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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM SOUTH CAROLINA WORKERS' COMPENSATION APPELLANT PANEL

Appellate Case No. 2025-000852

Sharonda Love, Claimant.....Appellant,

v.

Fresenius Medical Care Holdings, Inc., Employer,
and American Casualty Co. Reading, Pennsylvania, Carrier.....Respondents.

FINAL BRIEF OF APPELLANT

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STATEMENT OF THE CASE

Claimant/Appellant Sharonda Love injured her back on April 21, 2006, and her claim was resolved by consent order dated May 16, 2013. The order provided for lifetime medical treatment for Sharonda's injury and provided the avenue for defendants to be relieved of providing lifetime medical by providing an MSA. Defendants did not avail themselves of this option and provided medical treatment for Sharonda until this action was instituted. By order, the South Carolina Workers' Compensation Commission denied Ms. Love's right to lifetime medical.

FACTS

Ms. Love sustained a work-related back injury on April 21, 2006. (R. p. 02). The claim was accepted, and Ms. Love received workers' compensation benefits, including medical treatment for her lower back. (R. p. 89). After she was determined to be at maximum medical improvement (MMI), the parties resolved the claim by consent order in May 2013. (R. pp. 89–91). The consent order provided that Defendants would pay Ms. Love $34,352.94 in permanent disability benefits and would provide her with continued medical treatment for her back pursuant to § 42-15-60, while reserving the "right to establish a Medicare Set Aside Trust (MSA) to resolve lifetime causally related medical care, contingent upon approval by the Centers for Medicare and Medicaid Services…" (R. p. 90, paras. 2–3). Ms. Love has not returned to gainful employment since her 2006 work injury, other than volunteering two days per week for approximately five hours at a local pregnancy center.

For approximately nine years after the parties entered the consent order, Respondents provided Ms. Love with ongoing medical treatment for her back. Although the agreement initially specified that Respondents would authorize payment only for treatment recommended by Dr. Coric, Respondents also authorized other medical providers to treat Ms. Love's back, including Dr. Sumich, Dr. Coric's partner, and Dynamic Health Medical Group. (R. pp. 22–24; 27–56; 99–100; p. 126; pp. 134–135). Ms. Love's last authorized medical visit was with Dynamic Health on October 14, 2022, which the medical note identifies as visit 27 of 27. (R. pp. 99–100; p. 126; 134–135).

Ms. Love testified that in June or July 2023, she attempted to schedule a follow-up appointment with Dynamic Health, but Dynamic Health refused to see her because there were outstanding balances for prior treatment that the workers' compensation insurance carrier had not

paid. (R. p. 142 lines 10–20; 143 lines 1–7). She further testified that in 2022 and June/July 2023, she called the adjuster directly to request additional treatment, but the adjuster did not answer or return her calls. (R. p. 142 lines 4–25; R. p. 143 lines 1–16). No evidence in the record contradicts this testimony.

Unable to obtain treatment from Dynamic Health due to the unpaid balances and unable to reach the adjuster, Ms. Love sought treatment on her own at Express Health & Spine. (R. p. 143–144; 148; 153). She provided Express Health & Spine with her workers' compensation claim information for billing purposes. (R. p. 143 lines 8–25). Initially, she was not billed or required to pay upfront for treatment at Express Health & Spine and believed Respondents had authorized payment for that treatment. She later learned that Respondents had not authorized this treatment and contacted her attorney to seek enforcement of the 2013 consent order.

STANDARD OF REVIEW

On appeal from an appellate panel of the Workers' Compensation Commission, this court can reverse or modify the decision if it is affected by an error of law or is clearly erroneous in view of the reliable, probative, and substantial evidence in the whole record. The **Claimant** has the burden of proving facts that will bring the injury within the Workers' Compensation law; such award must not be based on surmise, conjecture or speculation. In a Workers' Compensation case, the appellate panel is the ultimate fact-finder. Workers' Compensation law is to be liberally construed in favor of coverage in order to serve the beneficent purpose of the Workers' Compensation Act; only exceptions [Nicholson v. S.C. Dep't of Soc. Serv., 411 S.C. 381, 759 S.E. 2d 1 (SC 2015)] and restrictions on coverage are to be strictly construed.

ARGUMENTS

I. DID THE HEARING COMMISSIONER ERR IN FINDING OF FACT 7 WHEN SHE FOUND THAT ETHOS WAS NOT AN INSURANCE CARRIER? (QUESTIONS PRESENTED 1 & 4)

Sharonda Love testified she left messages for the insurance adjuster and corresponded with EthosRisk (R. p. 139, Line 21-24), and the commissioner found as a fact that EthosRisk was not the insurance carrier or an agent of the carrier. She did not reference any testimony or documentation other than Ms. Love's testimony. Sharonda did present emails as proof of her position about correspondence with defendants (R. p. 107-113). The hearing commissioner found as a fact that EthosRisk was not an agent of the defendants without a shred of testimony or documentation that contradicted Sharonda's testimony. The hearing commissioner did not find that Sharonda was not credible or believable, yet she ignored her testimony.

That Sharonda needs medical treatment is not contested. That Sharonda Love has a work-related injury is not contested. That Sharonda Love has retained hardware in her back is also not contested. The purpose of the South Carolina Worker's Compensation Commission is to protect injured workers like Sharonda. The hearing commissioner did not protect Sharona and did not reference any evidence to support her decision.

Sharonda submitted emails and a copy of a voice mail that support her testimony about speaking to the adjuster personally and about a man who came and left a card requesting she call. Sharonda got hurt at work and still needs medical treatment. We are not arguing about compensability; we are arguing about what is right, and we are arguing about the purpose of the Act to help injured workers. How are the purposes of the Act furthered by denying this woman treatment who had been treating for sixteen years? Clearly, they are not. Sharonda

got hurt and doesn't get treatment in contravention of the purposes of the Workers' Compensation Act.

II. DID THE HEARING COMMISSIONER ERR IN FINDING THAT SHARONA WAS NOT ENTITLED TO LIFETIME MEDICAL BENEFITS? (QUESTIONS PRESENTED 2, 3, 5, 6, & 7)

The original of the single Commissioner dated November 13, 2024, in the third paragraph states, "The parties reserve the right to establish a Medicare Set-Aside Trust (MSA) to resolve lifetime causally related medical care...." (R. p. 102). The order clearly establishes the method for defendants to shed lifetime medical benefits by establishing an MSA which defendants never did. Defendants had the ability at any time to obtain an MSA but did not do so. It continued providing medical treatment for Sharonda for sixteen years without interruption. Were there other periods Sharonda went without treatment for over one year? The record is silent. Like clockwork, defendants provided medical treatment for Sharonda and never once mentioned an MSA.

The Commission ignored this provision of the original order. The Appellate Panel did state Sharonda could have done differently (R. p. 12). The hearing commissioner did ignore Sharonda's testimony and the Supplemental APA submissions.

When an order details instructions about lifetime medical treatment, the order must be followed. It was not followed, and this court cannot condone ripping away lifetime medical benefits in the face of this sixteen-year-old unappealed order. Lifetime medical does not mean sixteen years of medical, it means what it says, lifetime medical care. By denying Sharonda treatment, this commission will be condoning delay and deny tactics of this insurance carrier. Sharonda called and called, (R. p. 144, Line 13-23).

For the defendants, sent someone to her home, verified by the voicemail (R. p. 111). Defendants even verified in an email the procedure: Sharonda may call the adjuster directly, cutting out the lawyers (R. p. 107-110). Denying treatment for Sharonda Love is unequitable and plain and simply wrong.

III. DID THE HEARING COMMISSIONER ERR IN NOT APPLYING SOUTH CAROLINA CODE SECTION 42-15-60(B)(3)(A)?

This code section allows a carrier to suspend medical treatment after one year unless the "commission order provides otherwise." The order, as above stated, set out exactly how Sharonda's bargained-for lifetime medical benefits could be suspended by providing an MSA. Clearly, a Medicare Set Aside Trust was never offered, but continued medical treatment was. From the defendant's email allowing direct contact between Sharonda and the insurance company, continuing medical treatment was clearly contemplated (R. p. 107-110). The order provides otherwise, and the hearing commissioner was not free to ignore it.

CONCLUSION

This case cries out for reversal, and Sharonda Love requests that this court reverse the Appellate Panel's order and reinstate her lifetime medical.

CERTIFICATE OF COUNSEL

The undersigned herby certifies that the **FINAL BRIEF OF APPELLANT** complies with Rule 211 (b), SCACR.

Respectfully submitted,

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PROOF OF SERVICE

I, the undersigned paralegal of Elrod Pope Law Firm, attorneys for Appellant, do herby certify that I have served all counsel in this action with a copy of the **Appellant's Final Brief, and Proof of Service** by electronic and personal service at the following address(es):

VIA E-MAIL & UPS MAIL:	**VIA E-MAIL:**
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November 24, 2025

Via E-mail to ctappfilings@sccourts.org
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RE: Sharonda Love v. Fresenius Medical Care Holdings, Inc.
WCC No.: 0606817
DOI: 4/21/2006
Appellate Case No.: 2025-000852

Dear Ms. Kitchings:

Enclosed for filing in the above-referenced matter, please find the Appellants Final Brief and Proof of Service. One bound copy and one bound copy is being provided to you via UPS. Should you have any questions, please feel free to contact my paralegal, Ashley at (803) 324-6141 or via email ashleym@elrodpope.com.

By copy of this letter, we are hereby serving a copy of same on counsel for Respondent via email.

Sincerely,

s/David V. Benson

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