

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION

Appellate Case No. 2014-001788

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MAR 07 2016

SC Court of Appeals

Clarence Winfrey, Employee, Claimant, Respondent,

v.

Archway Services, Inc., Employer,
and American Fire & Casualty Insurance
Company c/o Liberty Mutual Group, Carrier, Appellants.

MOTION TO COMPEL MEDICAL CARE
PURSUANT TO AWARD OF THE COMMISSION AND SC CODE §42-17-60

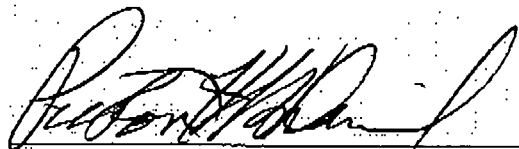
TO: MR. BRETT BAYNE, COUNSEL FOR THE APPELLATE

YOU WILL PLEASE TAKE NOTICE that ten (10) days from the date of the service hereof or as soon thereafter as Counsel for the Claimant/Respondent may be heard, or at such other time as designated by the Court (hereinafter Claimant), Claimant's Counsel, the Respondent before the Court, will move for an Order of the Court pursuant to SC Code Ann. §42-17-60 compelling the provision of medical care pursuant to the Award of the SC Workers' Compensation

Commission as originally entered by Commissioner Susan Barden on February 27, 2014, and affirmed the Full Commission by Order and Award issued and filed on July 24, 2014. The Defendants, the Appellants in this Court (hereinafter Defendants), filed a Notice of Intent to Appeal the Award of the Workers' Compensation Commission on August 20, 2014 and jurisdiction lies in this Court. The Motion to Compel Payment of Medical Care pursuant to the Award of the Commission and §42-17-60 is based upon the Memorandum of Law attached hereto and incorporated herein by reference.

Because of the urgency of this medical care and the provision of this medical care, the Movant would respectfully request a hearing on this matter as soon after the ten (10) days for Reply has run as is possible.

I SO MOVE.



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Attorney for Respondent/Claimant

March 4, 2016

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MEMORANDUM IN SUPPORT OF
MOTION TO COMPEL MEDICAL CARE
PURSUANT TO AWARD OF THE COMMISSION AND SC CODE §42-17-60

The Movant would respectfully show unto the Court as follows:

1. That the Hearing Commissioner issued her Award of benefits on February 27, 2014 and in that Award of benefits she specifically provided that:

IT IS FURTHER ORDERED that the Claimant having been found to have sustained compensable injury specifically to include injury to his heart, the Claimant is to receive medical care for all injuries and conditions stemming from the accident that occurred in this matter and specifically to

include all conditions related to the heart as found to be causally related by the authorized treating physicians which are hereby declared to be Dr. Jeffrey A. Travis and Dr. Lanneau D. Lide. The Defendants reserve the right to contest the compensability of any injury or condition opined to be related to the injury involving any bodily part, member, organ or system and the right to direct the treatment for all causally related medical problems outside of the area of expertise of the two (2) authorized treating physicians including the right to choose authorized treating physicians to provide that medical care."

2. That the Award of benefits and specifically as to the medical benefits provision was affirmed after review by the Full Commission which affirmed and entered the Award as the Award of the Commission by Order dated July 25, 2014.

3. That on August 20, 2014, the Defendants filed an appeal to that Award of benefits on August 20, 2014, thus rendering jurisdiction over this matter with the Court.

4. That SC Code §42-17-60 (as amended, effective July 1, 2007), provides:

"In the case of an appeal from the Decision of the Commission on questions of law, the appeal does not operate as a supersedes and, after that time the employer is required to make weekly payments of compensation and to provide medical treatment ordered by the Commission involved in the appeal, or certification, until the questions at issue have been fully determined in accordance with the provisions of this Title . . ."
(Emphasis added).

5. That pursuant to the provisions of SC Code §42-17-60 the Defendants, initially instituted treatment

through the authorized treating doctors for the Claimant's heart related problems and provided treatment through Dr. Travis and Dr. Lanneau Lide and such other medical providers as they deemed appropriate to treat the heart-related problems. During the course of that treatment, the Defendants, hired an independent agent rehabilitation company and nurse to coordinate the medical care, Mr. Howard Altman, RN, BSN, Field Case Manager, Genex Services, Inc.

6. That at the direction of the authorized treating physician, Dr. Lanneau Lide, the Claimant was referred to the Medical University of South Carolina for treatment of his heart related problems to include evaluation concerning a heart transplant. All medical care with the Medical University of South Carolina was authorized and scheduled by the Defendants at the request and direction of Dr. Lide. After evaluation and treatment by the doctors at MUSC, it was determined that the Claimant needed repair of a leaking valve with possible replacement. (This is according to the medical records provided to Claimant's Counsel and the reports received from the Field Case Manager, Mr. Howard Altman, RN.) (Note: according to the reports from Mr. Altman, the authorized field case manager, in addition to Mr. Altman and the adjuster, who upon information and

belief is Elizabeth Wrinkle with Liberty Mutual Insurance Co., Defense Counsel is involved in the decisions in reference to medical care which under the Award is a claims administration issue.)

7. That according to the records provided by the assigned rehabilitation nurse, Dr. Ikonomidis at MUSC On January 5, 2016 determined that the Claimant needed a valve repair and possible replacement and wanted to perform that surgery within one week was in the process of scheduling that surgery. As part of that surgical preparation, according to the medical records and the reports of the assigned Rehabilitation Nurse, the doctors requested that a dental evaluation be performed to clear him for the surgery.

8. That thereafter based on a verbal report from the Claimant, Claimant's Counsel was advised that it was his understanding that the Defendants were not authorizing the dental appointment necessary for the surgery to be scheduled. Inquiry was made by Claimant's Counsel pursuant to the emails attached hereto and incorporated hereby by reference, as to the scheduling of a dental appointment necessary for the surgery. Subsequent thereto and after no response, Claimant's Counsel received a monthly report for the period January 08, 2016 to February 06, 2016 from the

assigned Rehabilitation Nurse indicating that a conference call had been held between Defense Counsel, the Adjuster and the Rehabilitation Nurse and that the surgery was not being authorized until after depositions of the doctors, and that they were not authorizing the dental examination. A copy of that report is attached hereto and incorporated herein by reference. See entry February 1, 2016.

9. That almost simultaneously and also subsequent thereto, Counsel for the Claimant contacted Defense Counsel to determine the basis for the refusal to provide medical care pursuant to the Award of the Commission by the doctors that had been chosen and authorized to provide that medical care by the Defendants through MUSC. Inquiry was also made as to the dental appointment and to why it was not being authorized.

Subsequent thereto, Counsel received a series of emails from the assigned Rehabilitation Nurse and Nurse Coordinator at the SC Heart and Valve Center stating that the purpose of the dental examination was to have Mr. Winfrey examined to determine whether or not there was any infection, to clear any infection, and to then certify to the Heart Valve Center prior to surgery that the Claimant had no oral infection. A copy of those emails are attached hereto and incorporated herein by reference.

10. That Counsel for the Claimant inquired of the Defendants as to the basis for the denial of both the dental appointment and also refusal to schedule the surgery. Counsel for the Claimant specifically requested the medical opinion and/or any statement from the treating doctor upon which the Defendants were relying and specifically to set forth the specific basis for refusal to provide this medical care. Counsel for the Claimant advised that to his knowledge that neither of the authorized treating physicians nor any medical provider has made a statement that would result in the refusal of this medical care. Eventually Counsel for the Defendants replied that the reason that they were denying the medical care is that, "because the matter is still disputed as to causation and compensability, we will need to take the depositions of the necessary doctors prior to the approval of any surgery."

As is set forth in the Affidavit, Counsel for the Claimant has been made aware of no medical opinion or basis or any basis for the refusal of this medical care. This is medical care that has been awarded by the Commission and the Defendants are currently required by that Award and S42-17-60 to pay for that medical care and specifically under the provisions of the Award which provides that:

"Specifically to include all conditions

related to the heart as found to be causally related by the authorized treating physicians. Dr. Jeffrey A. Travis and Dr. Lanneau D. Lide."

There is absolutely no opinion or nor any statement nor has the Claimant been provided with any statement from any of the treating authorized doctors that this medical care is not causally related. The Defendants referred the Claimant to MUSC per the recommendation of Dr. Lide for causally related medical care due to his heart condition and up until the surgery have authorized all evaluations and treatment by MUSC.

Wherefore, the Claimant would respectfully request an Order of the Court directing the Defendants to immediately provide the medical as recommended by the doctors at MUSC, specifically to include the dental examination needed to clear the Claimant for surgery and to provide the surgery as soon as possible, for the costs of this action and for such other relief as the Court deems appropriate.

Respectfully submitted,



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March 4, 2016