

GOVERNMENT OF THE DISTRICT OF COLUMBIA  
Department of Employment Services

VINCENT C. GRAY  
MAYOR



LISA M. MALLORY  
DIRECTOR

COMPENSATION REVIEW BOARD

CRB No. 11-147

WILLIAM D. BUTLER,  
Claimant-Petitioner,

v.

GEORGETOWN UNIVERSITY and ZURICH INSURANCE Co.,  
Employer/Carrier-Respondent.

DEPT. OF EMPLOYMENT  
SERVICES  
COMPENSATION REVIEW  
BOARD  
2012 OCT 25 AM 10 01

Appeal from a Compensation Order by  
The Honorable David L. Boddie  
AHD No. 09-438A, OWC No. 657344

Michael J. Kitzman, Esquire for the Petitioner  
Todd S. Sapiro, Esquire for the Respondent

Before MELISSA LIN JONES, HENRY W. MCCOY, and LAWRENCE D. TARR, *Administrative Appeals Judges*.

MELISSA LIN JONES, *Administrative Appeals Judge*, for the Compensation Review Board.<sup>1</sup>

DECISION AND ORDER

FACTS OF RECORD AND PROCEDURAL HISTORY

On February 17, 2009, Mr. William D. Butler injured his back while performing his duties as a maintenance engineer for Georgetown University. Under the care of Phillips and Green, Mr. Butler was diagnosed with lumbosacral spine strain superimposed upon a previous injury, possible early right sciatica, postsurgical fibrosis, possible neural foraminal stenosis, and cervical spondylosis. Mr. Butler also treated with Dr. Joshua M. Ammerman, a neurosurgeon.

An issue arose over Mr. Butler's entitlement to pain management, and the parties proceeded to a formal hearing. In a Compensation Order dated November 18, 2011, an administrative law judge

<sup>1</sup> Jurisdiction is conferred upon the CRB pursuant to D.C. Code §§32-1521.01 and 32-1522 (2004), 7 DCMR §250, *et seq.*, and the Department of Employment Services Director's Directive, Administrative Policy Issuance 05-01 (February 5, 2005).

("ALJ") denied Mr. Butler's request based upon a utilization review report and an absence of evidence that any physician independently had recommended pain management.<sup>2</sup>

On appeal, Mr. Butler contends he is entitled to pain management. Mr. Butler asserts the utilization review report conflates the issues of causal relationship with reasonableness and necessity. Mr. Butler also asserts that the utilization review report "improperly credits the findings of the carrier's IME in analyzing the medical treatment recommended"<sup>3</sup> by adopting the opinions of the independent medical examination physician and that the utilization review report did not reject his need for pain management but predicated it upon a multidisciplinary evaluation. Mr. Butler requests we reverse the Compensation Order's denial of pain management.

On the other hand, Georgetown University highlights the fact that Dr. Ammerman did not make a recommendation for pain management which devalues Dr. Richard S. Meyer's indication that Mr. Butler should follow-up with pain management because Dr. Meyer's opinion is based upon Mr. Butler's representation that Dr. Ammerman had recommended pain management. Ultimately, Georgetown University argues the utilization review report is substantial evidence to support the denial of pain management and requests the Compensation Review Board ("CRB") affirm the Compensation Order.

#### ISSUE ON APPEAL

1. Did the ALJ properly consider the utilization review report such that the November 18, 2011 Compensation Order is supported by substantial evidence and is in accordance with the law?

#### ANALYSIS<sup>4</sup>

When the issue for resolution is reasonableness and necessity of medical treatment, the utilization review process is mandatory.<sup>5</sup> Once a utilization review report has been submitted into evidence, that report is not dispositive but is entitled to equal footing with an opinion rendered by a treating physician.<sup>6</sup> The ALJ

---

<sup>2</sup> *Butler v. Georgetown University*, AHD No. 09-438A, OWC No. 657344 (November 18, 2011).

<sup>3</sup> Memorandum of Points and Authorities in Support of Application for Review, unnumbered p. 4.

<sup>4</sup> The scope of review by the CRB is limited to making a determination as to whether the factual findings of the appealed Compensation Order on Remand are based upon substantial evidence in the record and whether the legal conclusions drawn from those facts are in accordance with applicable law. Section 32-1521.01(d)(2)(A) of the District of Columbia Workers' Compensation Act of 1979, D.C. Code, as amended, §32-1501 *et seq.* Consistent with this standard of review, the CRB is constrained to uphold a Compensation Order on Remand that is supported by substantial evidence, even if there also is contained within the record under review substantial evidence to support a contrary conclusion and even if the CRB might have reached a contrary conclusion. *Marriott International v. DOES*, 834 A.2d 882, 885 (D.C. 2003).

<sup>5</sup> See *Gonzalez v. UNICCO Service Company*, CRB No. 07-005, AHD No. 06-155, OWC No. 604331 (February 21, 2007).

<sup>6</sup> See *Children's National Medical Center v. DOES*, 992 A.2d 403 (D.C. 2010).

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 treating physician who recommends the treatment, or the opinion of the UR report, without the need to apply a treating physician preference.<sup>7]</sup>

Regardless of which opinion the ALJ gives greater weight, it is incumbent upon the ALJ to explain why one opinion is chosen over the other.<sup>8</sup>

In Mr. Butler's case, the ALJ thoroughly reviewed the medical evidence and determined neither Dr. Ammerman nor Phillips and Green had recommended pain management:

Nowhere in the medical reports of Dr. Ammerman is it reflected that he discussed or referred the Claimant for pain management treatment.

\* \* \*

The evidence in the record reflects that the Claimant then returned to Drs. Phillips and Green and continued treatment with them, as well as informing them that, in addition to discharging him, because he was not a surgical candidate, Dr. Ammerman had referred him for pain management treatment. The medical evidence in the record reflects that then in reports April 2011, Claimant's treating physicians noted that although they never received a formal medical report or referral form from Dr. Ammerman regarding pain management treatment, that they were waiting for such treatment to be authorized by the Employer. CE 1.<sup>9]</sup>

The ALJ then credited the opinion in the utilization review report when reaching the conclusion that pain management is not reasonable and necessary:

Although having noted that in a review of the evidence in the record submitted by both parties that there is no evidence of a referral by Dr. Ammerman, or any other physician, for pain management treatment. And while I note that my review of the evidence failed to reveal to me any referral, nor has any party specifically pointed out where in the evidence there is such a referral, both parties have presented evidence, by testimony as well as exhibits, in addition to their respective arguments presented in support, that the requested treatment is, or is not reasonable and necessary. Therefore, considering the evidence in the record, I find the more persuasive, and accord the greater weight to the medical opinions of Dr. Polesky, the utilization review reviewer,

---

<sup>7</sup> *Green v. Washington Hospital Center*, CRB No. 08-208, AHD No. 07-130, OWC No. 628552 (June 17, 2009).

<sup>8</sup> *Haregewoin v. Loews Washington Hotel*, CRB No. 08-068, AHD No. 07-041A, OWC No. 603483 (February 19, 2008). The Compensation Review Board's Decision and Order transposes the claimant's name; the claimant's name is Haregewoin Desta not Desta Haregewoin. See *Desta v. Loew's Washington Hotel*, AHD No. 07-041A, OWC No. 603483 (December 7, 2007).

<sup>9</sup> *Butler*, *supra*, at pp. 4, 5.

and his opinion on the question of reasonableness and necessity of pain management treatment, wherein he stated:

The guidelines indicate that admission to a multidisciplinary pain management program may be indicated following a thorough multidisciplinary evaluation. It does not appear that the patient has undergone such a multidisciplinary evaluation at this time. In addition, with the exception of the patient's apparently nonindustrial findings per the cervical MRI of increased signal intensity suggestive of marrow edema which needs to be clarified, the patient has somewhat benign imaging and physical examination findings. He has had extensive treatment over more than 2 years that has failed to return him to full duty status. Based on this information and the question of motivation for full recovery expressed by the IME physician, the patient would not be expected to appreciably benefit from a pain management program.

EE 1.<sup>[10]</sup>

Mr. Butler, however, disagrees with the utilization review report because, in his opinion, it "improperly conflated the issues of causal relationship with the reasonableness and necessity of the injury."<sup>11</sup> We disagree.

The questions posed in the utilization review report are

- (1) Please advise as to whether it is reasonable and necessary for the claimant to undergo pain management as recommended by Dr. Richard Meyer as a result of the February 17, 2009 work injury.
- (2) Please advise as to whether it is reasonable and necessary for the claimant to have monthly visits to Phillips and Green, M.D. as a result of the February 17, 2009 work injury.<sup>[12]</sup>

Contrary to Mr. Butler's assertion, these questions do not request an opinion about the causal relationship between Mr. Butler's injury and his compensable accident; these questions request an opinion of whether or not Mr. Butler's compensable injury requires specific medical treatment. Moreover, it is this reading that the ALJ gave the utilization review report, and we find no error in the wording or in the ALJ's application of the report to the issue for resolution.

---

<sup>10</sup> *Butler, supra*, at p. 6.

<sup>11</sup> Memorandum of Points and Authorities in Support of Application for Review, unnumbered p. 4.

<sup>12</sup> Employer's Exhibit 1.

Next, without any specific reference to the utilization review report, Mr. Butler argues that it “makes determinations as to the credibility of the injured worker’s complaints, the relationship of the subjective complaints to the objective findings, and adopts the opinion of the non-treating physician without ever examining Mr. Butler.”<sup>13</sup> Upon careful review of the utilization review report, Mr. Butler’s reading of it is unpersuasive.

The utilization review report provides a detailed summary of Mr. Butler’s medical treatment with Phillips and Green, his independent medical examination by Dr. Marc B. Danziger, his care with Dr. Ammerman, and his multiple diagnostic test results. To reach its conclusions, the utilization review report then applies the various providers’ evaluation of Mr. Butler’s treatment and conditions to the Official Disability Guidelines, Treatment Index, 9<sup>th</sup> Edition, 2011, Pain Chapter and to the criteria for the general use of multidisciplinary pain management programs. We find nothing improper in ALJ’s analysis and application of the content of the utilization review report.

Finally, the utilization review report definitively states a “pain management program is not medically necessary.”<sup>14</sup> This conclusion is not premised upon a multidisciplinary evaluation; a multidisciplinary evaluation merely is an option for additional consideration that could lead to a finding of reasonableness and necessity per the guidelines:

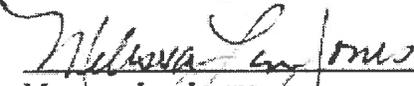
The guidelines indicate that admission to a multidisciplinary pain management program may be indicated following a thorough multidisciplinary evaluation. It does not appear that the patient has undergone such a multidisciplinary evaluation at this time.<sup>15</sup>

The plain wording of the utilization review report does not substantiate Mr. Butler’s position.

#### CONCLUSION AND ORDER

The ALJ properly considered the utilization review report in the context of Mr. Butler’s request for authorization for pain management. The November 18, 2011 Compensation Order is AFFIRMED.

FOR THE COMPENSATION REVIEW BOARD:

  
\_\_\_\_\_  
MELISSA LIN JONES  
Administrative Appeals Judge

\_\_\_\_\_  
October 25, 2012  
DATE

---

<sup>13</sup> Memorandum of Points and Authorities in Support of Application for Review, unnumbered p. 4.

<sup>14</sup> Employer’s Exhibit I.

<sup>15</sup> *Id.*