

GOVERNMENT OF THE DISTRICT OF COLUMBIA

Department of Employment Services

MURIEL BOWSER
MAYOR



DEBORAH A. CARROLL
DIRECTOR

COMPENSATION REVIEW BOARD
CRB No. 16-027

MIA McDONALD,
Claimant-Respondent,

v.

REMINGTON LODGING & HOSPITALITY, LLC AND LIBERTY MUTUAL INSURANCE COMPANY,
Employer/Carrier-Petitioner.

Appeal from a January 27, 2016 Compensation Order
by Administrative Law Judge Amelia G. Govan
AHD No. 14-011A, OWC No. 700961

(Decided June 29, 2016)

David M Snyder for Claimant
Richard W. Souther for Employer

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

LAWRENCE D. TARR for the Compensation Review Board.

DECISION AND REMAND ORDER

FACTS OF RECORD AND PROCEDURAL HISTORY

Claimant, Mia McDonald, injured her head and shoulders in a work-related accident on February 1, 2013, while working as a front desk clerk at Employer's Melrose Hotel. A dispute arose over whether Employer was responsible for a consultation with neurologist Dr. Ammerman and for a lumbar MRI study, both of which were recommended by Claimant's treating physician, Dr. Joel D. Fechter.

In a March 25, 2015 Compensation Order, an administrative law judge ("ALJ") granted the authorization for the neurological consultation with Dr. Ammerman but denied authorization for the lumbar MRI. *McDaniel v. Remington Lodging & Hospitality, LLC*, AHD No. 14-011A, OWC No. 700961 (March 25, 2015). Claimant appealed the ALJ's decision denying the MRI.

On appeal, the Compensation Review Board ("CRB") vacated the Compensation Order and remanded the case to the ALJ because it was unclear whether the ALJ used the correct legal standard for analyzing a claim involving a dispute between the medical opinion of a treating

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physician and the medical opinion of the Utilization Review (“UR”) doctor. *McDaniel v. Remington Lodging & Hospitality*, CRB 15-065 (August 20, 2015).

In her Compensation Order on Remand, which is the subject of this appeal, the ALJ reversed her earlier determination and authorized the lumbar MRI. Employer appealed and Claimant filed an Opposition to the appeal. Both parties timely filed memoranda in support of their positions.

ANALYSIS

In July 2013, Dr. Fechter recommended a lumbar MRI scan. His July 12, 2013, report stated, “I have recommended an MRI scan of the lumbar spine in view of (Claimant’s) significant pain here as well.”

Employer had Claimant’s medical records reviewed by UR Dr. Richard Duncan, also an orthopedic surgeon. In his January 6, 2014 UR report, Dr. Duncan was asked whether a lumbar MRI was medically appropriate for the Claimant. Dr. Duncan wrote:

No, an MRI of the lumbar spine . . . [is] not medically appropriate. As indicated above, [Claimant’s] examination and history suggest lumbar strain and aggravation of degenerative disc disease. She has a normal neurological examination, without radiculopathy, radicular leg pain, or red flag symptoms; therefore an MRI scan is not indicated, and MRI scans are not a screening tool.

On March 24, 2014, Dr. Fechter responded to the UR report. Dr. Fechter disagreed with Dr. Duncan’s characterization of the MRI as a “screening tool” and stated he continues to request the MRI. Dr. Fechter did not request reconsideration of the Dr. Duncan’s report.¹

In deciding the MRI should be authorized the ALJ held:

The undersigned is of the opinion that the medical advice of Drs. Mininberg and Fechter should be given more weight than that of the other physicians because these doctors examined Claimant and followed her and her condition for many months.

* * *

As already stated, Dr. Duncan’s specialty is orthopedic surgery. For this reason, I find his decision regarding whether or not Claimant should undergo a neurological procedure, such as a MRI scan of the lumbar spine, less than compelling. Conversely, Drs. Mininberg and Fechter show they are responsible

¹ D.C. Code §32- 2507 (b) (6) (c) states:

If the medical care provider disagrees with the opinion of the utilization review organization or individual, the medical care provider shall have the right to request reconsideration of the opinion by the utilization review organization or individual 60 calendar days from receipt of the utilization review report. The request for reconsideration shall be written and contain reasonable medical justification for the reconsideration.

physicians who tried to get a medical decision from another neurologist, as to what could or should be done to help improve Claimant's condition. For all of these reasons, the opinions of Drs. Mininberg and Fechter are given more weight than the opinions of the other physicians involved in this case.

Given the fact that there was no appeal of the ruling that Claimant is entitled to a neurological consultation, it is reasonable that such a consultation would be more precise if a MRI scan of the lumbar area was performed. Therefore, such a MRI scan must be performed.

Compensation Order on Remand at 6-7.

As this passage from the Compensation Order on Remand shows the ALJ primarily gave decisional weight to the opinion of Dr. Fechter because Dr. Fechter examined the Claimant and followed her for many months. By giving greater weight to Dr. Fechter's opinion because that doctor examined Claimant and followed her for many months, the ALJ improperly applied the treating physician preference to Dr. Fechter's report.

A UR report is entitled to equal evidentiary weight with the report of a treating physician:

The ALJ is free to consider the medical evidence as a whole on the 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 medical evidence and [the ALJ] 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 v. Washington Hospital Center*, CRB No. 08-208, AHD No. 07-130, OWC No. 628552 (June 17, 2009).

Therefore, the facts that Dr. Fechter examined the Claimant several times and treated her for many months, things which help define a treating physician, are not legitimate reasons for favoring his opinion over that of UR Dr. Duncan.²

The ALJ also stated that a reason she found Dr. Duncan's opinion "less than compelling" is because he is an orthopedic surgeon and he was evaluating a neurological procedure. However, Dr. Fechter also is an orthopedic surgeon. Therefore, this rationale for disfavoring Dr. Duncan's opinion--because he was an orthopedic specialist asked to comment on a possible neurological condition--is without support.

Lastly, the ALJ stated another reason for authorizing the MRI was because the upcoming consultation with the neurologist "would be more precise if a MRI scan of the lumbar area was performed." However, neither Dr. Fechter nor Dr. Ammerman have stated that the Dr.

² In his memorandum, Claimant suggests that one reason an ALJ could discount a UR doctor's opinion is the fact that the UR doctor did not perform an in-person physical examination of the injured worker. Claimant's memorandum at 6. We disagree. Unlike an IME, the UR provisions envision records review. *See*, 7 DCMR §232.

Ammerman's consultation would be aided by an MRI prior to that consultation. Therefore, this reason is not supported by substantial evidence in the record.

CONCLUSION AND ORDER

The ALJ's determination that a lumbar MRI is reasonable and necessary is not supported by substantial evidence in the record nor is it in accordance with the law.³ The January 27, 2016 Compensation Order on Remand is VACATED and REVERSED. This case is remanded to the ALJ with instructions to enter an Award denying this claim.

So ordered.

³ Our decision should not be construed as deciding whether an MRI prescribed by Dr. Ammerman, the neurologist whose medical consultation was found to be authorized, is reasonable and necessary.