



STATE OF SOUTH CAROLINA)
)
 COUNTY OF RICHLAND)
)
 Gertrude Shiver,)
 Employee/Claimant,)
)
)
 vs.)
)
 Palmetto Health Richland,)
 Self-Insured/Employer,)
)
 And)
)
 Palmetto Health Trust,)
 Carrier/Defendant,)
)
 And)
)
 Trident Regional Medical Center,)
 Employer/Defendant,)
)
)
 And)
)
 Zurich American Insurance)
 Company,)
 Carrier/Defendants)
)
)
)

IN THE COURT OF COMMON PLEAS

Appeals 2013-000887
 Case No. 2015-CP-40-001109
 W.C.C. File No.: 0217755

RECORD

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COUNTY OF RICHLAND)	
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Gertrude Shiver,)	Case No. 2015-CP-40-001109
)	
Employee,)	
)	
Claimant/Appellant,)	BRIEF OF RESPONDENTS
)	PALMETTO HEALTH RICHLAND
)	AND
Palmetto Health Richland,)	PALMETTO HOSPITAL TRUST SERVICES
)	
Employer,)	W.C.C. File No.: 0217755
)	
Palmetto Health Trust,)	
)	
Carrier,)	
)	
Defendants/ Respondents)	
)	

STATEMENT OF THE CASE

This claim came before the Hearing Commissioner pursuant to Form 50 and Motion for Sanctions filed on March 21, 2014 by the Appellant, Gertrude Shiver. Therein, Appellant alleged that Respondents had not paid any temporary total disability benefits or paid all authorized medical costs in this claim and sought sanctions as a result of the same.

Respondents replied by way of Form 51 and Reply to Motion for Sanctions and/or Motion to Dismiss for Lack of Subject Matter Jurisdiction on April 3, 2014. Therein, Respondents addressed the extensive and convoluted procedural history in the claim, which is further summarized below.

The Appellant sustained an admitted injury by accident to her lower back on March 23, 2002 and this claim was consolidated with six (6) additional claims for hearing before the

Commission. Commissioner Huffstetler heard all six (6) claims on September 4, 2007 at a hearing in Columbia, South Carolina. By Order dated October 23, 2007, Commissioner Huffstetler separately addressed each claim heard before him. Regarding the instant claim, Commissioner Huffstetler found that the Appellant had sought out unauthorized medical treatment, for which Respondents were not responsible; that Respondents did not contest the payment of temporary total disability benefits from March 23, 2002 through April 8, 2002; and that Defendants had submitted evidence showing they had paid all authorized medical costs. The Order did not command Respondents to pay any temporary total disability benefits at that time.

Subsequently, on November 5, 2007, the Claimant wrote to Commissioner Huffstetler asking to submit additional evidence and addressing the merits of the Order. This writing was held to be a motion for additional evidence and Form 30 appeal of this Order. On December 6, 2007, the Full Commission denied the Claimant's motion for additional evidence but did not address her appeal on the merits. The Appellant filed a petition for appeal to the Circuit Court, but this appeal was dismissed as interlocutory and the matter was remanded to the Full Commission for a determination of the merits of the Appellant's appeal of the October 23, 2007 Order. Appellant made a second motion for additional evidence on November 2, 2010, which was denied by the Full Commission.

The Full Commission considered the appeal on the merits of the October 23, 2007 Order without the need for oral argument. On May 3, 2011, the Full Commissioner issued its Order affirming Commissioner Huffstetler's October 23, 2007 Order in its entirety. The Appellant then informed the Commission stating her intent to appeal the Full Commission's Order to the Circuit Court. On June 1, 2011, the Appellant again filed for a petition for appeal in the Circuit Court as to the Full Commission's affirmation of the merits of the October 23, 2007 Order by

Commissioner Huffstetler.

A hearing on the Appellant's appeal to the Circuit Court was held on November 1, 2012, before the Honorable Alison Renee Lee. Judge Lee issued a March 23, 2013 Order affirming the Full Commission's Order in its entirety. By letter dated April 22, 2013, the Appellant wrote to the Court of Appeals stating her intention to file a further appeal to this higher court.

Because WCC File Number 0217755 is still pending in the Court of Appeals, Respondents alleged that the Workers' Compensation Commission did not have subject matter jurisdiction and should dismiss the Form 50/Motion filed on or about March 21, 2014 pending final adjudication in the higher court. Respondents acknowledged their continued willingness to pay the temporary total disability benefits in this claim, but for her multiple and ongoing appeals. In addition, because no final adjudication of the claim has been made by a higher court, Respondents believed they were not able to pay this amount. Even further, because there is no Order compelling Respondents to pay the temporary total disability benefits in question, Respondents contended no Sanctions or penalties were warranted in this claim. Appellant submitted her Pre-Hearing Brief to the Commission on May 15, 2014.

The Hearing Commissioner heard the claim on May 16, 2014 in Columbia, South Carolina. The Hearing Commissioner issued her Order on June 20, 2014 finding as a matter of fact that Commissioner Huffstetler's September 4, 2007 Order does not command the Defendants in this claim to pay any temporary total disability benefits, and therefore, the appeal of that Order to the South Carolina Court of Appeals does not remove this issue from the South Carolina Workers' Compensation Commission; that the Defendants have again indicated a voluntary willingness to make certain that the temporary total disability payment from March 23, 2002 through April 8, 2002 at the Appellant's applicable compensation rate of \$350.76 has either

already been paid or will be paid to the Appellant in order to put this issue to rest; that the Respondents further confirm that all authorized medical treatment has been paid for in this claim; and that since there has never been an Order compelling the Respondents to pay any temporary total disability benefits in this claim, it is inappropriate to award any sanctions or penalties against the Respondents in this case.

The Hearing Commissioner further ruled as a matter of law that under Section 42-9-260, of the South Carolina Workers' Compensation Act, an employer may make temporary total disability payments to an injured worker with a compensable workers' compensation claim and that under Section 42-15-60 of the South Carolina Workers' Compensation Act, an employer shall provide authorized causally-related medical care for a compensable workers' compensation claim. The Hearing Commissioner ordered that no penalties or sanctions are to be awarded in this claim; that the Defendants have fourteen (14) days from the date of this Order to provide evidence to the Commission that temporary total disability benefits from March 23, 2002 until April 8, 2002, totaling \$851.68 has either already been paid to the Appellant, providing appropriate documentary evidence of such payment, or providing current evidence that this amount of temporary total disability benefits has currently been paid to the Appellant; that the Respondents have fourteen (14) days to resubmit evidence submitted at the 2007 hearing before Commissioner Huffstetler in then Exhibit A, Payment History for Related Bills, showing the employer has paid all authorized medical costs related to this claim; and further ordering that all other issues in the above referenced claim remain on appeal to the South Carolina Court of Appeals and the Hearing Commissioner lacked subject matter jurisdiction to address any of those issues; and, finally, that no hearing costs are assessed in this matter.

Pursuant to Form 30 filed on July 7th, 2014, Appellant petitioned the Full Commission for

review of the Hearing Commissioner's findings of fact and conclusions of law. The Full Commission heard the appeal on the record and issued an Order of full affirmation on December 17, 2014.

Appellant filed a Notice of Intent to Appeal and Petition For Review of Decision and Order of The South Carolina Workers' Compensation Commission on 1/12/15 with the Richland County Clerk of Court. Appellant then filed her Brief and Memorandum of Law in Support with the Richland County Court of Common Pleas. Respondents then filed a Motion to Dismiss with the Richland County Court of Common Pleas. Appellant then filed a Reply to Motion to Dismiss with this Court. A Motion Hearing was held on April 24, 2015 and the Court issued its denial of Respondents' Motion to Dismiss on April 24, 2015 and indicated the matter would be reset for the parties to argue and present any evidence or argument on whether the denial of Sanctions by the Appellate Panel of the Workers Compensation Commission was proper. No hearing has been set in this matter to date. This brief, on behalf of Respondents Palmetto Health Richland and Palmetto Health Trust addresses the Appellant's appeal regarding WCC Claim No.: 0217755.

SUMMARY OF TESTIMONY

At the commencement of the Single Commissioner hearing on May 16, 2014, the Appellant was asked if she understood her right to an attorney. Appellant responded that she understood, but could not get an attorney. (Hrg. Tr., p. 2, ll. 1-7). The Hearing Commissioner confirmed that the Motion filed was asking for payment of authorized medical treatment and temporary total disability benefits from March 23, 2002 through April 8, 2002. Respondents acknowledged their willingness to pay the temporary total disability benefits and did not contest the payment, but were unsure if it had been paid previously. Respondents further argued that no

Order compelled them to pay any temporary total disability benefits. Even if ordered, the 2007 Order by Commissioner Huffstetler was currently pending in the Court of Appeals. (Hrg. Tr., p. 2, ll. 8-21). However, Respondents reiterated their continued willingness to pay the temporary total disability benefits in question, if not already paid and the appeal did not supersede the prior Order. (Hrg. Tr., pp. 2-3).

Regarding the authorized medical treatment, the Hearing Commissioner correctly stated that the issue of payment for her allegedly compensable treatment was under appeal and that there was no subject matter jurisdiction in this regard. (Hrg. Tr., p. 4). Because the issue of whether Appellant was entitled to temporary total disability benefits from March 23, 2002 through April 8, 2002 was not appealed by Respondents, the Hearing Commissioner did have jurisdiction over this particular issue. (Id.).

The Hearing Commissioner indicated the Respondents had fourteen (14) days to provide proof of payment for the TTD benefits in question, whether made in the past or currently, if not previously paid. (Hrg. Tr., p. 5). The amount of temporary total disability payments totaled \$851.58, which is based upon 2.42 weeks at a compensation rate of \$350.76. Respondent then argued that she should be entitled to penalties for failure to pay the temporary total disability benefits in question. However, the Hearing Commissioner explained that the claim was initially denied, but later admitted. (Hrg. Tr., p. 5). Further, there was no Order compelling Respondents to pay the same. Therefore, no sanctions or penalties were warranted. The Appellant's address was confirmed for purposes of sending a check for the TTD benefits, if appropriate. (Hrg. Tr., pp. 6-8).

Appellant testified that she was not getting bills from this claim and that she had paid the bills herself. (Hrg. Tr., p. 8, ll. 19-20). Regarding the authorized medical treatment, Appellant

testified that Respondents had not paid these bills and did not receive confirmation of the same. (Hrg. Tr., pp. 8-9). However, Respondents stated that evidence had been submitted at the original 2007 Hearing, as Exhibit A, showing all authorized medical expenses had been paid. The Hearing Commissioner held that Respondents had fourteen (14) days in which to resubmit evidence that the authorized medical expenses in question had been paid.

Of particular interest, a gentleman by the name of Johnny Thacker was present in the courtroom during the hearing. Mr. Thacker testified that he was going to file an affidavit to the South Carolina Court of Appeals requesting that he represent the Appellant. (Hrg. Tr., p. 11). When the Hearing Commissioner expressed her concern about his ability to represent the Appellant, Mr. Thacker testified that he was allowed to represent parties in the Court of Appeals because 17th century case law allowed him to represent Appellant in a civil case if she requested the same and he did not charge any money. Otherwise, Mr. Thacker admitted this would be the illegal practice of law. (Hrg. Tr., p. 12). The hearing was then concluded.

ARGUMENTS

I. The Full Commission was correct in finding that Respondents are not subject to any penalties or sanctions in this claim and the Order should be affirmed.

A. No Penalties or Sanctions are warranted for failure to pay TTD benefits

The substantial evidence in the record indicates that no sanctions or penalties are warranted for failure to pay temporary total disability payments pursuant to an Order. The Order of October 23, 2007 does not command Respondents to pay any temporary total disability benefits. Rather, the Order simply reflects that Respondents did not “contest the payment of temporary total benefits from March 23, 2002 through April 8, 2002 at this time.” (See Single Commissioner Order of October 23, 2007, pg. 9). However, before Respondents could pay the

temporary total disability benefits in question, Appellant appealed the Order of October 23, 2007. Her numerous appeals have gone through the Full Commission, Circuit Court and are now currently pending in the Court of Appeals. The procedural history of this claim is, understandably, quite complex and convoluted over the last decade.

Respondents have remained willing to pay the temporary total disability benefits in question in this claim. However, due to the numerous and ongoing appeals in this claim, Respondents were justifiably unsure of whether they could pay these benefits as the issue had not been adjudicated by way of Final Order.

In her Order on June 20, 2014, the Hearing Commissioner confirmed that the original Order from 2007 did not command the Defendants to pay any temporary total disability benefits and therefore, the appeal of that Order to the Court of Appeals did not remove this particular issue from the jurisdiction of the Commission. (See Findings of Fact 1, 2 and 4, Hearing Commissioner's Order on June 20, 2014.). The Hearing Commissioner further found that that because there was no Order compelling Respondents to pay any temporary total disability benefits in this claim, sanctions or penalties were not appropriate in this case. (Id.).

Following the May 16, 2014 hearing, Respondents did exactly what was ordered by the Hearing Commissioner in regards to payment of the temporary total disability benefits in question. On June 17, 2014, Respondents immediately paid the \$851.68 in temporary total disability benefits by way of check to the Appellant in order to prevent any further delay whatsoever in payment of these benefits. Of note, this was done in good faith and even before the official Order had been issued by the Hearing Commissioner. As requested, Respondents copied the Hearing Commissioner with the correspondence and check to Appellants on June 17, 2014, which more than fulfills the fourteen (14) day deadline given.

While Appellant argues that she should be entitled to sanctions and penalties, any delay in payment of the temporary total disability benefits is attributable to the Appellant's incessant appeals of each and every one of her numerous claims before this Commission, and now, the Court of Appeals. As stated above, Respondents have been more than willing to pay these benefits but for these appeals. Now that the Hearing Commissioner has found that this issue was not removed from the Commission's jurisdiction, Respondents have, very thankfully, been able to pay said benefits and finally put the issue to rest. Accordingly, the Full Commission was correct in affirming the Hearing Commissioner's Order holding that no sanctions or penalties are warranted in this claim.

B. No Penalties or Sanctions are warranted for failure to pay authorized medical treatment.

Here, substantial evidence in the record indicates that Appellant was provided appropriate medical treatment and that all authorized medical treatment has been paid for by Respondents. The Act provides that an employer shall provide medical treatment for the employee for a period not exceeding ten week from the date of injury to effect a cure or give relief and for such additional time as in the judgment of the Commission will tend to lessen the employee's period of disability. S.C. CODE ANN. §42-15-60 (1976, as amended). South Carolina law further provides that an injured employee may continue to receive treatment beyond the date of maximum medical improvement, provided that the employee carries his or her burden of proving that such treatment will tend to lessen his or her period of disability. Dodge v. Bruccoli, Clark, Layman, Inc., 334 S.C. 574, 580-81, 514 S.E.2d 593, 596 (S.C. App. 1999).

Per Commissioner Huffstetler's Order of October 23, 2007, Appellant was unequivocally found to have "sought out unauthorized medical treatment, for which the Defendants are not

responsible.” (See Finding of Fact Number 29, Single Commissioner Order dated October 23, 2007). Further, Commissioner Huffstetler found that Respondents had provided appropriate medical treatment and were not liable for any additional medical treatment. (See Single Commissioner Order dated October 23, 2007, pg. 28). Respondents submitted evidence at the 2007 hearing on this claim showing that they paid all authorized medical treatment. (See Single Commissioner Order dated October 23, 2007, p.9; See also Exhibit A from October 23, 2007 Hearing).

Appellant alleged in her pleadings that Respondents had not paid for all of her authorized medical treatment related to this claim. However, the preponderance of the evidence in the record shows that Respondents did, in fact, provide proof that all authorized medical treatment had been paid for as of the time of the October 23, 2007 hearing. During the May 16, 2014 hearing, the Hearing Commissioner heard the parties’ positions and ordered that Respondents “resubmit that evidence of those medical bills that have been paid...” (Tr., p. 10, ll. 8-10, emphasis added). While Appellant has alleged in her briefs that Respondents had somehow mischaracterized the Hearing Commissioner’s requests in this regard, this is simply untrue. Rather, on June 12, 2014, Respondents submitted the proposed Motion Order and also resubmitted the aforementioned “Exhibit A” from the October 23, 2007 hearing. This was done immediately and even before the Hearing Commissioner issued her final Motion Order on June 20, 2014, well before the fourteen (14) day period in the Order.

Respondents have complied with the both the Order of October 23, 2007 and the Order of June 20, 2014 in the instant claim in regards to submitting proof of payment for the authorized medical treatment. Again, the Order of October 23, 2007 clearly indicates that Respondents had paid all authorized medical treatment and evidence of such payment was submitted accordingly.

While Appellant continues to allege that her all of her medical bills have not been paid, Respondents have clearly satisfied this issue under the current Order in effect. Furthermore, it has been held repeatedly that Appellant sought out unauthorized medical treatment for which Respondents are not responsible. This claim remains under appeal to the South Carolina Court of Appeals and, therefore, the issue of unauthorized medical treatment has not been addressed by way of Final Order. However, it should be noted that the Single Commissioner, Full Commission, and Circuit Court have all affirmed the Single Commissioner's Order addressing this issue and Appellant has failed to carry her burden of proving entitlement to additional medical benefits thus far. Therefore, based on the substantial admissible evidence in the record, Respondents have paid all authorized medical treatment and fully complied with the Orders issued to date. Accordingly, the Appellate Panel of the Commission correctly held that no penalties or sanctions are warranted for failure to pay authorized medical treatment.

II. The Full Commission was correct in finding that the Commission lacked subject matter jurisdiction on all other issues.

The Hearing Commissioner was correct in finding that the Commission lacked subject matter jurisdiction on all issues aside from the ability to pay temporary total disability benefits. Rule 205 of the South Carolina Appellate Court Rules hold that upon service of the notice of appeal, the appellate court shall have exclusive jurisdiction over the appeal. (See Rule 205, SCACR.). However, nothing in these Rules shall prohibit the lower court, commission or tribunal from proceeding with matters not affected by the appeal. (Id.).

Here, the Hearing Commissioner held that because Respondents did not appeal the October 23, 2007 Order, the issue of their willingness to pay temporary total disability benefits was not outside of the Commission's subject matter jurisdiction and not affected by the appeal. However, because the issue of whether the Appellant was entitled to payment for unauthorized

and disputed medical treatment is still currently on appeal, the Court of Appeals has exclusive jurisdiction in this regard. Therefore, the Hearing Commissioner and Appellate Panel were correct in holding that all other matters in this claim remain on appeal and that there was no subject matter jurisdiction by which those claims could be addressed before the Commission.

III. Appellant was provided with ample opportunity to present evidence to support her claims and argue her positions.

The Appellant has accused the Hearing Commissioner of denying her the opportunity to respond and be heard regarding the Respondents' Motions and proposed Order. However, this is patently false. The Appellant had every opportunity to present evidence after filing her Form 50 and Motion for Sanctions. In fact, Appellant submitted a Pre-Hearing Brief on May 15, 2014, but failed to submit any evidence therein. Furthermore, she had every opportunity to submit her own proposed Motion Order for the Hearing Commissioner's consideration, but again failed to do so.

Although Appellant has been afforded the opportunity to obtain counsel at every hearing thus far, she has elected not to do so. Therefore, Appellant has chosen to proceed with her numerous appeals acting purportedly pro-se and at her own risk. After more than a decade has passed since the date of accident in this claim, any failure to submit evidence in this claim rests solely on the Appellant.

Furthermore, the Appellant has made numerous and widespread accusations against almost every commissioner, attorney or judge involved in her multiple appeals. These accusations cover the entire gamut of possible complaints, which are too numerous and grievous to list here. It is without any surprise whatsoever that Appellant is now continuing to accuse those involved of improper claims handling, intentional fraud, and prejudice. In fact,

Commissioner Huffstetler specifically found that the Appellant had a long history of alleged victimization and had extensive experience with the Workers' Compensation system, having filed ten (10) claims against various employers in his 2007 Order.

Regarding her attempt to submit evidence following the hearing on May 16, 2014 in her multiple briefs, this attempt is improper pursuant to the S.C. Code Ann. Reg. 67-707. This regulation requires the party seeking the admission of new evidence to file a motion to this effect. Despite having done so in the past, Appellant failed to file such a motion following the hearing on May 16, 2014. This evidence was known to her at the time of the first hearing and could have been discovered by reasonable diligence beforehand. Furthermore, our appellate courts have determined the new evidence must be "of the same nature and character as that required for granting a new trial..." *Ancrum v. Low Country Steaks*, 317 S.C. 188, 193, 452 S.E.2d 609, 612 (Ct. App. 1994). Therefore, Appellant's attempt to submit additional evidence by way of "Exhibits" or otherwise should be denied and excluded from consideration. Regardless of Appellant's attempt to submit additional evidence, the issue of her request for payment of all medical treatment is still within the sole jurisdiction of the Court of Appeals.

Of note, during the May 16, 2014 hearing, it would appear that the Appellant has been receiving legal assistance from a man named Johnny Thacker. To Respondents' knowledge, Mr. Thacker is not a licensed attorney in South Carolina. If he is attempting to represent the Appellant in her appeals, this may very well constitute the unauthorized practice of law.

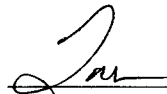
In conclusion, Appellant has alleged countless infractions and perceived slights on numerous grounds against almost every party involved. It is quite difficult for Respondents to ascertain the exact substance or grounds for her plethora of allegations. However, it is clear that Appellant has had every opportunity to present evidence and have her case heard before the

Commission and other higher courts in her numerous appeals. In sum, any issue in failing to present evidence rests squarely on the Appellant.

CONCLUSION

The Appellate Panel of the Workers' Compensation Commission was correct in affirming that Respondents were not subject to any penalties or sanctions in this claim and that the Commission lacked subject matter jurisdiction to hear any other issues aside from the payment of temporary total disability benefits, which Respondents have paid pursuant to the Order of June 20, 2014. Furthermore, the Appellant has been provided with ample time and every opportunity afforded by law to present her claims and argue her positions. Therefore, Respondents request that the Circuit Court affirm the findings of the Full Commission in their entirety.

Respectfully submitted,



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Attorney for Respondents

June 5, 2015
Columbia, South Carolina

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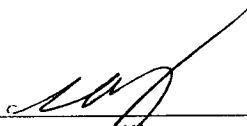
CERTIFICATE OF SERVICE

The undersigned hereby certifies that she is the legal secretary to Lana H. Sims, Jr., attorney for Defendants, and an employee of Adams and Reese LLP, and that she has mailed, on the date set forth below, a copy of the document(s) described below in the above-entitled action to the following with proper postage affixed thereto:

TO: **VIA U.S. MAIL AND CERTIFIED MAIL**
Gertrude Shiver, Pro se
1026 Congaree Church Road
Gadsden, SC 29052

DOCUMENT(S): 1. **Brief of Respondents Palmetto Health Richland and Palmetto Hospital Trust Services**

DATE OF MAILING: **June 5, 2015**



Ursula R. Veguilla