

**GOVERNMENT OF THE DISTRICT OF COLUMBIA**

**Department of Employment Services**

MURIEL BOWSER  
MAYOR



DEBORAH A. CARROLL  
DIRECTOR

**COMPENSATION REVIEW BOARD**

**CRB No. 16-034**

**HELEN C. WHITE,**  
**Claimant-Petitioner,**

v.

**WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY,**  
**Self-Insured Employer-Respondent.**

Appeal from a February 12, 2016 Compensation Order on Remand  
by Administrative Law Judge Gerald D. Roberson  
AHD No. 08-006B OWC No. 629434

DEPT. OF EMPLOYMENT  
SERVICES  
COMPENSATION REVIEW  
BOARD  
2016 SEP 12 PM 10 46

(Decided September 12, 2016)

Krista N. DeSmyter for Employer  
Sarah O. Rollman for Claimant

Before GENNET PURCELL, JEFFREY P. RUSSELL, *Administrative Appeals Judges* and LAWRENCE  
D. TARR, *Chief Administrative Appeals Judge*

GENNET PURCELL for the Compensation Review Board.

**DECISION AND ORDER**

**FACTS OF RECORD AND PROCEDURAL HISTORY**

In a prior Decision and Order, the Compensation Review Board (“CRB”) described the history of the injury and treatment of the Claimant as such:

Claimant worked for Employer Washington Metropolitan Area Transit Authority (WMATA) as a bus operator. On June 26, 2006, the bus Claimant was driving struck another vehicle from behind.[] As a result, Claimant injured her neck and lower back--areas of her back that had been previously injured in earlier work-related accidents during her twenty-five year career working for [Employer]. Claimant attempted to return to work after the accident but had to stop on August 1, 200[6]. She has not worked since.

Orthopedist and general medicine specialist, Dr. Eric G. Dawson, Claimant’s long-time treating physician, treated her for injuries sustained in the June 26, 2006 accident. Claimant has also twice been examined by orthopedic surgeon, Dr.

Louis Levitt for employer-requested independent medical examinations (IME), once by Dr. Michael Franchetti for an IME that Claimant requested, and her medical records were reviewed for utilization review (UR) by Dr. Robert Holladay.

On June 2, 2008, the parties settled the indemnity portions of Claimant's several workers' compensation claims. The settlement provided that Employer remained liable for Claimant's reasonable, necessary, and causally related medical expenses. In 2012, Employer denied approval for additional treatment by Dr. Dawson. As a result, a formal hearing was held to resolve the dispute over Employer's responsibility for Dr. Dawson's medical care.

The ALJ denied the claim. Claimant timely appealed with Employer timely filing an Opposition.

*Helen C. White v. Washington Metropolitan Area Transit Authority, et al.*, CRB No. 13-165 (May 30, 2014).

On May 30, 2014, the CRB affirmed the November 19, 2013 Compensation Order ("CO") issued by an Administrative Law Judge ("ALJ") in the Administrative Hearing Division ("AHD") of the District of Columbia Department of Employment Services ("DOES"). In that CO, the ALJ concluded that certain Claimant requested medical treatments were not reasonable and necessary and therefore not the Employer's responsibility.

In an opinion issued on July 23, 2015, the District of Columbia Court of Appeal's ("DCCA") affirmed in part and reversed in part, the CRB's May 30, 2014 Decision and Order. The DCCA remanded this matter "to the CRB to direct the ALJ to determine whether certain additional proposed treatments were reasonable and necessary."

On August 13, 2016, the CRB issued a Remand Order consistent with the DCCA's instructions.

On February 12, 2016, an ALJ issued a Compensation Order on Remand ("COR"). In that COR the ALJ concluded that the expenses for additional proposed treatments, including physical therapy, pain medication, muscle relaxants and sleep medication, were neither reasonable nor necessary. *Helen C. White v. Washington Metropolitan Area Transit Authority*, AHD No. 08-006B, OWC No. 629434 (February 29, 2016).

Claimant timely appealed the COR to the CRB by filing Claimant's Application for Review and Memorandum in Support of Application for Review ("Claimant's Brief"). In her appeal Claimant asserted that Employer failed to comply with the utilization review procedures to challenge the reasonableness and necessity of her treatment, and that the COR denying treatment as not reasonable or necessary is erroneous and must be reversed. Claimant's Brief, page 14.

Employer opposed the appeal by filing Employer's Opposition to Claimant's Application for Review ("Employer's Brief"). In its opposition, Employer asserted the COR complies with D.C. Code § 32-1520, is sufficiently explained, follows the factual findings, is supported by substantial evidence and should be affirmed. We agree.

## ANALYSIS<sup>1</sup>

Claimant argues that Employer failed to initiate “the utilization review (“UR”) procedures in order to determine if [Claimant’s specific request] for physical therapy, muscle relaxants, and sleep therapy was reasonable or necessary.” Claimant’s Brief at 5. In short, Claimant alleges the UR report was insufficient in its review, and as such, the ALJ’s conclusions were not based on substantial evidence, and must be reversed. We disagree.

To begin we review the prevailing law regarding the purpose and role of a UR report in an ALJ’s consideration of the reasonableness and necessity of a recommended medical treatment. In the workers’ compensation system, utilization review is a statutory procedure for addressing whether a proposed medical treatment is reasonable and necessary, and in that context, includes the evaluation of the necessity, character, and sufficiency of both the level and quality of medically related services provided an injured employee based upon medically related standards. D.C. Code § 32-1501(18) (A) (2001). The appropriateness of any medical care furnished, or scheduled to be furnished, to an employee through workers’ compensation may be reviewed under the UR procedures contained in D.C. Code § 32-1507(b)(6).

At a formal hearing held to determine the necessity or sufficiency of care (as opposed to causation), there is no preference for the opinion of either the medical care provider or the utilization reviewer. Pursuant to § 32-1507(b)(6) of the Act “[a]ny medical care or service furnished or scheduled to be furnished under this chapter shall be subject to utilization review. Utilization review may be accomplished prospectively, concurrently, or retrospectively.” D.C. Code § 32-1507(b)(6). Observing that the legislative intent of the UR provisions of the Act was to adopt “a utilization review paradigm,” the CRB has held that, if there is a dispute about the necessity of proposed medical treatment, utilization review is the mandatory first step in the resolution of that dispute. *Gonzalez v UNICCO Serv. Co.*, CRB No 07-005 (February 21, 2007).

Generally, the Employer is responsible for such medical services that are reasonable and necessary and directly related to the disabling injury. Claimant, thus, has the burden of demonstrating that the claimed medical care is reasonable and necessary. *Stewart v. DOES*, 606 A.2d 1350 (D.C. 1992).

In *Green v. Washington Hospital Center*, CRB No. 08-208, (June 17, 2009), (“*Green*”) the CRB stated clearly the posture in which a UR report is to be used. In *Green*, the CRB stated:

---

<sup>1</sup> The scope of review by the CRB as established by the District of Columbia Workers’ Compensation Act (“Act”) and as contained in the governing regulations is limited to making a determination as to whether the factual findings of a Compensation Order on appeal are based upon substantial evidence in the record, and whether the legal conclusions drawn from those facts flow rationally from those facts and are otherwise in accordance with applicable law. D.C. Code §32-1521.01(d) (2) (A). “Substantial evidence” as defined by the District of Columbia Court of Appeals (“DCCA”), is such evidence as a reasonable person might accept to support a particular conclusion. *Marriott Int’l. v. DOES*, 834 A.2d 882 (D.C. 2003) (*Marriott*). Consistent with this scope of review, the CRB is also bound to uphold a Compensation Order that is supported by substantial evidence, even if there is also contained within the record under review substantial evidence to support a contrary conclusion, and even where the members of the CRB review panel considering the appeal might have reached a contrary conclusion. *Marriott*, 834 A.2d at 885.

On the question of reasonableness and necessity, the UR is not ‘dispositive’, but rather, under the DCCA opinion in *Sibley Memorial Hospital, supra*, and our subsequent decision in *Haregewoin, [infra]*, it stands on equal ‘preferential’ footing with an opinion of a treating physician. The question of reasonableness and necessity is properly before the ALJ for consideration; he is free to consider the medical evidence as a whole on this question, and is not bound by the outcome of the UR report. The issue should be decided based upon the ALJ's weighing of the competing evidence and he is free to accept either the opinion of the treating physician who recommends the treatment, or the opinion of the UR report, without the need to apply a treating physician preference.

*Green, supra* at 5.

In the case at bar, Claimant asserts the UR procedures were insufficient as only two of the treatment modalities (Toradal injections and anti-inflammatory/NSAID treatments) that the ALJ determined to be unreasonable and unnecessary were specifically commented on in the UR report. Further, Claimant objects that the three remaining treatment modalities (physical therapy, muscle relaxants, and sleep medications) were not even referenced. Claimant’s Brief at page 3.<sup>2</sup>

With regard to the request for physical therapy, in the CO the ALJ determined that the record did not support, and Claimant did not meet her burden in proving whether she continues to need physical therapy for a work injury she sustained in 2006. The ALJ noted that Claimant made progress with respect to the June 23, 2006 injury and had “reached a medical baseline” according to her treating physician, Dr. Dawson. The ALJ concluded that although Claimant’s treating physician recommended physical therapy, this recommendation was not related to Claimant’s 2006 injury, Dr. Dawson failed to address the findings of the UR report, and the record did not support that physical therapy would be reasonable and necessary. The CO noted Dr. Levitt found the treatment to be unnecessary, stating that there is no clinical indication to begin physical therapy “after a period of six to 12 weeks for the treatment of back pain.” Here, in accordance with *Green*, the ALJ considered the record as a whole and concluded that physical therapy was not reasonable or necessary. We agree with the ALJ’s conclusion on this issue.

With regard to the request for pain medication, the ALJ determined that, given the law of the case regarding Claimant’s entitlement to Toradol and Depo Medrol injections, and notwithstanding Claimant’s treating physician’s non-referral of morphine, opioid or narcotics, the record did not establish what type of pain medication Claimant was seeking.

In our review of the findings made by the ALJ, we agree that the record is indeed imprecise as it relates to Claimant’s request for pain management. The record reflects Claimant’s treating physicians are opposed to her use of opioid/narcotic-based pain management, and although Dr. Franchetti opined that “pain management will be necessary permanently into the future due to a

---

<sup>2</sup> Although Claimant also complains that the UR report does not reference the need for opioid pain medications and continued office visits, opioid pain medication treatment was not one of the “additional proposed treatments” remanded by the DCCA for the ALJ’s consideration. Further, the DCCA’s opinion upheld the CRB’s affirmation that continued office visits with Dr. Dawson were not reasonable or necessary. See *White v. DOES*, 120 A.3d 615 (D.C. 2015).

combination of all [Claimant's] work-related injuries [,]" the ALJ noted that the record did not contain any evidence of Dr. Franchetti's disagreement with the UR report's assertion that no further treatment is needed. Appropriately, the ALJ determined that Claimant failed to establish that continued use of pain medication is reasonable and necessary. We agree that the ALJ's conclusion on this issue is consistent with the law.

With regard to the request for muscle relaxants and sleeping medication, the ALJ determined that the evidence did not establish these treatments to be reasonable and necessary given the lack of objective findings related to Claimant's work injury. The ALJ found that Claimant's medical records did not reveal any evidence of active musculoskeletal process linked to the injury, and Claimant's examination was unchanged in January 2013. Having examined Claimant twice, Dr. Levitt noted his physical examination revealed no evidence of a limp or imbalance, nerve inflammation, irritation (lumbar radiculopathy), irritability or spasm (cramps). The ALJ considered that although a 2005 electrocardiogram suggested nerve root irritability, Claimant had no clinical pathology of radiculopathy at any level to correlate the condition. Finally, the ALJ noted that Claimant's treating physician did not offer any rationale for the continued need for muscle relaxants and sleeping medication; neither was there any specificity in the record as to the proposed nature and frequency of any historical use of these medications, or any future benefit Claimant would derive therefrom. The ALJ determined that Claimant failed to establish, and the record does not support, the use of muscle relaxants and sleeping medication as reasonable and necessary under the Act. We agree that the record supports the ALJ's conclusion on this issue.

The DCCA concluded in *Placido v. DOES*, 92 A.3d 323, 327 (D.C. 2014), and reiterated, in its review of the instant case in its July 23, 2015 opinion that an ALJ may consider an IME physician's opinion when determining the reasonableness and necessity of medical services. *Id.* In arriving at the decision that Claimant's request for physical therapy, pain medication, muscle relaxants and sleep medication was not reasonable and necessary the ALJ undertook a detailed assessment of the medical evidence in the record, including the medical reports of Drs. Levitt, Franchetti and Dawson, the deposition of Dr. Levitt, and the UR report which stated that per the Official Disability Guidelines "there is no indication for further treatment that would be related to a soft tissue injury that occurred over six years ago." The ALJ found no reason to reject the opinions in the UR report, and pursuant to *Green*, cited to substantial evidence to support his denial of Claimant's claim for treatment. The ALJ's analysis and conclusions were based upon substantial evidence in the record and in accordance with the law.

We affirm the COR.

#### CONCLUSION AND ORDER

The ALJ's determination that Claimant failed to meet her burden of proof to establish that the additional proposed treatments were reasonable and necessary is supported by substantial evidence and is in accordance with the law. The February 12, 2016 Compensation Order on Remand is AFFIRMED.

*So ordered.*