

GOVERNMENT OF THE DISTRICT OF COLUMBIA

Department of Employment Services

MURIEL BOWSER
MAYOR



DEBORAH A. CARROLL
DIRECTOR

COMPENSATION REVIEW BOARD

CRB No. 15-065

**MIA McDANIEL,
Claimant-Petitioner,**

v.

**REMINGTON LODGING & HOSPITALITY, LLC and
LIBERTY MUTUAL INSURANCE COMPANY,
Employer/Insurer-Respondent.**

Appeal from a March 25, 2015 Compensation Order By
Administrative Law Judge Amelia G. Govan
AHD No. 14-011A, OWC No. 700961

DEPT. OF EMPLOYMENT
SERVICES
COMPENSATION REVIEW
BOARD
2015 AUG 20 AM 9 16

(Decided August 20, 2015)

David M. Snyder for Claimant
Richard W. Souther for Employer

Before MELISSA LIN JONES, LINDA F. JORY, and HEATHER C. LESLIE, *Administrative Appeals Judges.*

MELISSA LIN JONES for the Compensation Review Board.

DECISION AND REMAND ORDER

FACTS OF RECORD AND PROCEDURAL HISTORY

On February 1, 2013, Ms. Mia McDaniel was employed by Remington Lodging & Hospitality, LLC (“Remington”) as a front desk agent at the Melrose Hotel. On that day, construction material from the ceiling fell on Ms. McDaniel’s head and shoulders. She sought medical attention for headache, neck and shoulder stiffness, and tingling in her hands and feet.

Ms. McDaniel began treating for neck and low back pain with Dr. Harvey N. Mininberg and Dr. Joel D. Fechter. Dr. Fechter recommended a neurosurgical consultation and a lumbar MRI. Remington would not authorize the consult or the MRI.

The parties proceeded to a formal hearing to adjudicate the reasonableness and necessity of Dr. Fechter’s recommendations. In a Compensation Order dated March 25, 2015, an administrative law judge (“ALJ”) granted authorization for a neurological consultation but denied authorization

for a lumbar MRI. *McDaniel v. Remington Lodging & Hospitality, LLC*, AHD No. 14-011A, OWC No. 700961 (March 25, 2015).

On appeal, Ms. McDaniel disputes the ALJ's denial of authorization for a lumbar MRI. Ms. McDaniel contends the ALJ erred in relying upon the utilization review report because contrary to the ALJ's ruling that "[t]here were no recommendations from Dr. Fechter regarding exercise or other therapeutic protocols to address Claimant's complaints of low back pain," *Id.* at p. 5, there is evidence in the record that she underwent physical therapy. Ms. McDaniel also asserts the ALJ rendered a medical opinion by finding her pain is minimal and does not significantly effect her daily activities. Finally, Ms. McDaniel argues the ALJ's logic is circular in that the ALJ accepted the utilization review report's determination that there is a lack of objective findings to suggest lumbar radiculopathy while denying an MRI which could objectively verify any radicular complaints. For these reasons, Ms. McDaniel requests the Compensation Review Board ("CRB") reverse the Compensation Order.

In response, Remington repeatedly points out Drs. Fechter and Mininberg have noted in their reports that Ms. McDaniel has no radicular pain, numbness or tingling. Remington asserts the Compensation Order is supported by substantial evidence and requests the CRB affirm it.

Neither party appeals the ALJ's ruling that Ms. McDaniel is entitled to a neurological consultation.

ISSUE ON APPEAL

Is the March 25, 2015 Compensation Order supported by substantial evidence and in accordance with the law?

ANALYSIS¹

When the issue for resolution is reasonableness and necessity of medical treatment, the utilization review process is mandatory. *See Gonzalez v. UNICCO Service Company*, CRB No. 07-005, AHD No. 06-155, OWC No. 604331 (February 21, 2007). 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. *See Children's National Medical Center v. DOES*, 992 A.2d 403 (D.C. 2010). 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

¹ The scope of review by the CRB is limited to making a determination as to whether the factual findings of the appealed Compensation Order 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, as amended, D.C. Code §32-1501 to 32-1545. Consistent with this standard of review, the CRB is constrained to uphold a Compensation Order 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).

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). 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. *Haregewoin v. Loews Washington Hotel*, CRB No. 08-068, AHD No. 07-041A, OWC No. 603483 (February 19, 2008).²

In this case, the ALJ denied authorization for a lumbar MRI because

Employer's position is supported by the other medical record evidence. There were no recommendations from Dr. Fechter regarding exercise or other therapeutic protocols to address Claimant's complaints of low back pain. Her described symptoms at Formal Hearing, of occasional low back pain and bi-monthly lower extremity tingling, were minimal and do not significantly affect her activities of daily living. Dr. Fechter's reports reflect identical verbiage throughout the course of his treatment regarding the dearth of objective findings to suggest lumbar radiculopathy. There is no record support for rejection of the UR provider's conclusions regarding the requested lumbar MRI.

McDaniel, supra, at p. 5. The ALJ's analysis reflects both errors of law and errors of fact.

The ALJ wrote, "There were no recommendations from Dr. Fechter regarding exercise or other therapeutic protocols to address Claimant's complaints of low back pain," *Id*; however, Dr. Fechter prescribed both home exercises and physical therapy (which Ms. McDaniel received). Claimant's Exhibit 1. Thus, the ALJ's analysis is factually inaccurate.

In addition, although Ms. McDaniel did not testify to specific daily activities that are impacted by her injury, Dr. Fechter has limited Ms. McDaniel's standing and her activities. *Id*. Whether those limitations result in a significant effect on Ms. McDaniel's daily living is not clear from the record.

As for Ms. McDaniel's argument that the ALJ's recognition of the dearth of objective findings to suggest lumbar radiculopathy is a circular argument because an MRI could provide such objective findings, this argument is rejected. While it is true that an MRI could provide such objective findings, it is not the only means to do so, and as the record stands, the ALJ's assessment of the MRI evidence is accurate.

Finally, regarding the applicable law, the ALJ wrote

The medical opinions in the record must be fully considered in determining Claimant's need, if any, for medical treatment. The ALJ has an obligation to weigh the treating physician's opinion and the UR [footnote omitted] opinion based upon the record as a whole; the ALJ must explain why the ALJ chooses one opinion and not the other, but no initial preference is required.

² The CRB's Decision and Order transposes the claimant's name; the claimant's name is Haregewoin Desta, not Desta Haregewoin. *Desta v. Loew's Washington Hotel*, AHD No. 07-041A, OWC No. 603483 (December 7, 2007).

Haregewoin v. Loews Washington Hotel, CRB No. 08-068, AHD No. 07-041A, OWC No. 603483 (February 19, 2008). Haregewoin adopted the reasoning of the District of Columbia Court of Appeals (DCCA) in *Sibley Memorial Hospital v. DOES*, 711 A.2d 105 (D.C. 1998), which requires that the ALJ expressly address why a UR report is not credited. *Mario Jarquin v. Omni Shoreham Hotel*, CRB No. 14-131, AHD No. 14-280, OWC No. 705202 (March 19, 2015).

McDaniel, *supra*, at pp. 4-5. From the language in this paragraph, it is unclear whether the ALJ placed the utilization review report on equal footing with the opinion of the treating physician. By stating “[t]here is no record support for rejection of the UR provider’s conclusions regarding the requested lumbar MRI,” *Id.* at p. 5 without providing an analysis of why the utilization review report was accepted, it seems the ALJ may have accepted it by default thereby giving it a preference. Ultimately, because the ALJ did not provide the necessary analysis regarding the utilization review report, the law requires the CRB remand this matter for the ALJ to weigh the medical evidence without affording a preference.

CONCLUSION AND ORDER

Because the ALJ made both errors of fact and errors of law, the Compensation Order is not supported by substantial evidence, is not in accordance with the law, and is VACATED IN PART. This matter is REMANDED for the ALJ to assess whether a lumbar MRI is reasonable and necessary by weighing the medical evidence without affording any preference.

So ordered.