



**Workers'
Compensation
Board**

ADMINISTRATIVE REVIEW DIVISION
WORKERS' COMPENSATION BOARD
PO BOX 5205
BINGHAMTON, NY 13902
www.wcb.ny.gov

State of New York - Workers' Compensation Board

In regard to Wendy Wagner, WCB Case #2770 9381

MEMORANDUM OF BOARD PANEL DECISION

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Opinion By: Renee L. Delgado

Freida Foster

Linda Hull

There are two Applications for Board Review before the Board Panel. In the first, the claimant requests review of the Workers' Compensation Law Judge's (WCLJ) decision filed June 26, 2023. A timely rebuttal was filed by the carrier.

In the second, the claimant requests review of the WCLJ decision filed July 21, 2023. A timely rebuttal was filed by the carrier.

ISSUE

The issues presented for administrative review are:

- 1) Whether the claimant's submissions comply with 12 NYCRR 300.13; and
- 2) Whether the record supports denying the claimant's request to direct the carrier to pay for medical treatment rendered by a provider who is not coded by the Workers' Compensation Board.

FACTS

The claim is established for injuries to the head and back, resulting from the claimant's work-related accident on March 10, 1977.

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Claimant -	Wendy Wagner	Employer -	Babley Publishing Corp
Social Security No. -		Carrier -	Federal Insurance Company
WCB Case No. -	2770 9381	Carrier ID No. -	W080006
Date of Accident -	03/10/1977	Carrier Case No. -	011250770993WAGNER
		Date of Filing of this Decision -	03/19/2024

ATENCION:

Puede llamar a la oficina de la Junta de Compensacion Obrera, en su area correspondiente, cuyo numero de telefono aparece al principio de la pagina y pida informacion acerca de su reclamacion(caso).

By Notice of Decision filed September 10, 1991, the claimant was classified with a permanent total disability and symptomatic treatment was authorized for the neck and back.

The matter was called to the hearing calendar on June 21, 2023. The pro se claimant raised three issues: the continuation of a treatment by a non-workers' compensation coded neurologist; treatment for autonomic function beyond the Medical Treatment Guidelines (MTGs); and the medication formulary portal not validating the claimant's special needs from her catastrophic injuries. The claimant stated the carrier honored an agreement beginning in 1987 that permitted her to see a non-coded neurologist; however, that neurologist retired in 2021 and the carrier no longer complies with the agreement. The carrier's counsel argued that the applicable laws and regulations have changed over the course of the claim; the treating physicians have not submitted the proper variances for treatment to the back; and some medications have been approved but the treating physicians have not submitted sufficient documentation to substantiate all medications. Following extensive arguments, the WCLJ opined he does not have discretion to direct the carrier to pay for services rendered by a doctor that is not coded by the Board. Regarding medications, the WCLJ found that prior requests Lidoderm patches and Baclofen were recently approved, and there was no request for Dilaudid that he could rule on. Notably, the WCLJ suggested the claimant obtain counsel to assist with the formulary process. The WCLJ directed the necessary parties to confer about the carrier continuing the agreement that was in place and continued the matter.

By Notice of Decision filed June 26, 2023, the WCLJ continued the case for a subsequent hearing for an update on the issues of treatment by a non-coded medical provider and various prescription medications.

The matter returned to the hearing calendar on July 18, 2023. The carrier's counsel confirmed the carrier would not permit the claimant to see a non-coded provider and denied that any such agreement was ever formalized. Further, the claimant's doctor is not following the proper procedure for requesting a medication variance. The claimant made extensive arguments in response. Thereafter, the WCLJ again opined that he could not require the carrier to pay for services from a non-coded provider. The WCLJ noted there were no pending medication requests subject to his review and again counseled the claimant on obtaining counsel to assist with the prior authorization process. The claimant then requested the Board subpoena "my whole CHUBB file" from the carrier to obtain documents related to the purported agreement that was in place. The carrier objected to the request on several grounds and noted that even if such an agreement did exist, it was voluntary and not binding. The WCLJ denied the claimant's request, as it was too broad and irrelevant to the instant issue of treatment by a coded provider.

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By Notice of Decision filed July 21, 2023, the WCLJ authorized treatment and care, as necessary, to the established sites within the MTGs. The WCLJ denied the claimant's request for a direction to compel the carrier to pay for medical treatment from a non-coded provider, as well as her request to subpoena the carrier for their entire case file to ascertain the existence of a legal agreement between the parties. If such an agreement did exist, the WCLJ does not have jurisdiction to rule on the validity or enforce the same. The WCLJ further noted that the carrier did not dispute extending a courtesy to the claimant by permitting her to see a non-coded doctor; however, that doctor has retired and the carrier will no longer extend such a courtesy.

LEGAL ANALYSIS

In her July 11, 2023 appeal, the claimant contends the WCLJ must direct the carrier to continue to abide by the non-worker's compensation physician agreement the parties entered into in 1987 because the carrier will not abide on their own. 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.

The carrier argues that review of the claimant's submission should be denied, as it does not comply with 12 NYCRR 300.13 for several reasons, and is interlocutory. On the merits, the WCLJ properly ruled there is no jurisdiction to force the carrier to pay anything because the issue was not ripe and the provider is not coded. While there is no issue ripe for a determination, the carrier notes that all treatment must be provided within the MTGs, the MTG variance process, and the Drug Formulary.

In her August 10, 2023 appeal, the claimant reiterates the arguments made in her July 11, 2023 application, and contends the non-worker's compensation physician agreement she entered into with the carrier in 1987, should not be terminated because of Dr. Mazurek's retirement.

In rebuttal, the carrier reasserts the arguments made in its August 17, 2023 submission.

12 NYCRR 300.13

12 NYCRR 300.13(b)(1) states that unless submitted by an unrepresented claimant, applications for review and rebuttals shall be in the format as prescribed by the Chair, and must be filled out completely. 12 NYCRR 300.13(b)(2) sets forth the requirements for demonstrating proof of

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service on the necessary parties of interest. However, formatting, completion, and proof of service requirements do not apply to unrepresented claimants.

The Board Panel rejects the carrier's request to deny review of the claimant's appeals, as 12 NYCRR 300.13 does not apply to unrepresented claimants. Further, the WCLJ did make a ruling on the record during the June 21, 2023 hearing, relative to the carrier's obligation to pay for medical services rendered by a non-coded provider. As such, the claimant's appeal is not interlocutory and will be considered on the merits.

Medical Treatment by a Non-Coded Provider

"Workers' Compensation Law § 13-b(1) provides that 'no person shall render medical care or conduct independent medical examinations under [the Workers' Compensation Law] without [the] authorization [of] the chair.' The clear legislative purpose of this provision is to insure the quality of the medical care and treatment rendered to injured claimants by limiting payment for such medical care and treatment to lawfully qualified persons under the Workers' Compensation Law (see *Szold v Outlet Embroidery Supply Co.*, 274 NY 271 [1937], *appeal dismissed* 303 US 623 [1938]). However, the provision does not proscribe evidence from physicians who are not authorized to receive payment for treatment rendered to injured claimants since to do so would impermissively influence the selection of the physician by a workers' compensation claimant (see Workers' Compensation Law § 13-a [6]) and would be contrary to the economic and humanitarian objectives of the Workers' Compensation Law (see *Matter of Bowman v J & J Log & Lbr. Corp.*, 305 AD2d 888 [2003]; *Matter of Selleck v Lane Constr. Corp.*, 96 AD2d 614 [1983]). The statute is not intended to compel the selection of a physician authorized by the Board, particularly where ... in an attempt to determine the cause and suitable treatment of [an illness], claimant selected a physician without regard to the establishment of [a workers' compensation] claim. In short, the statute at issue prevents payment to unregistered physicians. It does not erect an evidentiary barrier to exclude the testimony and records of such a physician" (*Matter of VanDam v New Paltz Cent. School Dist.*, 46 AD3d 1194 [2007]).

WCL § 13-f (1) provides that "[f]ees for medical services shall be payable only to a physician or other qualified person permitted by sections thirteen-b [] of this chapter or other authorized provider of health care under the education law or the public health law permitted to render medical care or treatment under this chapter, or to the agent, executor or administrator of the estate of such physician or such other qualified person.

In Matter of Pilgrim Psychiatric Ctr., 2001 NY Wrk Comp 29322191, the Board Panel found that when a claimant's treating physician is not coded and approved by the Board, per WCL §§

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13-b and 13-f, "there is no statutory provision from which the Law Judge can compel the carrier's payment" for the medical services rendered.

To begin, the claimant raised numerous issues during the subject hearings and within the instant appeals, many of which are not ripe for WCLJ or Board Panel review. Most of the claimant's grievances arise from a misunderstanding of the applicable laws, regulations, and Board processes, that would undoubtedly be better navigated with the assistance of counsel. Accordingly, the Board Panel joins the WCLJ in recommending that the claimant seek legal counsel during the pendency of her claim.

The narrow issue before the Board Panel is whether the carrier is obligated to pay for medical treatment rendered by a provider who is not coded by the Board. The WCLJ made no other substantive findings and the remaining issues raised by the claimant are not ripe for review. (E.g. there are no pending Prior Authorization Requests for Medication (RX-L1), RX-L1 denials, C-8.1Bs, etc.)

On the merits, the Board Panel finds the controlling authorities of WCL §§ 13-b and 13-f, *Matter of VanDam*, and *Matter of Pilgrim Psychiatric Ctr.*, unequivocally support the WCLJ's finding that the Board has neither the jurisdiction nor authority to obligate the carrier to pay for medical services rendered by a non-coded provider. The existence of any prior agreement, either oral or written, is immaterial, as that agreement was at the carrier's discretion and there is no legal authority to bind the carrier to the same. Accordingly, there is no basis to disturb either decision.

Therefore, the Board Panel finds, upon review of the record and based upon a preponderance of the evidence, that the carrier is not obligated to pay for medical services rendered by a non-coded provider.

CONCLUSION

ACCORDINGLY, the WCLJ decision filed June 26, 2023, is AFFIRMED.

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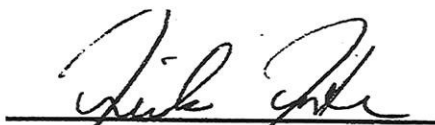
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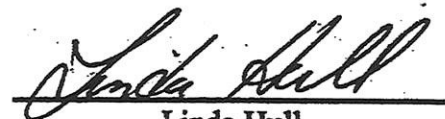
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The WCLJ decision filed July 21, 2023, is AFFIRMED. No further action is planned at this time.

All concur.


Renee L. Delgado


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