

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Department of Employment Services

VINCENT C. GRAY
MAYOR



LISA M. MALLORY
DIRECTOR

CRB No. 11-040

PENELOPE A. MINTER,

Claimant–Petitioner,

v.

DISTRICT OF COLUMBIA OFFICE OF THE CHIEF MEDICAL EXAMINER,

Employer–Respondent.

Appeal from an Administrative Action of
Administrative Law Judge Fred D. Carney
AHD No. PBL 073B, DCP No. 761035-0001-2006-0014

Penelope A. Minter, *pro se* Petitioner

Pamela L. Smith, Esquire, for the Respondent

Before JEFFREY P. RUSSELL,¹ LAWRENCE D. TARR and MELISSA LIN JONES, *Administrative Appeals Judges*.

JEFFREY P. RUSSELL, for the Compensation Review Board:

DECISION AND ORDER

BACKGROUND

Petitioner Penelope Minter sustained an injury while employed in the Office of the Chief Medical Officer of the District of Columbia (OCM). The details of that injury and the administrative and litigation history of that claim are not germane here, beyond noting that prior to February 1, 2011, the Disability Compensation Program (DCP) which is administered by the District of Columbia Office of Risk Management (ORM) through its third party administrator (TPA) Sedgewick CMA authorized Ms. Minter to receive medical care from a physician by the name of Dr. Batipps, he being a member of the panel of physicians selected by ORM to provide medical care in DCP cases.

¹ Judge Russell is appointed by the Director of DOES as an interim Board Member pursuant to DOES Administrative Policy Issuance No. 11-02 (June 13, 2011).

On that date, ORM sent Petitioner a letter advising her that Dr. Batipps was no longer a member of the ORM approved panel, and that if she wished to continue to receive medical care for her work related injury at ORM's expense, she would need to select a new physician from the approved panel list.

Ms. Minter wrote a letter to ORM asking that they reconsider that decision. At the same time she filed an Application for Formal Hearing (AFH) with the Administrative Hearings Division (AHD) of this Agency. On March 28, 2011, an Administrative law Judge (ALJ) in AHD entered an order dismissing the AFH for lack of jurisdiction. Ms. Minter filed an Application for Review of that order, to which ORM filed an opposition.

JURISDICTION AND STANDARD OF REVIEW

Where, as here, the decision or action presented to the CRB on appeal arises in a setting and under circumstances in which no record is produced, the CRB must affirm said decision unless it is determined to be arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law. *See*, 6 Stein, Mitchell & Mezines, ADMINISTRATIVE LAW § 51.03 (2001).

DISCUSSION

We note preliminarily that Ms. Minter does not specifically attack the ALJ's determination that he lacked jurisdiction to hear her complaint. Her appeal to the CRB merely reiterates the same points that she sought to make before the AHD, that is, that ORM's denying her continuing care through Dr. Batipps is an arbitrary and capricious decision which is unfair to her and to Dr. Batipps, and that ORM is engaged in a broader practice doing similar things adversely affecting other claimants.

D.C. Code § 1-623.03 (a) and (d) provide that medical care provided under the Act is to be provided "by a managed care organization or other health care provider designated by the Mayor or his or her designee", meaning ORM. Under this statutory scheme, DCP and ORM are not liable for medical services provided by non-approved physicians. *See*, *Mitchell v. D.C. Public Schools*, CRB No. 09-109 (December 11, 2009).

Review of the administrative file from AHD reveals that the document upon which Petitioner premised her March 4, 2011 AFH is a February 1, 2011 letter from ORM advising her that her prior treating physician, Dr. Batipps, "is no longer a panel physician for your workers' compensation injury claim". She was advised in that letter that she is "free to continue treating with [Dr. Batipps] but bills for treatment ... by Dr. Batipps will no longer be paid by the program and the program will require you to see a panel doctor for treatment recommendations. Please choose another provider from the following list and advise of your choice" following which were the names of two physicians, plus the name of a medical practice group. Also attached to the AFH is a letter to a Claims Examiner and a supervisor at Sedgewick CMI, the TPA that administers the DCP for ORM. That letter, dated March 4, 2011, requests reconsideration of Dr. Batipps's "removal" from the panel of physicians authorized to provide medical care under the DCP.

The letter requesting reconsideration makes many assumptions, among them that Dr. Batipps was "removed" from the panel, as opposed to withdrawing from it; that Dr. Batipps is opposed to his no

longer being on the panel; that his removal was without justification; that Dr. Batipps had been denied a right to appeal his “removal”, and that his patients (including Ms. Minter) had been denied the opportunity to continue to receive care from him while he appealed.

Not only are these assumptions without foundation, they are (1) incapable of determination in a formal hearing which is governed by the Act, and, more important (2) by their very nature they illustrate why it is that DOES has no role in this particular controversy.

The legislature determined that DCP, administered for the government by ORM, would provide medical care through a system of pre-selected panels of medical care providers. Only physicians and managed care organizations on the panels are authorized to be compensated by the DCP for that medical care. AHD and DOES have no role in determining whether, when, why or how such physicians or organizations are selected, or are removed from the panel, or what rights of appeal or reconsideration they might have in any process of panel selection, or when, how or why physicians or organizations may resign from the panel, whether, when and how patients are to be notified of a physician’s or organization’s participation status, etc.

These are all DCP policy decisions of the type that ORM has been charged with making, and which are not governed in any manner by the Act. And only final decisions made pursuant to the Act concerning a worker’s entitlement to medical care and wage loss benefits that may be brought to DOES for resolution. As the ALJ properly held, the method employed by DCP to select and maintain the members of the medical panel is not justiciable, at least not before an ALJ in DOES, under the Act.

CONCLUSION

The Dismissal Order dismissing the Application for Formal Hearing was neither arbitrary, capricious, an abuse of discretion, nor contrary to law.

ORDER

The Dismissal Order is affirmed.

FOR THE COMPENSATION REVIEW BOARD:

JEFFREY P. RUSSELL
Administrative Appeals Judge

March 7, 2012
DATE