Appeal No. CV-24-2041

STATE OF NEW YORK SUPREME COURT
APPELLATE DIVISION THIRD DEPARTMENT

In the Matter of Wendy Wagner v. Bobley Publishing Corp. et al.

Wendy Wagner,
Appellant,

V

Chubb Group of Insurance Companies, Federal Insurance,
Respondent.

Workers' Compensation Board,
Respondent.

WCB No. 2770-9381

APPELLANT'S BRIEF

Wendy Wagner
2105 Manor
Massapequa, New York 11758
908-456-2783

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Questions Presented

Question 1. Will Chubb continue the Non-Workers' Compensation Physician Agreement Accommodation?

Answer 1. Chubb made a structured agreement with me because of the nature of my injury. That medical cause has not changed. Both parties honored the Agreement for 37 years. Susan Clark (Respondent) said in her letter (7-15-22) that Chubb made "an accommodation." Accommodation is a legal term in New York and cannot be taken away, except if there is a material change in circumstances. I have the right for Chubb to continue the non-Workers' Compensation Physician Agreement. Chubb admitted they made the Agreements as an accommodation.

Question 2. Will the NYS Medication Formulary Portal continue to validate my extensive history of medication reactions and the medication requirements of my diagnoses, despite Chubb's bad faith denials?

Answer 2. Chubb has denied every month all of my pain medications without cause, on Level One and Two of the Portal, claiming the doctor isn't documenting, when he is answering Chubb multiple times a day. Now the prescription is finally being allowed to escalate to Level Three, and the Medical Director's office is approving it, based on medical necessity.

Question 3. Will the Workers' Compensation Board make accommodation for my severe autonomic dysfunction and catastrophic injury?

Answer 3. The MTG is inappropriate to be used on my injury on multiple grounds. Chubb never did, for that reason. The neurological documentation and history must determine treatment for my severe autonomic dysfunction and catastrophic injury.

Question 4. Will the Workers' Compensation Board schedule a Hearing on the Medical Issues in this case?

Answer 4. Since Chubb did in their Rebuttals and in court specifically state their intention to deny current and future medications and treatment, it is imperative that the Workers' Compensation Board retain jurisdiction in this case and not walk away and let Chubb go rogue to satisfy their self-serving goals. It is documented that the magnitude of the causally-related neurological damage was caused by Chubb's rampant unwarranted denial of treatment in the initial 4 1/2 years of my injury.

Question 5. Accommodation, Equitable Remedy, or Settle?

Answer 5. Restore the non-Workers' Compensation Physician Reasonable Accommodation. Continue providing medications based on medical necessity and atypical conditions. Let the neurological history determine the medical treatment. The alternative is, to settle the case for an amount adequate for the medical care, not returnable to Chubb on death.

Statement of Facts

I believe that the verdict in this case has the right to review, because of errors in the law, because of the way the law was applied and because the proceedings were not fair. I was denied medical equity without a fair and unprejudiced Appeal process to present the medical arguments to an informed and impartial forum, because the initial law judge said he had no authority. His assumption made the core of my case mute going forward. Therefore, I am being held to a standard that is inappropriate for my condition.

My medical care, adjudicated for life by the Workmen's Compensation Board, presently and for the past two years is being progressively denied and eliminated by Chubb, causing extreme, critical deterioration of my medical condition. The new owners of Chubb Group of Insurance Companies (Ace Insurance) are using the Medical Treatment Guidelines Law and the NYS Medication Portal Law to facilitate medical maltreatment and force me out of the system. I am being held to a standard that is inappropriate for my condition, by new state guidelines and Chubb Group of Insurance Companies: a standard that is incompatible with my diagnoses, severe autonomic dysfunction, and my causally-related catastrophic injury, and puts me at extreme hazard.

Chubb is presently activating against me a law and a standard that Chubb validated in 2014 was inappropriate to be used in my case. In 2014 Chubb

management, through Nora Strobert (my Claims Adjuster for 30 years), proposed and implemented throughout their entire multi-state system, an Agreement not to use the new Medical Treatment Guidelines Law in my case “because of the nature of your injury.” Until March 2021, they never did.

Also, Chubb, from March of 2021, terminated a non-Workers' Compensation Physician Agreement that Chubb management initiated in 1987 because no Workers' Compensation neurologist would treat me, due to the nature of my injury and the degree of my disability. So, I am presently, and for the past 2 years, being denied neurological treatment for my compensable catastrophic injury: Spinal Cord Injury with Severe Autonomic Dysfunction. By their denial, Chubb is also blocking current neurological documentation, including for acute exacerbations of multiple critical diagnoses and severe autonomic reactions/responses.

The Agreement was initiated because Workers' Compensation neurologists tell me, ”Please get dressed and leave. You are way over my head.” Judge Khan said, “There is no such thing as doctors won't take you.” He is mistaken.[1]

On a snowy March 10, 1977, I was a 32-year-old editorial assistant at Bobley Publications: 12 days pregnant. Exiting the library, I slipped on ice on the tiled hallway floor brought in from outside by workmen using the water cooler. I

[1] “People with disabilities have a shorter average life expectancy. Discriminatory medical decisions are a key factor … Only 56% of physicians strongly agreed that they welcomed patients with disabilities into their practice,” Health Inequities, 9-14-23, Office of Civil Rights, Office of the Secretary, HHS.

landed eight feet down the hall when the back of my head hit a steel file cabinet, tearing my corneas and causing amnesia.

I sustained spinal cord injury at C2-3, T7-8, and L5-S1. In 1981, testing at Columbia Presbyterian Neurological Institute in Manhattan that included Myelogram, determined that my spinal cord was still bleeding. My Central, Autonomic (Sympathetic and Parasympathetic) and Peripheral nervous systems were damaged. I was diagnosed with Spinal Cord Injury with Severe Autonomic Dysfunction. The fifth cranial nerve and brainstem were damaged. Spinal fluid pressure caused papilledema, resulting in visual loss. My condition was inoperable. The neurologist, Dr. Gamboa, told me that she would never deal with Workers' Compensation. It took me ten years to find a neurologist who would treat me. He was not a Workers' Compensation physician.

Laurie Saldutti, Susan Clark (Claims supervisors), and Tara Segro (claims adjuster) at Chubb told me that Chubb is terminating the non-Workers' Compensation Physician Agreement and holding me to the Medical Treatment Guidelines Law because my neurologist of 33 years retired. They said it was triggered by new management, John Jaronski and his team, “coming down “ on my file and finding “many discrepancies.” They told me that, “now that Dr. Mazurek retired, you must follow the rules. You must obey the law.” The non-Workers' Compensation Physician Agreement was made with me, not a doctor. It was

honored by Chubb for 37 years, throughout their multi-state network. Now Susan Clark tells me it is ”illegal” for them to do it and that Workers' Compensation is ”preventing” Chubb from continuing.

Mr. Gourley (Chubb’s lawyer) claimed they ended the Medical Treatment Guidelines Law Agreement because, “The laws changed. The Carrier didn’t change” (WCB Hearing on June 21, 2023). This Is incorrect. Chubb’s Anti-Medical Treatment Guidelines Law Decision by management was honored in good faith throughout Chubb’s Corporation for eleven years after the law passed.

Chubb supervisors (Saldutti, Clark) told me repeatedly to take the issue to a Hearing. And, “If the judge says we can allow you to go to a non-Workers' Compensation doctor, then We Will Comply.”

I filed for a Hearing for three medical issues to be resolved:

1. Chubb claims a Hearing judge must tell them they can continue their Agreement that I can go to a non-Workers' Compensation neurologist for my Workers' Compensation injury. Supervisors told me repeatedly, “If a judge tells us to, We Will Comply.”
2. Severe autonomic dysfunction is not covered by the Medical Treatment Guidelines law and autonomic dysfunction can never be codified. I am asking that the neurological documentation on my injury determine the medical responses and treatment.
3. The NYS Medication Formulary Portal must validate the special needs of my severe autonomic dysfunction, history of reactions and sensitivities, and causally-related catastrophic injury, pertinent to medications, for safety.

The Law Judge at the initial Hearing on June 21, 2023 prejudiced the process by ruling that he has no authority to rule on the issues relating to the new

laws, the Medical Treatment Guidelines Law and the New York State Medication Formulary Portal. Judge Khan ruled that these are state legislation that everyone must comply with. He stated that there are no exceptions, even for catastrophic injury. Thus, there was no due process in the Appeal process, because the medical issues, which are the core of my case, were not considered. The Appeal process only considered the narrow issue of the non-Workers' Compensation Physician Agreement. The medical issues were ignored and left in limbo in the Appeal process, enabling Chubb to deny and block medical care and medications going forward. Mr Gourley affirmed that intent repeatedly in his Rebuttals.

Fact 1. I have been denied due process and medical equity by errors that caused the Workers' Compensation process to refuse to consider the medical arguments in my Appeals.

Fact 2. My medical care, adjudicated for life by WCB, is being progressively denied, blocked and eliminated by Chubb, causing very critical deterioration of my condition affecting heartbeat, breathing, degree of pain, vision, thermoregulation, blood pressure, circulation, level of consciousness, mobility, hearing, immune, lymph, gastrointestinal and digestion: the function and response of every bodily system.

Fact 3. I am being held to a standard that is inappropriate for my condition by Chubb and new state guidelines that are incompatible with my catastrophic injury and causally-related diagnoses.

Fact 4. An accommodation can only legally be taken away if there is a material change in circumstances or for an undue hardship to the company.

Points of Argument

Point 1. There are errors in the law.
Point 2. I am being held to a standard that is inappropriate for my condition.
Point 3. There are errors in the way the law was applied.
Point 4. The proceedings were not fair.
Point 5. I was denied due process.

Point 1. There are Errors in the Law.

Bias in the Law

I believe that the verdict in this case has the right to review, because there are errors in the law. There is an inherent bias toward my case in the Medical Treatment Guidelines Law both procedurally and medically.

The legal standard is antithetical to my injury. The medical standard of treatment is contrary to and impossible to be applied to the realities of my injury. Also, my injury is not covered by the Medical Treatment Guidelines, which Judge Khan and Mr, Gourley both pointed out. So Chubb and Workers' Compensation are requiring me to comply with a statute that they admit does not cover my compensable injury. That is irrational and inequitable.

Medical Treatment Guidelines Procedure

The Procedural Standard of the Medical Treatment Guidelines law is: presumption of improvement, treatment dictated by a standard of care determined by New York State legislators, re-evaluation every 3 weeks, change the diagnosis or treatment if there is no objective improvement, recovery, return to work.[2]

[2] Medical Treatment Guidelines Overview, https://www.wcb.ny.gov/content/main/hcpp/MedicalTreatmentGuidelines/MTGOverview.jsp.

Legal Standard

Before Dr. Mazurek retired and Chubb started denying my medications and treatment, my condition was stable. However, improvement, recovery and return to work are not realities for my injury, since that was confirmed by Dr. Kadandale Shetty (neurologist) in 1980. I am being held to a standard that is impossible for me to meet. I am told by pain management if they don't report improvement, pain medications are denied. My doctors are being forced to evaluate and report on my condition using rules and codes that are incompatible with my injury. I am being judged by incongruous norms and pushed to conform to irreconcilable demands and inevitable failure.

Medical Treatment Guidelines Standard of Treatment

The Medical Treatment Guidelines law is implemented through treatment dictated by a standard of coded medical care for the most commonly claimed body parts, on injuries that are able to be coded. Objective improvement, expeditious recovery and return to work are expected.

I was adjudicated by NYS Workers' Compensation as permanent total injury to the head, neck, and back after extensive medical testing. I was diagnosed with spinal cord injury with severe autonomic dysfunction. My condition was reported inoperable and permanent: with damage to the central, autonomic (parasympathetic and sympathetic) and peripheral nervous systems, the 5th cranial nerve and

brainstem. There are 12 causally-related diagnoses. This is a catastrophic injury that affects every system in my body.[3]

Inherent Bias: Falling through the Cracks

There is an inherent bias in the Medical Treatment Guidelines Law against my diagnoses and injury. It prejudges and discriminates against the nature of my work-related injury: the extent, severity, multisystem nature and life-threatening[4] potential of autonomic dysfunction and catastrophic injury, the degree of my disability and even the adjudicated classification of permanent total. The MTG requires Improvement, Recovery and Return to work.

Judge Khan at Hearing and Mr Gourley in his Rebuttals said that the Medical Treatment Guidelines Law does not cover autonomic dysfunction, special needs, or catastrophic injury. Therefore, it is illogical to compel me to comply with a law that does not cover me, which Chubb validated from 2010 until 2021. It is abusive to force years of litigation to attempt to twist my injury into a system of compulsory state regulations that I can never meet, and that are hazardous to my medical condition. I need a neurologist who is expert in severe autonomic damage and who is willing to treat me.

[3] Alan Mazurek, M.D. Annual Medical Report, 12-11-2018, Record on Appeal, p. 26.
[4] Mazurek Report to Drysdale 12-19-17, p. 3, Record on Appeal, p. 21.

Severe Autonomic dysfunction is damage to the autonomic nervous system from trauma. “The extent of dysfunction is dependent on the degree of autonomic damage or which pathways are involved.”[5] It is life-threatening. “In the acute phase, the autonomic imbalance and its effect on cardiovascular, respiratory system and temperature regulation may be life-threatening.”[6]

By its very nature, autonomic dysfunction is atypical, erratic, and antithetical, reactions, responses, and vitals: it can never fit into a coded system. Symptoms, exacerbations, reactions and responses are abnormal and cannot be predicted or anticipated, ever! It is multifaceted and multisystemic. It requires continuing treatment, and immediate, urgent treatment on an episodic basis for severe exacerbations from multiple causally-related diagnoses.

You Are Way Over my Head

When I go to doctors, they tell me, ”You are way over my head. Please get dressed and leave.” My compensable condition is beyond the scope of the Medical Treatment Guidelines. Years ago a WCB judge told me, “Your case falls between every crack in the system.” I am being held to a law that is incompatible with the medical facts. Workers' Compensation is twisting my case to fit a standard I cannot

[5] Trauma: Handbook of Clinical Neurology, 110, Neurological Rehabilitation, ed Michael P. Barnes, David C. Good, Elsevier B.V., p. 126, 2013.
[6] Autonomic Dysfunction in Spinal Cord Injury: Clinical Presentation of Symptoms and Signs. Ann-Katrin Karlsson, p. 149, Progress in Brain Research: Autonomic Dysfunction After Spinal Cord Injury, ed. L.C. Weaver, C. Polosa, 2006 Elsevier B.V.

meet. Chubb is using bogus denials to force me out of the Workers' Compensation system. My medical condition has deteriorated dramatically since Chubb started chipping away at my medical care in March 2021. I was told by Judge Khan to follow the rules, or pay for my own medical care. But the Workers' Compensation website says it is illegal for me to pay a doctor. Workers' Compensation is holding me to the MTG law by saying they have no authority not to hold me to it. There are no exceptions, not even for catastrophic injuries. And if you cannot comply, your medical care adjudicated for life for your causally-related diagnoses is gone. Workers' Compensation Judges terminated the Appeal process by refusing to conduct a Full Board Review on my case, and left me at extreme hazard.

The Hearing Process Failed

The current Hearing process failed to see the cracks, because it didn't want to. There was no time. Seventeen minutes were allotted for a 47-year-old case. The judge kept reminding me. He said he read my letter, he understands the issue. Mr. Gourley declared my only issue is the “egregious carryings on of the Carrier.” There was no legal process, only the dictum: “no authority.” There was no due process. I had the minimal right for all three issues to be discussed. There was only the prejudice of the Law, prejudgment and misconception by the judge and unbridled disrespect by the carrier’s attorney.

Workers' Compensation validates the program, the rules, standardization, categorization. It expedites recovery, return to work, getting on with it. Aberrations hold up the line. The Hearing process failed!

Body Parts Not Included Clause

There used to be a clause in the Medical Treatment Guidelines law called "Body Parts not Included"[7], that cited conditions not covered. It said that if your condition is not covered by the MTG law, implement the treatment that you were using all along. The clause was removed and replaced in 2022. But it illustrates that the legislature validated that exceptions do exist.

MTG Methods for Treatment Do Not Work

The methods available to a physician under the Medical Treatment Guidelines law to obtain appropriate alternate medical care for his patient when medically warranted are limited, faulted by their specifications and enable the carrier to unparalleled abuse.

Chubb Abuse of Prior Authorization, Misrepresents Denials

Prior authorization is a request by the injured worker's physician to obtain prior approval from the carrier for treatment, durable medical equipment or

[7] Letter to Laurie Saldutti 6-8-2021 on the "Body Parts Not Included" clause to the Medical Treatment Guidelines Law, Record on Appeal, p. 249.

non-formulary medications. The requests are submitted through a Portal. Level One and Two of the Portal seek approval from the carrier. This is an uncontrolled mechanism for the carrier to abuse, intimidate and harass the claimant and his physician, with continuous unjustifiable denials. Level Three goes to the Medical Director's office and approval is granted or denied based on medical necessity.

Chubb has used the NYS Portal to deny all of my pain medications on Level One and Level Two on a regular basis. This means the pain prescription is sent back to the doctor, re-submitted within a set number of days, once, then a second time, after the second denial by Chubb. This is a consistent pattern Chubb has followed. The prescription is ultimately being approved by the Medical Directors Office at Level 3 on medical necessity. But, this convoluted path by Chubb meant that I was without one or all pain medication for 16 days each month. These are the exact same medications Chubb has regularly paid for decades.

At the Hearing, Mr. Gourley said I was getting my medications. This was untrue, and he knew it. I got no pain medicine for months at a time. The judge accepted his word because I received one-half of a Baclofen prescription and one Lidoderm prescription in the last several months. Mr. Gourley claimed I was not taking Dilaudid and did not request it. Actually, I sent Chubb bills to reimburse me because I had no doctor authorized to put it into the portal.

Chubb refused to pay for the Dilaudid. My son paid $1,000 for Dilaudid, that is Chubb's responsibility. Chubb continued to deny pain medications until the medical director consistently overrode them and I filed an Appellate Appeal.

Variance

When medical care differs from the MTGs, the physician can request an alternate treatment, by filing a variance with the insurance carrier. The Carrier has 15 days to respond. Autonomic symptoms and exacerbations must be treated immediately, urgently, in order to relieve the symptoms, minimize the damage, control the attack, to stabilize and avoid escalation. A variance is not an option for a claimant with a hyperactive autonomic system, severe hemorrhagic damage, in an exacerbation, an escalating pain attack, an autonomic storm, an extremely low heartbeat, or intracranial pressure to blindness. Mr. Gourley reiterates in Rebuttal that if my doctor requests a Variance Chubb will "challenge" it.

IME

When the carrier chooses to object to the physician's request for a Variance, they have the right to request an independent medical evaluation by a doctor of the carrier's choosing. The purpose of this examination is to provide a medical opinion that can be used to reduce, deny or terminate Workers' Compensation benefits. The Carrier has 30 days to request an Independent Medical Examination. This is not an

option for a claimant with severe autonomic dysfunction and urgent exacerbations from multiple causally-related diagnoses and enables the carrier to gross maltreatment. It, like the Variance, is a rule that disqualifies my injury from the Medical Treatment Guidelines. IME consultants are instructed by the carrier to deny the medical request. They actually show me those letters from Chubb. Also, unless he is an autonomic dysfunction specialist, he is not qualified to examine this injury. Mr. Gourley's Rebuttals predetermine all Variances with IMEs.

Chubb Validated that My Diagnoses Exceed the System

Each of the above requirements of the Medical Treatment Guidelines conflict with this injury and my neurological history. Chubb validated that fact in 2014 when Nora Strobert informed me Chubb management would not use the Medical Treatment Guidelines law on my case because of the nature of my injury. They never did, for 11 years after the law went into effect: not until Ace Insurance purchased Chubb, singled out my case and cut off my neurological care. When managed care came to Workers' Compensation, Nora called and told me Chubb would not use it on my case. In 2018 Christine Dilts, a new case manager, questioned reimbursement for Dr. Mazurek. Michele Lopa (supervisor) was assigned by the main office after I spoke to Wendy Strober,[8] to investigate Chubb's non-Workers' Compensation Agreement. She called me (3-2018) and said,

[8] Letter to Wendy Strober, 1-26-2018, Record on Appeal p. 246.

"Nothing will change. Everything will go on as it has been all along." She instructed Christine Dilts to pay the bills and to send me written notice that the Agreement would continue.[9]

Point 2. I am Being Held to a Standard Inappropriate for my Condition.

I believe that the verdict in this case has the right to review, because I am being held to a standard that is inappropriate for my condition. It is inappropriate because of the degree and extent of my catastrophic injury, the severity and multisystem nature of the Autonomic Dysfunction, the extremely atypical nature of my condition, the need for immediate urgent care, and the fact that my Autonomic Dysfunction cannot be codified.

Standardized, Categorized, Coded

The Medical Treatment Guidelines regulates a system of standardized medical care based on coding medical conditions and dictating treatment protocol based on available medical evidence and consensus, to offer the most cost-effective and expeditious treatment options for treatment of the most frequently claimed work-related injuries. The Medical Treatment Guidelines diagnostic and procedural

[9] "As a follow up to the conversation you had with my supervisor, Michelle Lopa… We have your total reimbursement request for Dr. Mazurek at $2,350. Full reimbursement for those office visits was issued 1/26/2018…. Please continue to submit your future receipts and medical notes as you have been doing. Once we receive and review, we will reimburse you accordingly.", Christine Dilts letter 2-2-2018, Record on Appeal p 247.

coding involves standardization, categorizing, norms, regulations, rigid requirements, which promotes medical bias, and mistreatment, negligent care and medical error of chronic and critical conditions and medical aberrations.

Responses/Reactions can Never be Anticipated

Autonomic dysfunction is atypical, unpredictable, erratic, contradictory, multi-systemic.[10] It involves abnormal responses/reactions and exacerbations. Reactions can never be anticipated. Exacerbations require immediate, urgent care.[11] Critical vitals can be disastrous. It will never fit the norm and cannot be categorized. It is reckless and dangerous to try. Dr. Mazurek noted,

"Exposure to practitioners unfamiliar with her condition and the medical consequences, or to medications incompatible with her sensitivities, is life-threatening." [12]

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[10] "The extent of dysfunction is dependent on the degree of autonomic damage or which pathways are involved...", p.126; "The autonomic nervous system has cranio-sacral parasympathetic and thoraco-lumbar sympathetic pathways and supplies every organ in the body" (Janig and McLachlan, 2002, p. 64), Handbook of Clinical Neurology 110, Neurological Rehabilitation, ed Michael Barnes, David Good, Elsevier BV, 2013.

[11] "Autonomic hyperactivity is a syndrome characterized by excessive activation of the sympathetic system, either in isolation or in association with the parasympathetic system. This syndrome can be a prominent and life-threatening manifestation of a wide range of disorders affecting the central or peripheral nervous systems.", p. 170, "Excessive parasympathetic activation may elicit bradyarrhythmia and syncope.", p. 181, "Patients with autonomic hyperactivity should be managed in the intensive care unit, as they require continuous monitoring of cardiac rhythm, blood pressure, respiration and fluid balance. General principles of management include adequate hydration to maintain an euvolemic state, effective treatment of pain, exclusion of infection, and early recognition and elimination of the triggering stimuli." p. 182, Autonomic Neurology, Eduardo E. Benarroch, 2014.

[12] Mazurek Report to Dilts 12-11-2018. Record on Appeal, p. 28.

Chubb initiated medical Agreements in my case because of the degree of my injury and to correct an incongruity they recognized between the system and my injury.

Improvement, Recovery, Return to Work

The Medical Treatment Guidelines Law was designed for people who are normal, to implement procedures that expedite objective improvement, fast recovery and expeditious return to work. It mandates improvement. Treatment and outcome are dictated. None of those conditions apply to my injury. I am adjudicated permanent total disability based on medical facts. Improvement, recovery and return to work are requirements I cannot meet. Continually trying to make me comply with standards I cannot satisfy is unwise, abusive, and prejudicial. Every claimant in Workers' Compensation has the right to be respected, despite their injury, and not to be forced into categories they cannot fit into or standards they can never meet. By Workers' Compensation insisting I can comply with a law and a standard that is diametrically opposed to my medical reality, it enables Chubb to negligently deny me critical medical treatment.

Point 3. There are Errors in the Way the Law was Applied.

The Judge Decided not to Decide

I believe that the verdict in this case has the right to review, because there are errors in the way the law was applied. The application of the law was faulted. The law judge used his authority to decide not to decide on all three issues. I read my statement. He said he read my letter and understands the issues, but he has no authority on all three issues. There was no discussion or deliberation. Judge Khan believed that he had no authority to rule on an issue involving the Medical Treatment Guidelines law and the New York State Medication Formulary Portal. He stated these are inflexible New York State Legislation and that everyone must comply. There are no exceptions, “not even for catastrophic injury.” He said I can follow the rules or pay for my own medical care. Because of his belief in his inability to apply the law, he refused to make a decision on all three issues in my case. Critical medical issues became moot. Judge Khan’s decision not to decide, predetermined and changed the outcome of the case. My three Appeals were not considered, except to affirm on the narrow issue of the non-Workers' Compensation Agreement that he made no procedural error. Throughout the Appeals there was no due process, because there was no process. Judge Khan

effectively enabled Chubb and disenfranchised[13] me from adjudicated medical care.

Judge's Incorrect Premise: Exceptions really are Validated

Judge Khan based his decisions on the Medical Treatment Guidelines law and the NYS Medication Formulary Portal on an incorrect premise. He stated that they are New York State legislation that everyone must follow, there are no exceptions, even for catastrophic injuries. The ADA, The Rehabilitation act of 1973, Section 504 (Workers' Compensation has received Federal Funds) and the Workers' Compensation Website FAQ Page disagree.

The FAQ Page addresses uncovered injuries, exceptions, special circumstances, and alternate treatment. It states that the Medical Treatment Guidelines is "only mandatory if there is a final effective medical treatment guideline" for the condition. Emergency care is validated and can be rendered outside the MTG. It says, "It is recognized that there are legitimate reasons for exceptions to the Medical Treatment Guidelines ." Individual circumstances may make alternate treatment appropriate.[14] There was error in applying the law at my Hearing on June 21, 2023 based on misinformation and an incorrect premise.

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[13] "Disenfranchisement may be accomplished explicitly by law or implicitly through requirements applied in a discriminatory fashion, through intimidation, or by placing unreasonable requirements…" Disfranchisement. (2024, November 24). In Wikipedia. https://en.wikipedia.org/wiki/Disfranchisement

[14] WCB Website FAQ in Appeal, 7-5-23, p.6, Record on Appeal p. 351 to 353.

Representatives of the New York State Department of Labor told me, “The legislators did not write this legislation to cut off lifetime medical care.” They told me that the Medical Treatment Guidelines law is interpreted by the Workers' Compensation law judge when appropriate. They said I needed to get a Hearing.

Judge Khan Focused on Legal Issues

The Workers' Compensation Hearing was scheduled specifically to resolve medical issues. But the judge focused on the legal issues. And those he addressed by not addressing them. He said he had no legal authority to make a decision on the Medical Treatment Guidelines or the Medication Formulary Law because they are state laws everyone must follow, no exceptions. But every single agency I went to before filing for a hearing told me that I had to take it to a Workers' Compensation Law Judge. He must rule. They said the NYS Workers' Compensation Board alone is responsible for administering the State's Workers' Compensation Law.

Judge Nullified the case’s Medical Issues

Judge Khan’s premise on the legal issues cut off access to deliberation on the medical issues that are the core of my case, like severe autonomic dysfunction, catastrophic injury, special needs in medication, medical inappropriateness of the Medical Treatment Guidelines for this injury, and medical cause in the

non-Workers' Compensation Physician's Agreement. The entire Case was nullified. My Appeals had no voice all the way down the line, because the Appeals judges did not consider anything except the voluntariness of the non-Workers' Compensation Physician's Agreement. My suffering was disrespected.

Focusing on legal issues, both Judge Khan (and Mr. Gourley in his Rebuttals) kept hammering that autonomic dysfunction, special needs, and catastrophic injury are not covered by the Medical Treatment Guidelines Law. Mr. Gourley repeatedly reiterated that because they are not covered, Chubb will not pay for anything involving those issues. After 47 years! Those issues are my injury: why the Medical Treatment Guidelines are inappropriate, why I need special needs in the New York State Medication Formulary Portal.

Chubb Made Agreements for Medical Cause

Judge Khan ruled on the legality of the non-Workers' Compensation Physician Agreement as a permissible by law, but voluntary agreement. He said Chubb could take it away at will. Chubb supervisors told me in 2022 that it was "illegal," Workers' Compensation was "preventing" them from continuing and I couldn't prove they ever did it. I was "confused."

Both the 1987 non-Workers' Compensation Physician Agreement and the 2014 Decision by Management on the Medical Treatment Guidelines law were

decided on and initiated by Chubb management, for medical cause. That medical cause still exists! In 2014 Nora Strobert (my claims adjuster) said that the Medical Treatment Guidelines Decision was made after management had a meeting on my case. They decided not to use the Medical Treatment Guidelines law in my case (they never had) due to the nature of my injury. Chubb honored their decision for 11 years after the MTG was passed, until new management singled out my case.

Chubb Formal Agreement with Specific Terms

The 1987 non-Workers' Compensation Physician Agreement was a structured Agreement with specific terms, initiated by Chubb for medical cause (Nora Strobert fax),[15] because no neurologist would treat me on Workers' Compensation and because of the nature of my injury. The Agreement was made with me, not with a physician.. It was implemented multi-state through adjusters, billers, service providers, banks and the U.S. Postal Service, for 37 years. All the doctor did was treat me and document my condition. The terms were: I was allowed to be treated by a non-Workers' Compensation physician for my Workers' Compensation injury. I would pay him and Chubb would reimburse me by return mail after I sent the receipt and a narrative report on the visit. I sent a

[15] "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 fax to Charles Fiscella, Record on Appeal, p. 354.

comprehensive Yearly Report updating my condition. Chubb would honor his prescriptions for treatment, tests, medications, and durable medical equipment.

Chubb said, "We Will Comply."

Judge Khan did not address the intent, legal structure or medical cause of the non-Workers' Compensation Physician Agreement. Chubb continued the Agreement for 37 years after management initiated it, because no Workers' Compensation neurologist would treat my catastrophic injury within the system due to the nature of my injury. Chubb validated an incongruity between the system and my injury. Chubb held me to structured terms and met specific terms on their end. There was never any incongruity. We had a formal agreement. Michelle Lopa (Supervisor) called me in 2018 and said, "Everything will continue as it has all along." She followed up that call with instructions to Christine Dilts (my claims adjuster) to confirm, in writing.[16] Michelle continued to supervise my case until 2021. (I told Chubb to ask Michelle about her confirmation of the Agreement. Chubb claimed she no longer works there. But she is still listed as employed at Chubb.) In 2021, Susan Clark was imported to "investigate" the case, and replaced my claims adjuster and her supervisor. She only read my file from 1995 forward. She said I couldn't prove the Agreement was ever written down and that verbal agreements are not legal. I requested the Hearing specifically because she and

[16] Christine Dilts letter, 2-2-2018, Record on Appeal, p. 247.

several Chubb supervisors told me to get a hearing and if the judge says they can continue the non-Workers' Compensation Physician Agreement, “We will comply.”

In New York State, Verbal Agreement Is Legal

In New York State, a verbal agreement made by an insurance company is legally enforceable.[17] I believe that Judge Khan should have considered the circumstances under which Chubb made the non-Workers' Compensation Physician Agreement and their commitment to me that they expected him to rule on it, and made a decision on continuance of the Agreement. It is crucial for my medical safety.

In New York State, Accommodation is a legal term

Judge Khan only addressed the legality of the non-Workers' Compensation physician Agreement. He did not validate that Chubb supervisors (Saldutti, Clark) specifically told me to take it to a Hearing and, “If the judge says we can, We Will Comply.” He said it is legal for Chubb to allow me to go to a non-Workers' Compensation physician, but it is voluntary. He could not force them. If they told me he could, they knew it was untrue when they said it. Susan Clark wrote that it

[17] “The Court in Nygren V Greater NY Mutual Insurance Co (26) August 5, 2024 articulated the majority view that, ‘in general, oral agreements so long as they comply with the requirements for a contract, are legally enforceable. …Oral contracts in New York are equally as valid as written ones…’” Oral Contracts in New York: How Valid are “Handshake” Agreements. https://nysba.org/oral-contracts-in-new-york-how-valid-are-handshake-agreements/.

was illegal, so they never would have done it. She said I was confused, that I misunderstood. She said I can't prove it was written down. Finally, she admitted in her letter that Chubb did it as "an Accommodation."[18]

Chubb Provided Reasonable Accommodation

I had the minimal right to have the fact that the non-Workers' Compensation physician Agreement was a formal agreement with specified terms considered in the initial Hearing. Susan Clark made a statement on the non-Workers' Compensation Agreement in her letter, that Mr. Gourley submitted instead of seeking reconsideration from Chubb as he was instructed to do.

"Chubb can and did at their discretion allow you to treat with a physician, Dr. Mazurek, who did not otherwise participate in Workers' Compensation in New York. This was an accommodation extended to you due to the difficulty you had identifying a doctor 33 years ago and was honored by Chubb until Dr. Mazurek's retirement."[19]

Accommodation is a legal term in New York State. This includes accommodations to programs and services for disabled individuals in policies, practices, procedures, rules, and guidelines that allow people with disabilities to access healthcare services and facilities equally.[20] In addition, the ADA prohibits

[18] Clark letter 7-15-22, Record on Appeal, p. 31 to 33.
[19] Clark letter 7-15-22, Record on Appeal, p. 31 to 33.
[20] Reasonable Accommodation and Disability Rights under the NYS Human Rights Law, https://dhr.ny.gov/system/files/documents/2022/05/nysdhr-disability-rights-handbook-073020.pdf

discrimination in medical services.[21] And, an accommodation made to an individual cannot be taken away without cause. An accommodation can only legally be taken away if there is "a material change in circumstances or for an undue hardship to the company."[22] Otherwise, it is a violation of disability laws like the ADA. Judge Khan did not consider the non-Workers' Compensation Physicians Agreement on the basis of an Accommodation, and that was an error. It violated the Claimant's right to equitable consideration and enabled the Carrier.

Mr. Gourley Shreds Future Medical Care

Because the Judge focused on the legal issues, there was no due process for severe autonomic dysfunction, special needs and catastrophic injury. Mr. Gourley shredded my adjudicated medical care, misrepresenting my condition and my doctors, claiming the right to future gross denials of treatment for Chubb,[23] for

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[21] "Health care providers are required to make reasonable modifications (or changes) to policies, practices, and procedures to provide equal access to facilities and services to people with disabilities. The term 'reasonable modification' is a broad concept that covers every type of disability. https://adata.org/factsheet/health-care-and-ada and "Title II of the Americans with Disabilities Act (ADA) prohibits discrimination on the basis of disability in, among other areas, all health care and social services programs and activities of State and local government entities. OCR also enforces section 1557 (section 1557) of the Patient Protection and Affordable Care Act (ACA), which prohibits discrimination on various bases including disability in any health program or activity, any part of which receives Federal financial assistance, including credits, subsidies, or contract of insurance or under any program or activity that is administered by an Executive Agency or any entity established under Title I of the ACA." https://www.federalregister.gov/documents/2023/09/14/2023-19149/discrimination-on-the-basis-of-disability-in-health-and-human-service-programs-or-activities.

[22] "Enforcement Guidance on Reasonable Accommodation and Undue Hardship under the ADA," U.S. Equal Employment Opportunity Commission; Isabell v John Crane Ic30 F. Supp. 3d 725, 734 (N.D. 11.2014).

[23] Gourley, Rebuttals, Record On Appeal, p. 411, 413, 416-17, 424, 426-28, 445, 447-50.

autonomic dysfunction, special needs and catastrophic injury and for Variances. The Appeals' judges did not even notice, because Judge Khan made medical care a non-issue on Appeal by his inaction.

Process Prejudiced Against Catastrophic Injury

This Workers' Compensation judicial process was fraught with prejudice, bias, and discrimination. The Medical Treatment Guidelines Law categorizes medical conditions and treatment, stereotypes[24] injured workers, judges based on the norm and rigid standards of progress and recovery, and discriminates against and penalizes those who don't conform. It does not give the catastrophically injured worker a safe and viable alternative. The law compels compliance. The MTG discriminates against my injury because I am different and can never meet its standards. The Workers' Compensation process discriminated against my case and disrespected my suffering, because I cannot conform to their new law.

Chubb for 37 years validated that the system was contraindicated for my injury. But in March 2021 Chubb new management withdrew the reasonable accommodation Chubb had provided because of the nature of my injury. Judge Khan misunderstood their provision of reasonable accommodation for a voluntary

[24] "Stereotypes about the value and quality of the lives of people with disabilities have led to discriminatory medical decisions in both the provision and denial of medical treatment." Federal Register, Discrimination on the basis of Disability in Health and Human Service Programs or Activities, 9-14-24, OCR, Office of the Secretary, HHS.

arrangement, because new management presented it to him as such. And so he ruled that Chubb could withdraw the non-Workers' Compensation Physician Agreement, when it was actually a Reasonable Accommodation that they cannot legally take back.

Judge Khan prejudiced the Appeal process by deciding not to decide on the core medical issues of the case, based on his faulted belief that he had no authority. He addressed only his legal impotence, because he believed that he could not rule on State legislation, the Medical Treatment Guidelines Law or the NYS Medication Formulary Portal. But his belief put a stamp on my case that prevented the Appeal Judges from looking at or considering the medical issues all the way to a Full Board Hearing Denial. Judge Khan's prejudgment prejudiced the procedural equity of all of my Appeals. There was no due process.

The constant intentional reinvention of facts pertinent to the Agreements, medications, my injuries, my doctors, by Mr. Gourley, unchallenged by Workers' Compensation, prejudiced the Hearing and Appeal process with inaccuracy. It required the judges to make decisions based not on fact but on prejudicial carrier manipulation. When I tried to object to his lies, I was told it was not my turn. The MTG places the burden of proof on the claimant, but I was silenced.

Judge Khan Predetermined the Outcome

The focus of my Hearing Request and three Appeals was the medical issues. These were not discussed by the law judge at Hearing due to his premise about his legal authority. So, the core purpose of the Hearing was not considered on Appeal. The actions of Judge Khan at the initial Hearing pre-determined the outcome of this case. My Appeals never had a chance. Because he did not rule on the medical issues that the Hearing was scheduled to resolve, Judge Khan made my case null and void on the issues going forward. So, the request for a Full Board Review was refused. The Appeal judges considered only ”the narrow issue of the non-Workers' Compensation neurologist” even though my Appeals were on medical issues. The Appeal Judges ruled that Judge Khan made no legal error ruling on the issue of the non-Workers' Compensation Agreement, in his Decision that he had no authority to force Chubb to comply with their long-standing Agreement. My case was thrown back unresolved. There was no due process, due to incorrect assumptions.

Because Judge Khan Specified Exclusions

Because the judge specifically stated that the Medical Treatment Guidelines does not cover catastrophic injuries and autonomic dysfunction, Mr. Gourley.stated repeatedly that Chubb will not pay for catastrophic injury, autonomic dysfunction and special needs, even though Chubb has done so for 47 years.

"The claimant asserts the carrier should be directed to cover treatment for severe autonomic dysfunction, which is not covered by the MTGs, and that she has been diagnosed with 12 different conditions, treatment of which must be covered. Additionally the carrier is denying requests for various medications, as the medication formulary portal does not consider the special needs of severe autonomic dysfunction."[25]

The unfair and bigoted Hearing and Appeal process enabled Chubb to further flagrantly deny the extent and seriousness of my injury, to reinvent my medical condition, to predetermine my medical care in their Rebuttals, to deny my medical care recklessly at the will of Chubb retroactively, today and going forward, for compensable injury and diagnoses, and to continue acting in bad faith.

Point 4. The Legal Proceedings Were Not Fair.

I believe that the verdict in this case has the right to review, because the proceedings were not fair.

1. I was Held to a Standard that I Cannot Meet

I cannot meet the procedural and medical standards of the Medical Treatment Guidelines Law due to the nature of my injury. The autonomic damage impacts every system in my body. Response /reactions are abnormal and unpredictable. Exacerbations require urgent treatment. The law has an inherent bias to my injury. It is impossible for me to comply. The complexity of the medical

[25] NYS WCB Notice of Decision dated 3-19-2024, p. 3, Record on Appeal p. 433.

issues was far beyond what the judge understood, even though Dr. Mazurek's reports were included with my Hearing application letter. Judge Khan is holding me to a law with regulations and standards that I cannot meet. Through the entire Appeal process, the aberrations of my injury were nullified because of the initial ruling. The critical issues were not even given cursory consideration.

2. Held to a Law that Does Not Cover my Condition

The court is holding me to a law that does not even cover my causally-related diagnoses. Judge Khan said that the Medical Treatment Guidelines do not cover autonomic dysfunction and catastrophic injury. However, he said I am not exempt from the law. I can follow the rules or pay for my own medical care. Mr. Gourley derided the twelve compensable, documented, diagnoses.

3. Held to a Law Counter to my WCB Classification

The entire premise of the Medical Treatment Guidelines Law is improvement, recovery, and return to work. It does not cover chronic conditions. I was classified by the Workers' Compensation Board as Permanent Total Injury. My WCB classification sets me apart from the intention of this law. But the intention of the Hearing Judge was to ignore the implications of my classification. My injury was not considered on its adjudicated reality, and that harmed the Decision.

4. Judge Faulted Premise on the MTG Law

Judge Khan had a faulted premise about the Medical Treatment Guidelines Law: it was inflexible, no exceptions, he could not interpret it and he had no authority. He made his rulings based on his faulted premise. My medical issues were disrespected, because the eyes of justice were clouded with misconception.

5. Judge Khan Decided Not To Decide

The judge said he had no authority to rule on the MTGs or the NYS Medication Formulary Portal. So, he decided not to decide. His inaction cut off the process. It took away my right to challenge being held to a law that is inappropriate for me to be held to on medical grounds. There was no due process.

6. Judge Predetermined the Outcome of the case

Because the judge had a faulty premise on the law, believed he had no authority and decided not to decide, the Appeal decisions all the way down the line were altered. The medical issues had no chance of being heard on Appeal because the law judge only ruled on the narrow issue of the non-Workers' Compensation Physician Agreement. The procedure became review and affirmation instead of review and deliberation. Errors at the initial Hearing predetermined the outcome of the case, changed the final ruling and condemned my medical care going forward.

7. The Hearing Process Enabled Chubb

The proceedings were not fair because Chubb repeatedly acted in bad faith, denied injury they paid for for almost half a century, and threatened my medical. No judge challenged Chubb. Chubb used the Hearing process to reinvent my medical history, redefine my medical care, deny diagnoses, predetermine future treatment denials and to pick and choose what they want to pay for or reject. No judge objected. Mr. Gourley wrote in his Rebuttals and stated in court that Chubb will not pay for my diagnoses, even for Medications in the NYS Portal. I am worse off after the Hearing process than I was before, because the process and judicial inaction enabled Chubb to further abuse me, deny and cut my medical care.

8. Chubb Had No Intention of Trying the Case

Chubb sent a lawyer who had no intention of trying this case. Mr. Gourley told me that he had no interest in the medical issues. He told the judge that "This is a settlement case." and asked him for my phone number. The next day, Mr. Gourley called me and when I tried to explain that my corneas were torn in the accident, he said, "I am not interested in the medical issues. I am only here for a settlement offer." I was told by Chubb to get a Hearing judge's decision and they would continue the non-Workers' Compensation Physician Agreement.

9. Chubb Was Not Held To The Letter Of The Law

Judge Khan told Mr. Gourley to go back to the carrier and ask them to reconsider continuing the non-Workers' Compensation Physician Agreement. He postponed the Hearing to accommodate Gourley. The next day Mr. Gourley called me and said he was not going to call Chubb: they will not continue the Agreement. He knew that when he agreed to reconsider. At the next Hearing, he presented a letter from Susan Clark defending Chubb and refusing to continue the Agreement. It was blatantly clear that Mr. Gourley had not followed instruction on reconsideration, because the letter was written one year ago. Mr. Gourley was not sanctioned for knowingly misleading the court about his intentions. I have been held to the letter of the law in all proceedings, rules and regulations. But Chubb was not. Carrier preference prejudices the WCB process and destroys equity.

10. The Judge Was Adamant

The judge was rigid. He would not open his mind to divergent possibilities. This made the proceeding extremely prejudicial. When I said something that was not in his field of experience, he shot me down. He would not believe that I could not go to interventional pain management, that doctors refuse to treat me, or that Chubb denied my medication for months. He said there are many doctors and

specialties on the Workers' Compensation Website. Follow the rules or pay for your own medical care. Legislatures made the rules. Comply with the law.

11. Judge Khan Was Not Aware

Judge Khan was very sure that he had no authority to make a decision in my case. But, he did not know that he can interpret the Medical Treatment Guidelines Law, according to the Labor Department. And he was not aware of all of the exceptions to the law on the Workers' Compensation Website. And, he and Mr. Gourley kept telling me that I could go to any doctor I want, as long as I pay him. What they both failed to say was that the NYS Workers' Compensation website clearly states[26] that,

"if treatment is not within the MTG's and a variance is not obtained, the treatment may not be provided at no charge by the doctor, nor can the patient receive it and pay privately outside the WCB system."

Workers' Compensation is a Catch-22. They wonder why claimants commit suicide.

Point 5. I Was Denied Due Process.

I believe that the verdict in this case has the right to review, because I was denied due process. I was denied access to due process in the Workers' Compensation Hearing system because Judge Khan's initial decision that he could

[26] WCB Website in my 7-5-2023 Appeal p. 6, Record on Appeal p. 351 to 353.

not decide was all that the Appeals court validated, on all three issues. My voice was muted. Every single agency that I went to for help outside of Workers' Compensation before the hearing told me the issues can only be decided by a Workers' Compensation Law Judge. And the Workers' Compensation Board administers the Workers' Compensation law. But, the Hearing and Appeals process, on the medical issues of my Workers' Compensation Hearing request, were faulted and nonexistent.

I Had No Recourse

Being in Workers' Compensation was never medically appropriate for my catastrophic injury. The system never provided physicians willing to treat the degree of my injury. But that fact was buried in extended medical denials and frivolous litigation by Chubb in the first 8 years after the fall at Bobley Publications. Living with a dire medical injury, rampant carrier abuse and physician discrimination in the early years of my injury, I researched the Fourteenth Amendment Equal Protection Clause of the United States Constitution. I was told that Workers' Compensation claimants could use this amendment in the past. But, Workers' Compensation was now exempt from it. I had no recourse.

Chubb Validated I Didn't Belong In The System

Eventually, Chubb validated that my injury was significant, and in 1987 proposed a formal Agreement to me, to allow me to receive treatment by a qualified non-Workers' Compensation neurologist for my Workers' Compensation injury. When Managed Care came to Workers' Compensation, Nora Strober told me Chubb was not going to use it on my case because of the way my case was adjudicated. In 2014 Nora Strobert told me that Chubb management had decided they would not use the new Medical Treatment Guidelines Law on my case because of the nature of my injury. For 33 years, Dr. Mazurek treated me. I paid him. Chubb reimbursed me. Chubb repeatedly validated that my injury was beyond the system with Reasonable Accommodation Chubb honored until March 2021.

Ace Buys Chubb. Cuts My Medical Care

Now Chubb is withdrawing the Agreements without cause, although the medical cause still exists. Mr. Gourley says Chubb will not pay for autonomic dysfunction, special needs, and catastrophic injury. Chubb is, after 47 years, picking and choosing what they want to pay for. Mr. Gourley said at the Hearing, "The carrier did not change. The laws changed." Not true. Chubb did not hold me to the MTG for 11 years after it passed. The only thing that changed was that Ace Insurance bought Chubb. That does not affect Reasonable Accommodation.

Conclusion

NYS Cannot Pass A Law to Take Away Lifetime Medical

A state cannot pass a law to take away medical care that was adjudicated for life. Workers' Compensation cannot decide not to decide and leave me at the mercy of a cut-throat carrier that (it is documented) created the degree of my injury by denying me medical care for 4 1/2 years while my spinal cord was bleeding.

The Workers' Compensation court spoke years ago when they adjudicated my case as Permanent Total Injury. While Workers' Compensation may be exempt from the 14th Amendment of the U.S. Constitution, New York State passed an Equal Protection Amendment to its Constitution on November 5, 2024. (Article 1, Section 11 of the New York Constitution). It provides for equal protection because of disability from discrimination,

"by any other person or by any firm, corporation, or institution, or by the state or any agency or subdivision of the state."

Finally, Section 504 of the Rehabilitation Act of 1973 was updated in 2024 to ensure "medical treatment decisions are not based on negative biases or stereotypes about individuals with disabilities."[27]

[27]"Final Rule advances equity and bolsters protections for people with disabilities under Section 504 of the Rehabilitation Act" https://www.hhs.gov/about/news/2024/05/01/hhs-finalizes-rule-strengthening-protections-against-disability-discrimination.html

Fit for Decision. Hardship to the Claimant.

Mr. Gourley claims the issues are not ripe, while he manipulates the truth about Chubb's medication compliance, the degree of causally-related injury and the reasonable accommodation. Because of this, the Three Judge Panel said that the issues, except the non-Workers' Compensation Physician Agreement, are "not ripe for review." (Notice of Decision, June 26, 2023, page 5).

After 47 years of coverage, Chubb, under new management, is disclaiming compensable responsibility for autonomic dysfunction, catastrophic injury and the causally-related diagnoses, denying medical care. Medical experts authenticate the exceptional and rare nature of this injury, and reiterate that it is life-threatening. For 37 years, the medical issues in this case have been laid out in scrupulous detail in the record and outlined in my Appeals. Fitness for Review and Decision is developed. Constant current denials are ongoing, causing dire neurological deterioration. Hardship and harm to the Claimant is ongoing. The issues are ripe.

Lack of decision by the legal authority, the Workers' Compensation Board, for continuing causeless denials, and for threatening predetermined future denials of medication, diagnoses, treatment and doctors, is empowering Chubb. Chubb controls due process by manipulating the facts, makes a mockery of Workers' Compensation adjudications, and denies the claimant medical care because of the

nature of her compensable injury. Throwing this case unresolved back to Chubb, is unconscionable and abandons equity.

An Equitable Remedy

I am being denied medical protection equal to that which all normal Workers' Compensation claimants under the Medical Treatment Guidelines system are assured, because of the nature of my injury. Chubb is hiding behind the MTG law, claiming doctors are not complying, when doctors are doing so multiple times a day. Medications are being denied and blocked each month by Chubb without legitimate cause. Chubb is disavowing 33 years of neurological documentation, minimizing and reinventing my injury. Workers' Compensation is enabling Chubb by not challenging obvious misrepresentations and obstruction. Meanwhile, the claimant is suffering horrific pain and collateral damage.

Documentation Determine Medical Responses

I request that the neurological documentation and history of my injury determine the medical responses and treatment. Autonomic dysfunction progresses, if untreated. When you get to the final stage, you Die, from autonomic failure or

autonomic dysreflexia.[28] That is my reality. Chubb was informed for 33 years of the life-threatening nature of my diagnoses.

"A person has a depraved indifference to human life when that person has an utter disregard for the value of human life - a willingness to act, not because he or she means to cause grievous harm (to the person who is injured), but because he or she simply does not care whether or not grievous harm will result."[29]

Continue Non-Workers' Compensation Neurologist

I request a non-Workers' Compensation neurologist who is qualified to treat severe autonomic dysfunction and is willing to take my case, as Chubb admitted was an Accommodation they afforded me for 33 years. A reasonable accommodation provided for medical cause, cannot legally be withdrawn unless that medical cause is eliminated. I request that Chubb cease harassing me and my doctors because of the nature of my injury and the degree of my disability.

Due to Chubb's disregard for and dismissal of the medical facts and cautions of the critical nature of my condition, and Mr. Gourley's three Rebuttals that denial of future treatment is predetermined by Chubb,

"The claimant can choose any provider that she wishes… the treatment serving from these providers will be denied… The carrier would obtain an Independent Medical Examination to determine whether the variance is medically necessary."[30]

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[28] "Autonomic dysreflexia refers to episodes of massive hyperactivity triggered by reflex stimuli below the level of the lesion in patients with cervical or thoracic SCI," p. 179, Autonomic Neurology, ed. Eduardo E. Benarroch, 2014.
[29] Assault in the First Degree (Depraved Indifference), https://www.nycourts.gov/judges/cji/2-PenalLaw/120/120-10%283%29.pdf
[30]Gourley Rebuttal, 5-16-2024, Record on Appeal, p. 449.

Chubb going forward constitutes a continuing grave danger to my medical welfare.

Chubb: Treatment Denials or Settlement

Mr. Gourley told Judge Khan that this is a settlement case. That is why Chubb is suddenly summarily denying my medical care: to force me to settle on their terms. Mr. Gourley's Rebuttals cite one example after another of how Chubb will block future medical care. But the settlement Mr. Gourley proposed in a phone call the day after the Hearing grossly misrepresented future medical expenses and the nature of my injury. It dramatically minimizes treatment, tests, medications, oxygen, durable medical equipment, physical therapy, and hospitalizations. And, it ignores the 24-hour nurse that three Workers' Compensation law judges awarded me 15 years ago, that Chubb has consistently refused to provide, even though Workers' Compensation called them three times and told them they must comply. Mr. Gourley told me that Chubb will never make a settlement unless the settlement balance is returned to Chubb on my death, which Chubb told me is age 84. However, in New York State, Workers' Compensation terms of a Workers' Compensation settlement are whatever both parties mutually agree upon. If the settlement is closed, final and not revocable on my side, then it is closed, final, and not revocable on Chubb's side. That Is Equitable!

For the reasons stipulated herein, I respectfully request that this court reverse the determination of the Workers' Compensation Board denying this case a Full Board Review. The Appeal judges stated that they only considered the “narrow issue” of whether Judge Khan made a mistake in his ruling on a “voluntary agreement.” The 1987 Agreement was a Reasonable Accommodation, not permitted to be terminated unless there is “a material change.”

Accordingly, I request a partial review of the 7-21-2023 Decision of Judge Khan, only on the non-Workers Compensation Neurologist Reasonable Accommodation Agreement, and only on how Workers Compensation will accommodate my causally-related, uncodable conditions and injury (autonomic dysfunction, catastrophic injury) that are not covered by the MTG law.

Wendy Wagner, Pro Se
2105 Manor Lane
Massapequa, NY 11758
908-456-2783

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