all
12 along. She told me that she had other people that
13 were in the same situation. However, she went back
14 and told her supervisor and a Mr. Geransky, um, just
15 like danced all over my e. The next time I called Tara
16 she told me that, um, that Mr. Geransky was
17 investigating my case and that he was finding multiple
18 discrepancies and, um, they were paying me erroneously
19 from 1994 and, um, that he was going to take my case
20 to a hearing and all of these things. They, um, they
21 removed my 2 claims adjusters. The supervisor and the
22 adjuster and they kept accusing me about lying about
23 the agreement. That the agreement at first they said
24 the agreement never existed. And after that like

1 later on they said, well, you know, it doesn't matter
2 because it was not written down. All right, then Lori
3 Sedutti, who was the supervisor at that time of my
4 case, she told me that I must now follow the rules and
5 I must find a doctor within 2 weeks or they were going
6 to close my case. Um, so this is Susan Clark. Susan
7 Clark was now assigned as my claims adjuster, but she
8 was not really my claims adjuster. She was an
9 investigator and she spent weeks grilling me and
10 calling me up and grilling me and then she, um,
11 submitted a letter, um, which was basically a defense
12 of, of, um, Chub doing what they had done all those
13 years. And she said Chub can and did at their
14 discretion allow you to treat with a physician Dr.
15 Mazurek, who did not otherwise participate in Worker's
16 Compensation in New York. This was an accommodation
17 extended to you due to the difficulties that you had
18 in identifying a doctor 33 years ago and was honored
19 by Chub until Dr. Mazurek's retirement. All right,
20 now, I have a fax here from Norris Strober in 2005 to
21 Dr. Charles Fichello. It says I'm in receipt of your
22 report on Ms. Wagner. I'm aware of Ms. Wagner's
23 difficulties finding a physical therapist to treat her
24 due to the severity of her condition and the fact that

1 she loses consciousness during the treatment. I will
2 authorize physical therapy. All right.

3 MR. GOURLEY: Judge, if I may.

4 THE JUDGE: One second. Um, because, um, this
5 is quite an extensive record on this matter. Now, Ms.
6 Wagner, if I can just, um, streamline the issues, um,
7 that you would like to have me address. You would
8 like to have a continuation of the treatment, um, for
9 a non coded Worker's Compensation Board non coded
10 medical doctor, correct?

11 THE CLAIMANT: Yes.

12 THE JUDGE: Okay, what is the other wish, um,
13 you had mentioned about medications. You said that
14 the medication --

15 THE CLAIMANT: Yes.

16 THE JUDGE: Yes. Go ahead.

17 THE CLAIMANT: Yes. The portal is not giving
18 me my medications. They are specifically not giving
19 me anything with regard to the medications. I'm in
20 agony. I'm in agony 24/7.

21 THE JUDGE: Who is your pain management doctor?

22 THE CLAIMANT: Okay, that, that comes up later
23 in the letter. Do you want me to read that part now?

24 THE JUDGE: No. I'm just asking you. What is

1 the pain management doctor's name?

2 THE CLAIMANT: I don't have one. I don't have
3 one.

4 THE JUDGE: Okay.

5 THE CLAIMANT: I will get to that if you let me
6 continue.

7 THE JUDGE: Yes.

8 THE CLAIMANT: I'm not going to be much longer.

9 THE JUDGE: What is the third issue? I want to
10 have the issues in front of me.

11 THE CLAIMANT: The issue is that the medical
12 treatment guidelines don't pertain to catastrophic or
13 autonomic dysfunction and, um, Chub validated that
14 from 2014 on.

15 THE JUDGE: No. I understand that. I just
16 want to have the issues outlined.

17 THE CLAIMANT: Okay. So those are the 3
18 issues.

19 THE JUDGE: Okay, I will speak about the
20 medical issues and then move on and then Mr. Gourley
21 can go.

22 THE CLAIMANT: Can I just finish this part?
23 I'm almost to the medication. Okay, so since, um,
24 1987 Chub made special arrangements followed by every

1 Chub employee who touched my case for me to get
2 medical treatment because no neurologist or physical
3 therapist would treat me on the Worker's Compensation
4 due to the nature of my diagnosis and the consequent
5 symptoms, including the loss of consciousness. But
6 when Chub management learned that Mazurek retired they
7 suddenly disclaimed their Worker's Compensation
8 neurological agreement of 1987 and their medical
9 treatment guidelines law decision of 2014. Chub
10 withdrew both of their long term standing executive
11 decision insisting that it never happened. They have
12 no proof that I'm asking them to break a law. I have
13 been told by 2 supervisors at Chub insurance that, if
14 the Worker's Compensation Board hearing judge makes a
15 decision that my catastrophic injury is an exception
16 to the medical treatment guidelines law that, Chub
17 will abide by the Judge's decision. And I have a, um,
18 law here from the medical treatment guidelines law
19 that says body parts not covered by the guidelines.
20 How will injuries to parts of the body not covered by
21 the medical treatment guidelines be handled by
22 insurers. Work related injuries not covered by the
23 medical treatment guidelines will be handled as they
24 have been prior to the implementation of the medical

1 treatment guidelines. The provider should follow
2 their normal standard of care and the normal Board
3 rules and procedures. So my primary diagnosis is a
4 spinal chord injury with severe autonomic dysfunction.
5 It is a very viable catastrophic injury and my severe
6 autonomic dysfunction cannot be codified. My
7 symptoms, responses, and reactions, and vitals, are
8 erratic, and untypical, and abnormal, and
9 unpredictable. I also, in addition to requiring
10 continuing treatment, I require immediate urgent
11 treatment on an episode basis for severe exacerbation
12 of multiple diagnoses. I also go into autonomic
13 dysreflexia, which is life threatening and must be
14 treated on an urgent basis. My spinal chord was
15 injured on the job at C-2-3, T-7-8, and L-5, S-1. It
16 continued to hemorrhage for 4 and a half years. Um,
17 it effects my heart beat, and my breathing, and my
18 blood pressure, and my circulation, and my thermal
19 regulation, and my Immunol function, and my gastro
20 intentional and digestive function, and my level of
21 consciousness, and vision, and movement. The function
22 and response of every bodily system. All right, here
23 is the medication part. Due to autonomic dysfunction
24 I have an atypical exaggerated often reversed reaction

1 to most medications and anesthesia. I have been in
2 anaphylactic shock 3 times. I was told by a physician
3 at the Columbia Presbyterian Hospital Institute, and
4 Saint Francis Hospital, and at the Sloan Kettering
5 Institute, that the most important thing for my
6 condition is to control the pain. Just a minute. The
7 Worker's Compensation medication formulary portal
8 facility needs to validate my medical history.
9 Including response reactions and aberrations from
10 severe autonomic dysfunction. Presently the Worker's
11 Compensation medication portal is denying and delaying
12 and cutting in half my established prescribed
13 documented medications even when they are properly put
14 through the Worker's Compensation medication portal by
15 a certified Worker's Compensation provider. The
16 Worker's Compensation Board is giving me none of the
17 medications prescribed for pain. I'm paying for the
18 morphine myself for over a year. Dr. Mazurek's letter
19 to Chub on April 27, 2015, enclosed and delineated
20 specific medications that are proven to keep my
21 condition stable and keep me independent and
22 functional to the best of my ability. He said that.

23 THE JUDGE: One second, Ms. Wagner. I have to
24 stop you now because this is a 17 minute hearing and

1 we are 14 minutes into the hearing and I have to hear
2 what the carrier has to say as well. Mr. Gourley, um,
3 you have heard what Ms. Wagner said.

4 THE CLAIMANT: I'm not finished.

5 THE JUDGE: Yes. But I read your letter and I
6 get what the issues are here.

7 THE CLAIMANT: Can I just tell you what is not
8 in the letter? Can you just tell you something that
9 is not in the letter?

10 THE JUDGE: I have to give the carrier a chance
11 to respond. Let them respond and then we will see
12 what to do next. Mr. Gourley, you can go ahead.

13 THE CLAIMANT: I need to tell you this.

14 THE JUDGE: One second, Ms. Wagner. Mr.
15 Gourley, go ahead please.

16 MR. GOURLEY: Judge, I do sympathize with Ms.
17 Wagner. Obviously she had a very serious injury in
18 1977. Her primary issues are alluding to a
19 nefariousness being carried out by the carrier. But
20 it's just that it is a 46 year old claim and of course
21 adjusters have changed with regard to the claim. It's
22 not that the carrier changed the agreement, but that
23 the laws have changed over time. So in 2014 the
24 medical treatment guidelines came into effect and the

1 claim is established that I can see only for the head
2 and the back. I understand that there are other
3 issues, but the head and the back were the 2 primary
4 body parts established in this claim. She is treating
5 with doctors who are not submitting the proper
6 variances for treatment to the back. And as far as
7 the drug formulary, I guess the carrier has approved
8 some of the medications, but the doctors are not
9 submitting any documentation to the Board to
10 substantiate the medications.

11 THE CLAIMANT: That is not true.

12 THE JUDGE: One second, Ma'am, let him finish.
13 He did not interrupt you. Let him finish and then you
14 can tell us what you disagree with. Go ahead.

15 MR. GOURLEY: Judge, specifically with regards
16 to the formulary, there is a request for Lidoderm
17 Patches and Baclofen, which the carrier authorized a
18 partial fill. And very clearly I will note that the
19 doctor is not giving any reason why she needs to be
20 on, um, these chronic pain medications and if there is
21 any functional improvement. Again, she is referring
22 to a letter that was referring to a retired doctor
23 that was from 8 years ago. She needs to see a pain
24 management doctor and a neurologist that understand

1 the Worker's Compensation system and are submitting a
2 request to the Worker's Compensation Board system.
3 The carrier is not going to get in the way if it is
4 being done properly. But these new laws came into
5 effect in 2014 and now the formulary is not something
6 that can just be ignored because now this is a 1977
7 case. So, again, I just want to be clear that we are,
8 if the doctors submit what they are required to
9 submit, it will be processed properly. But they are
10 not going to circumvent the law because she is not
11 seeing doctors that understand the law apparently. I
12 don't understand what they are doing. They are not
13 submitting requests. Dr. Feder who she said is not
14 her pain management doctor and is no longer submitting
15 the pain managing medication requests. So I'm not
16 certain what is going on there.

17 THE JUDGE: Yes, Ma'am, you may continue now.
18 You had something else to add. Go ahead.

19 THE CLAIMANT: All right, um, I just have 2
20 more inserts from here and then I have something else.
21 Okay, Dr. Mazurek's letter says her medications must
22 be monitored and prescribed with extreme caution and
23 must always be brand and dispensed as written and not
24 generic. This is an extremely complicated case. The

1 case history includes an extensive list of medication
2 reactions and sensitivities. Okay, um, including
3 anaphylactic shock. All right, I must take all
4 medications, um, orally. That is pills. Okay, I
5 can't take injections with pain management procedures
6 because of severe autonomic dysfunction response and
7 reaction. Most pain management physicians are
8 interventional. They specialize in the injections and
9 procedures. So far it is impossible for myself and my
10 physicians to find a pain management physician who
11 prescribed oral medication. Because of the new
12 Worker's Compensation compensation rules I'm told that
13 doctors who do not specialize in pain management are
14 prevented from giving pain medications. There are
15 special circumstances in this case that are being
16 ignored and overruled. And I would like to say to the
17 gentlemen that just spoke that it is not true what you
18 said about Dr. Feder. He has given sometimes 3
19 different, um, responses to the medication formulary
20 and he keeps giving, um, medical necessity and they
21 just keep ignoring it. And, and this I would like to
22 say, the medication treatment guidelines law, which
23 was written to expedite normal peoples quick recovery
24 and return to work, but my injury is catastrophic and

1 not going away. Chub's arguments were based on the
2 notice, on the nature of my diagnosis. They decided
3 not to put the, the, medical treatment guidelines law
4 to me in 2014 over and over. The medical treatment
5 guidelines law does not cover autonomic dysfunction.
6 Autonomic dysfunction cannot be codified. I'm being
7 held to a standard that is inappropriate for my
8 condition and endangers me. Chub told me several
9 times that if a judge says that I can go to a non
10 Worker's Compensation doctor for the medical treatment
11 and that the guidelines is not appropriate for my case
12 that they will comply. And for as far as Dr. Feder
13 not putting in medication requests, he puts in
14 medication requests over and over ever time I go there
15 and he puts in documentation over and over and they
16 are ignoring it and he cannot understand. And I can't
17 go to an interventional pain management person because
18 they do injections and they do not do pills. I can't
19 with the autonomic dysfunction do that. I have been
20 to them and they tell me that they have no idea how my
21 system will react if they do different things to me.
22 So they can't do it. This is a special case.

23 THE JUDGE: Okay.

24 THE CLAIMANT: And chub has always handled it

1 as a special case.

2 THE JUDGE: When you sent the letter to the
3 Board, Ma'am, did you receive a response?

4 THE CLAIMANT: From the Board? No.

5 THE JUDGE: All right.

6 THE CLAIMANT: This is my response.

7 MR. GOURLEY: This is her response. The
8 hearing is, Judge.

9 THE JUDGE: Okay --

10 THE CLAIMANT: Why are you laughing?

11 MR. GOURLEY: I'm not. I'm saying that this is
12 the response.

13 THE CLAIMANT: It is not funny.

14 MR. GOURLEY: I'm not laughing at you. This
15 was their response to schedule the hearing I mean.

16 THE CLAIMANT: Right, but they did schedule a
17 hearing in January and cancelled it saying that they
18 were going to try to, um, do the issues at or without
19 a hearing. I was told that.

20 THE JUDGE: Okay, so this is, let me try to
21 address the issues as best that I can. Um, with
22 regard to the authorization, um, to see a non coded
23 Worker's Compensation Board doctor the carrier, um,
24 there is a statement in the letter that you read, or

1 in, or part of the statement where you mentioned the
2 carrier Chub had advised that it was at their
3 discretion, um, to, um, permit you to see Dr. Mazurek
4 even though he was not coded by the Worker's
5 Compensation Board or authorized and that is fine. I
6 mean the carrier would have the discretion to do that.
7 These are the rules regarding, um, the certifications
8 for medical providers and, um, the requirement that
9 they be coded or having permission by the Worker's
10 Compensation Board to see certain patients, um, those
11 patients involved in work related accidents or
12 injuries, um, or occupational diseases, but, um, they
13 can deviate from that if they want. I mean, the
14 carrier is free to do that. It is really within
15 their, um, discretion. But if they say look we are
16 not going to do that anymore and you have to comply
17 with the rules and see a coded doctor before we pay,
18 then I can't force them to do that. I mean that is
19 really something that is voluntary.

20 THE CLAIMANT: They told me you could.

21 THE JUDGE: They can decide internally, um, at
22 their discretion to pay bills from doctors that are
23 not coded. And they can decide to not do it at a
24 certain point. So I don't have the jurisdiction to

1 authorize or to make a direction to the carrier to
2 permit you to see a doctor who is not coded by the
3 Worker's Compensation Board. I don't have the
4 authority to do that. Um, so I can't do it.

5 THE CLAIMANT: They told me that you could.

6 THE JUDGE: No. No. I don't care what they
7 told you. That is not correct.

8 THE CLAIMANT: Chub told me.

9 THE JUDGE: If the carrier told you that it is
10 not correct. I cannot, um, do it. It is not, I would
11 not have a legal basis to make that direction because
12 we have, I mean, there are a number of specialties if
13 you go on our website, the Worker's Compensation Board
14 website, and you would be able to find, um, multiple
15 specialist, including in pain management. So I can't
16 make a direction for them to go ahead and, um, to pay
17 for bills which are from a non coded Worker's
18 Compensation Board doctor. I just can't do that. I
19 don't have the legal authority to do that. I mean, if
20 Mr. Gourley and his client want to go ahead and, um,
21 and permit, or to have such an arrangement, that is
22 something within their discretion. So that is the
23 first issue.

24 THE CLAIMANT: They did say that you can do

1 that.

2 THE JUDGE: But I'm telling you that I can't.
3 I don't know why they would tell you that. I can't
4 speak to that. But I can tell you that I can't make
5 that direction. If I did it would not have any legal
6 basis, um, because we have specialties that we have
7 identified in pain management. We have specialties.

8 THE CLAIMANT: They wont treat me. They wont
9 treat me.

10 THE JUDGE: But, Ma'am, I can't make that
11 direction. And I don't know how many specialties you
12 went to or why they refuse treatment, but there are
13 more than one. There is certainly more than one of
14 them.

15 THE CLAIMANT: I went to all of them. I went
16 to 75 physical therapist that would not treat me. I
17 went to a whole bunch of pain management people that
18 would not treat me and neurologist that would not
19 treat me. Chub made an agreement and that was in 2014
20 and they kept it all along and now they are saying the
21 only way that they will reinstate it is if the judge
22 says so. This is what they told me. Judge, that's
23 what Susan Clark told me. Lori Sedutti told me only
24 if the judge says that they have to do it will they do

1 it because they don't want to brake the law because
2 they seem to think that they are going to get into
3 trouble if they continue an agreement that they had
4 then.

5 THE JUDGE: Do you know anything about this, Mr.
6 Gourley, that if this is authorized that the carrier
7 will go ahead and pay for it?

8 MR. GOURLEY: I don't know anything about this,
9 Judge. I think it is more in terms of if the judge
10 authorizes something, but not necessarily this
11 specific instance. I do think that there are other
12 things in the letter that are being misconstrued and
13 Chub has no documents with regard to things like that.

14 THE CLAIMANT: No. No. No. Don't say that.
15 I waited 2 years for this hearing. Don't say that.
16 You bring Susan Clark in here and you bring Lori
17 Sedutti in here. They both told me that if the judge
18 says they are allowed to continue that agreement that
19 they would continue with it. They both told me that.
20 Don't, don't disrespect my condition. I waited 2
21 years for this hearing on this case. I'm in agony
22 24/7 and don't tell me that I can go ahead and get a
23 pain management doctor because they will not take me.

24 THE JUDGE: All right.

1 THE CLAIMANT: They will not take me.

2 THE JUDGE: This is really, I mean, this is,
3 these are catastrophic injuries and I can see it here.
4 I'm looking through the file. It is the neck and back
5 injury. I mean, um, I have --

6 THE CLAIMANT: It is had a spinal injury. It
7 is a spinal injury.

8 THE JUDGE: I have looked through the records
9 that you have attached in your letter to the Chair. I
10 mean, so these are serious injuries. Um, but you are
11 asking me to make an exception to the, um, the rule
12 that a patient or a claimant has to see, um, a coded
13 Worker's Compensation Board doctor. Now just keep in
14 mind that you can go ahead and see a doctor who is not
15 coded by the Worker's Compensation Board. The issue
16 comes in with regard to the payment. It's still
17 medical evidence. But when it comes to the payment
18 they may or may not pay the bill. So that is the
19 issue.

20 THE CLAIMANT: Can I just tell you something,
21 sir?

22 THE JUDGE: One second, Ma'am. We are way
23 beyond the time. When we allocate the hearings there
24 are, there is a certain time that is given to each

1 hearing. When I go beyond that time it goes into
2 another Claimant's case. So we are way beyond the
3 time allowance. So this is what I'm going to do in
4 this matter. I'm going to, um, let you confer with
5 your client Mr. Gourley, um, with regards to, um,
6 details or see what needs to be done for the claimant
7 to see a non coded Worker's Compensation Board doctor.
8 And, Ma'am, do you have the name of the doctor that
9 you had in mind?

10 THE CLAIMANT: Yes. I do.

11 THE JUDGE: What is the name of that doctor?

12 THE CLAIMANT: Her name is Barbara Allis
13 A-l-l-i-s.

14 THE JUDGE: And just keep into mind that this
15 doctor can also, um, go through our process of
16 becoming coded herself. So then it would not be an
17 issue. I mean, but that is something between you and
18 the doctor. That is something for the doctor as well.

19 THE CLAIMANT: Most of the doctors, a lot of
20 the doctors on the, on the list that you have won't
21 take me because they are not taking Worker's
22 Compensation Benefits anymore because of the new law.

23 THE JUDGE: No. Well, let me just, um, say
24 this, what I'm going to do, I will let the carrier's

1 attorney confer with his client, um, and see what is
2 their updated position on this to confirm because
3 there are a lot issues here, and there was a lot said
4 at the hearing today, and I want him to go back to his
5 client to bring that information to them to see what
6 their updated position is. Whether or not yes and
7 then we will go ahead and permit her to see Dr. Allis
8 or no. And then I will know what to do next. With
9 regard to the exception for catastrophic injuries,
10 there is no catastrophic injury exception to the
11 medical treatment guidelines. And as far as the
12 medication and formulary --

13 THE CLAIMANT: Well --

14 THE JUDGE: Let me address that. One second.
15 The formulary, um, that was enacted by the legislation
16 in April of 2017 and it required the Worker's
17 Compensation Board to establish a drug formulary.
18 Now, um, that is based upon the effectiveness and
19 inappropriateness for various medications. Um, but
20 there is --

21 THE CLAIMANT: For normal people. For normal
22 people.

23 THE JUDGE: No.

24 THE CLAIMANT: For normal people.

1 THE JUDGE: No. It doesn't give any exception
2 as far as I'm aware. Um --

3 THE CLAIMANT: No. I'm not normal, sir. I'm
4 not normal, sir.

5 THE JUDGE: What, this is my next question to
6 you, what medications are at issue?

7 THE CLAIMANT: The Dilaudid. I didn't get any
8 pain medication for 5 months. The Lidoderm is pain
9 medication and the Baclofen is pain medication. They
10 are cutting that in half and the Dilaudid I'm paying
11 for it myself. I have been paying for to for over a
12 year now. That is morphine. I'm getting no payment
13 for pain medication and I'm in agony 24/7. And I was
14 told that I could go to the Supreme Court if you deny
15 me here. And, and that's because I'm an exception to
16 this law. It says body parts not --

17 THE JUDGE: Do you have a lawyer, Ma'am?

18 THE CLAIMANT: No. I don't have a lawyer. I
19 have done my own case for 46 years and I got permanent
20 total for 46 years.

21 THE JUDGE: But a lot has changed since. The
22 laws have changed here and there are additions to the
23 law and we have the medical treatment guidelines,
24 which we did not have then. We have the drug

1 formulary which we did not have then and, um, maybe
2 you should think about getting a lawyer. There is no
3 charge if an attorney takes your case.

4 THE CLAIMANT: No, sir.

5 THE JUDGE: There is no charge to you. Only if
6 there is compensation. I know the case --

7 THE CLAIMANT: Of course there is a charge.
8 They take it out of your money. They take it out of
9 the Worker's Compensation money.

10 THE JUDGE: Let me speak to you, Ms. Wagner.
11 The Worker's Compensation Board's Law with regard to
12 hiring an attorney is that if there is not
13 compensation paid to you out of the case, then the
14 attorney is not paid. Now I know the stage of this
15 case right now and that the monetary part of it, um,
16 has long gone. And really now it is medical issues.
17 But you may find a Firm that may be willing to take
18 your case none the less. I have seen that before even
19 know though it is a medical issue and there is no
20 money going to the Firm. So you may want to look into
21 that because like I said, there, there are new issues
22 that exist now that did not exist in the past.

23 THE CLAIMANT: You are saying that the
24 medication formulary is legislative. I have gone to

1 the legislature and they will not deal with it. They
2 keep bouncing it back.

3 THE JUDGE: Because it is in the jurisdiction
4 of the Worker's Compensation Board. They are not
5 going to be able to authorize or make the Board
6 authorize the medication from the carrier. It is a
7 set of rules that has to be followed and administered
8 by the Worker's Compensation Board.

9 THE CLAIMANT: But I'm not normal and those
10 rules were made by the legislature for normal people.
11 I'm not normal. I have autonomic dysfunction, which
12 means if you give me a medication that I may react
13 totally opposite to it. If you give me an injection I
14 could go into a coma for a month. When I pass out I,
15 I pass out for 36 hours. I'm not normal and you are
16 treating me like I'm normal and saying that I have to
17 go by a medical formulary that is made by the
18 legislature for normal people. The medical treatment
19 guidelines law is made for normal people to get them
20 back to work to help them to recover. I'm never going
21 to recover. I'm 46 years in this and that has always
22 been in agony. And Chub has been, has been making
23 exceptions. In 2014 they made an exception. And for
24 11 years after the medical treatment guidelines law

1 they, they didn't use it on me. And now all of a
2 sudden because, um, because Dr. Mazurek retired they
3 are saying, oh, tough stuff lady, you just can't have
4 any care. It is not legal. They, they for 11 years
5 after the law was in effect they didn't use it on me.

6 THE JUDGE: One second.

7 THE CLAIMANT: There is no reason why a person
8 should have to suffer like I'm suffering.

9 THE JUDGE: What is the other medication?

10 THE CLAIMANT: I waited 2 years for this
11 hearing.

12 THE JUDGE: What is the medication that you are
13 paying for, Dilaudid?

14 THE CLAIMANT: Dilaudid. It is morphine. It
15 is morphine. I'm in agony and I'm getting no
16 medication. My bones brake, sir. My bones brake from
17 the spasms in my spinal chord. Don't tell me that I
18 have a back injury. I have a spinal chord injury and
19 the spasms in my back made my bones brake. My leg
20 broke in 4 places. I have a brace on both legs so
21 that they will not break. I have a brace on my hand
22 because I have it broken. My bones brake all of the
23 time from these spasms. I'm not normal and cannot go
24 to an interventional pain management person. They

1 tell me please get dressed and leave. You are way
2 over.

3 THE JUDGE: Who did you go to see so far that
4 was unable to treat you?

5 THE CLAIMANT: I went to a whole bunch of
6 people.

7 THE JUDGE: Who was that?

8 THE CLAIMANT: I went to the ones from when the
9 medical director called me. The medical director's
10 office called me and gave me a name and said this
11 person will treat you. And I said he already refused
12 to treat me. And then they gave me another one and I
13 said he already refused me to treat me too. And the
14 last one. The last pain management person I went to
15 said I have no idea how your body will react if I do
16 anything to you. So I will not touch you.

17 THE JUDGE: What are the names is what I'm
18 trying to ascertain from you which were not able to
19 treat your condition?

20 THE CLAIMANT: I don't have them on me right
21 now. But, um, um, I went to a lot of people on your
22 list and I went to a lot of people that are not on
23 your list. You know, they sent me a list of people
24 that, um, are, are, you know, you know, are Worker's

1 Compensation doctors. And also the other thing is
2 that they like because I have a spinal chord injury,
3 and I pass out, like I said, when I pass out I go out
4 for like 36 hours. Nobody wants to deal with that.
5 So, as I read to you, um, um, from my letter, it says
6 that she doesn't say, you know, oh, um, you could not
7 get a doctor. She says that we understand that the
8 degree of her injury --

9 THE JUDGE: All right, this is what we are
10 going to do here, Ma'am. We are going to come back on
11 July 18 and that will be at 10:00. That will be for
12 30 minutes. I'm giving more time to the case --

13 THE CLAIMANT: Okay.

14 THE JUDGE: -- than was given for today's
15 hearing. In the meantime, um, I'm going to direct the
16 carrier to investigate this with his client, um, to
17 see. Carrier's attorney to investigate this with his
18 client to see what their position is. Whether or not
19 they can authorize your visits with Dr. Barbara Allis.
20 I believe that is the Number 1 issue.

21 THE CLAIMANT: Okay.

22 THE JUDGE: And --

23 THE CLAIMANT: She is a specialist in spinal
24 chords.

1 THE JUDGE: For the medication, um, the, I
2 mean, if it is denied then, then we, let me just take
3 a look here, hold on one second.

4 THE CLAIMANT: Dr. Feder keeps putting in
5 letters.

6 THE JUDGE: One second. There were Lidoderm
7 Patches that were authorized in May. It was 5
8 percent. A 90 days supply. Um, that was by Dr.
9 Feder. One second. I mean, the medications have to
10 go through the portal. It is a new system. I mean,
11 it's, this is one of the changes.

12 THE CLAIMANT: It wont go through the portal.

13 THE JUDGE: It's not that it is denied for no
14 reason. When they deny they give a reason why.

15 THE CLAIMANT: Yes. The medical office called
16 me and this lady Ally called me the other day and she
17 said, oh, um, your Lidoderm was, and your Baclofen
18 was, um, approved in half. And they are cutting the
19 medication that they do approve in half. And that's
20 for the spasms. For the spasms in my spinal chord
21 that is breaking my bones.

22 THE JUDGE: One second. The Baclofen was also
23 authorized?

24 THE CLAIMANT: If half.

1 THE JUDGE: A 90 day supply. Hold on one
2 second.

3 THE CLAIMANT: Half.

4 MR. GOURLEY: Judge, in response, they are
5 telling the doctor what is missing with regard to the
6 document wise. I don't see that he is filing it in.

7 THE CLAIMANT: Listen, he keeps giving it. He
8 gives it sometimes 3 times a day and they just ignore
9 it. They just ignore it. He says what's wrong with
10 these people. They are just ignoring my
11 documentation. It's not true that he is not doing it.
12 You can say these things until you are blue in the
13 face, but it is not true. Do you think that I need to
14 sit here and beg you for medication.

15 THE JUDGE: One second. So this is the
16 procedure. When, and I'm telling you this because
17 these are the rules, Ma'am, I'm not making this up.
18 These are the rules and that's why I think that you
19 should try to get an attorney to represent you. It
20 would not harm you. And, um, for example, I'm looking
21 at the Baclofen, which was only granted in part. If
22 you disagree with that to have this reviewed you have
23 to file another request by May 31. It tells you that
24 on the notice. Right, either you or the physician.

1 And there is a procedure for that, um, to take it up
2 to the next level. So that was never done. So the
3 time is past to review that is what I'm saying. That
4 is with regards to the Baclofen. And, um, under the
5 Dilaudid, let's check to see what is going on with
6 that. I don't see the recent request for that.

7 THE CLAIMANT: It's not going through because
8 they will not give it to me until I pay for it.

9 THE JUDGE: No. No. No. Your doctor can,
10 Ma'am, your doctor can request it. Okay, and --

11 THE CLAIMANT: Dr. Feder is not allowed to give
12 it to me.

13 THE JUDGE: I don't know where you are getting
14 this information from. If he is pain management he is
15 permitted. There is no law that says that a doctor
16 cannot prescribe the medication.

17 THE CLAIMANT: He is not pain management. He
18 is an orthopedist.

19 THE JUDGE: Ma'am, a medical doctor can
20 prescribe to you the pain medication. All right, it
21 is either going to be denied or it is going to be
22 granted. There is no rule that says the doctor has to
23 be in pain management.

24 THE CLAIMANT: He is an orthopedists and an

1 orthopedist is not allowed. The orthopedist is not
2 allowed to.

3 THE JUDGE: The law does not prevent your
4 orthopedist from making a request for medication. He
5 or she may not want to do it because that is not their
6 specialty, but that is something else.

7 THE CLAIMANT: They said they are not allowed
8 to do it after 7 days.

9 THE JUDGE: That is a different issue. He may
10 or may not want to do it because that is not his
11 specialty. But they are permitted to make that
12 request even for oral, um, opioid medication, as
13 opposed to injections. You had mentioned that before.
14 Okay, but I don't have a request here. I can't just
15 authorize, um, narcotic medication, or opioid
16 medication, without a request. There has to be a
17 request made by a doctor. Whether or not by Dr. Feder
18 or by somebody else. Okay, so that's how that will
19 address the Dilaudid. But as far as the Baclofen,
20 part of it was authorized. Part of it was authorized
21 and if you disagreed with that, then there was a time
22 frame within which to have that reviewed. That time
23 has passed on this request. On another request just
24 keep a lookout for that is what I'm saying. The

1 Lidoderm Patches were authorized. So the only issue
2 that we have here on the medication is that there is
3 no request for the Dilaudid. There has to be a
4 request for that. It cannot be approached without
5 their being a request. There is not way around that.
6 Um, and the Baclofen, again, if it is partially
7 granted, then there is a date in which you have to,
8 um, seek review, um, of that. You or the doctor. Um,
9 so that is for the medication. But when we come back
10 we --

11 THE CLAIMANT: Can I ask you a question?

12 THE JUDGE: When we come back, Ma'am, and I
13 have to go after this statement, when we come back,
14 um, it is going to be on the update regarding the
15 medical provider Dr. Barbara Allis and, um, if there
16 is a new request for medications that has been
17 partially granted, or denied, um, and then we can see
18 if we can address that if it is within the time frame.
19 Okay?

20 THE CLAIMANT: Can I ask you something.

21 THE JUDGE: We have spent, we have spent 41
22 minutes on this case and I have to go now. I'm giving
23 you another hearing because I'm now in another cases's
24 time. Okay?

1 MR. GOURLEY: Judge --

2 THE JUDGE: So I have to go now. Mr. Gourley,
3 go ahead.

4 MR. GOURLEY: Can I just have the claimant's
5 phone number because I have a settlement, or I have
6 the authority to settle the case maybe. So if I can
7 just discuss it with her. Ms. Wagner, is your phone
8 number 908-456-2783?

9 THE CLAIMANT: Yes.

10 MR. GOURLEY: I will call you after the
11 hearing.

12 THE JUDGE: When we come back I'm hoping that
13 we may have some resolution on this. I'm bringing the
14 case back, okay, so we will see you back here.

15 THE CLAIMANT: Thank you.

16 THE JUDGE: We will see you back here again
17 and, um, you can speak to each other between now and
18 then and hopefully there is a positive resolution when
19 we come back. Okay?

20
21 MR. GOURLEY: Thank you, Judge.

22 THE CLAIMANT: Thank you. Thank you, sir.

23 THE JUDGE: All right.

24 THE CLAIMANT: Thank you, sir.

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THE JUDGE: Take care everyone and have a good day. Goodbye.

THE CLAIMANT: Thank you, sir.

THE JUDGE: Goodbye.

THE CLAIMANT: Thank you.

THE JUDGE: Okay, goodbye.

Date: September 14, 2023

Certified to be a complete transcription of the
Digital Audio Recording to the best of my belief and ability.

A handwritten signature in black ink that reads "John Pirrello". The signature is written in a cursive style with a large initial "J".

John Pirrello
Hearing Reporter