

GOVERNMENT OF THE DISTRICT OF COLUMBIA

Department of Employment Services

VINCENT C. GRAY
MAYOR



F. THOMAS LUPARELLO
DIRECTOR

COMPENSATION REVIEW BOARD

CRB 14-073

**JEFFREY CARMON,
Claimant-Respondent,**

v.

**DISTRICT OF COLUMBIA DEPARTMENT OF CORRECTIONS,
Employer-Petitioner.**

Appeal from an April 30, 2014 Compensation Order
issued by Administrative Law Judge Fred D. Carney, Jr.
AHD No. PBL 10-064A, DCP No. 30100289590

DEPT. OF EMPLOYMENT
SERVICES
COMPENSATION REVIEW
BOARD
2014 DEC 18 AM 10 15

Matthew J. Peffer for Claimant-Respondent
Corey P. Argust for Employer-Petitioner

Before: Jeffrey P. Russell, Heather C. Leslie, and Melissa Lin Jones, *Administrative Appeals Judges*.

Jeffrey P. Russell, *Administrative Appeals Judge*, for the Compensation Review Board.

DISMISSAL ORDER

A dispute concerning the provision of medical care pursuant to D.C. Code § 1-623.01, *et seq.*, the Public Sector Workers' Compensation Act (PSWCA, or the Act) was presented for resolution to an Administrative Law Judge (ALJ) in the Department of Employment Services (DOES). On April 30, 2014, the ALJ issued a Compensation Order in which the employee's request for medical care was granted.

The Compensation Order was appealed to the Compensation Review Board (CRB) by the Employer on May 30, 2014, seeking review of the Compensation Order, contending that DOES had no jurisdiction to hear the claim, that the ALJ applied the treating physician preference contrary to law, that the ALJ's allocations of the burden of proof was faulty, and that the award was otherwise not in accordance with the Act. The Claimant filed an opposition to the appeal, arguing that it was properly issued by DOES and that it was otherwise supported by substantial evidence and in accordance with the Act.

In the Compensation Order and the filings of the parties, the dispute is characterized in one form or another as if the issue presented was for modification of a prior compensation order or a decision to terminate entitlement benefits on a claim that has previously been accepted and for which benefits have previously been paid.

Both parties in this matter and the ALJ appear to miss the legal nature of the dispute and the framework within which the Act contemplates its resolution.

This is not a case that presents any issue concerning modification of a compensation order or a claimant's continuing entitlement to benefits as a matter of compensability as a legal matter. This is a dispute concerning the reasonableness and necessity of requested medical care. As such, the following code sections are to be applied.

D.C. Code § 1-623.03 provides:

(a) The District government shall furnish to an employee who is injured in the performance of duty the services, appliances, and supplies prescribed or recommended by a qualified physician, who is approved by the Mayor or his or her designee pursuant to subsection (d) of this section, which the Mayor considers likely to cure, give relief, reduce the degree or period of disability, or aid in lessening the amount of monthly compensation. These services, appliance and supplies shall be furnished:

(1) Whether or not a disability has arisen;

...

(3) By or on the order of the District of Columbia medical officers or hospitals, or by a physician or managed care organization designated or approved by the Mayor.

...

(d)(1) An employee to whom services, appliances, or such supplies are furnished pursuant to subsection (a) of this section shall be provided with such services, appliances, and supplies ... by a managed care organization or other health care organization or health care provider designated by the Mayor or his or her designee, in accordance with such rules, regulations, and instructions as the Mayor considers appropriate. ...

...

(3) Any medical service provided pursuant to this subsection shall be subject to utilization review under § 1-623.23.

...

(f) The Mayor or his or her designee shall provide a claimant with written authorization for payment of any treatment or procedure within 30 days after the treating physician makes a written request to the Mayor or his designee for this authorization. If the Mayor or his or her designee fails to provide written authorization to the claimant within 30 days of the request, the treatment or procedure shall be deemed authorized, unless the Mayor or his or her designee

commences a utilization review pursuant to § 1-623.23(a-2) within 30 days of the request.

D.C. Code § 1-623.23 provides:

(a)(a-2) Any medical care or service furnished or scheduled to be furnished under this subchapter shall be subject to utilization review. ...

...

(a)(1) In order to determine the necessity, character, or sufficiency of any medical care or service furnished or scheduled to be furnished under this subchapter and to allow for the performance of competent utilization review, a utilization review organization or individual used pursuant to this chapter shall be certified by the Utilization Review Accreditation Commission [URAC].

...

(a)(4) Disputes between a medical care provider, employee, or District of Columbia Government on the issue of necessity, character, or sufficiency of the medical care or service furnished, or scheduled to be furnished, or the fees charged by the medical care provider shall be resolved by the Mayor upon application for a hearing by the District of Columbia Government, employee, or medical provider. **The decision of the mayor may be reviewed by the Superior Court of the District of Columbia.** The decision may be affirmed, modified, revised, or remanded in the discretion of the court. The decision shall be affirmed if supported by substantial competent evidence on the record.

(Emphasis supplied.)

We have no jurisdiction to affirm, vacate, reverse or modify the Compensation Order.

The appeal is dismissed.

SO ORDERED.

FOR THE COMPENSATION REVIEW BOARD:



JEFFREY P. RUSSELL
Administrative Appeals Judge

December 18, 2014

DATE