

2024 WL 210680 (N.Y.Work.Comp.Bd.)

Workers' Compensation Board

State of New York

EMPLOYER: SC & BP SERVICES INC

Case No. G240 9403

Carrier ID No. 468-13-3837 W166250

January 12, 2024

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Date of Accident 12/22/2018

The Full Board, at its meeting held on December 19, 2023, considered the above captioned case for Mandatory Full Board Review of the Board Panel Memorandum of Decision filed on August 1, 2023.

#### ISSUE

The issue presented for Mandatory Full Board Review is whether the direction for the claimant to provide a Health Insurance Portability and Accountability Act (HIPAA) release with regard to her fibroidectomy treatment or surgery is supported by the law.

The Workers' Compensation Law Judge (WCLJ) resolved the C-8.1Bs involving physical therapy in favor of the provider only to the extent approved by the carrier's response to the Attending Doctor's Request for Approval of Variance and Insurer's Response (MG-2GP); and denied the carrier's request for a direction for a HIPAA release for claimant's fibroidectomy of June 17, 2021, finding that it was not related.

The unanimous Board Panel found that the WCLJ properly resolved the C-8.1B issues in favor of the provider only to the extent approved by the carrier in its MG-2GP.

However, the Board Panel majority modified the WCLJ decision filed on July 12, 2022, to grant the carrier's request for a direction for the claimant to produce a HIPAA authorization for her fibroidectomy procedure.

The dissenting Board Panel member would affirm the WCLJ's denial of the carrier's request for the claimant to provide a HIPAA release for the claimant's fibroidectomy procedure, finding no evidence "that the claimant had a fibroidectomy on June 17, 2021" and no medical evidence in the record to support the carrier's request.

The claimant filed an application for Mandatory Full Board Review requesting that the direction for a HIPAA release of the claimant's records from her gynecologist be rescinded. The claimant argues that the carrier's request is "nothing more than a

fishing expedition” because the carrier has made no “offer of proof sufficient to justify a release of [these] records when no connection has been made [to] the claimant's causally related back condition.”

No timely rebuttal was filed.

Upon review, the Full Board votes to adopt the following findings and conclusions.

## FACTS

On January 28, 2019, the Board received an Employee Claim (C-3) in which the claimant reported that she injured the lower part of her back while at work on December 22, 2018. The Board also received a Limited Release of Health Information (C-3.3) in which the claimant reported that Dr. Hanan had previously treated her lower back.

On January 21, 2019, the claimant was evaluated by Dr. Hanan, who noted that the claimant reported that since the accident on December 22, 2018, she has had lower back pain that radiates into her right leg, and bilateral knee pain. Dr. Hanan diagnosed [contusion of lower back](#) and pelvis, sprain of lumbar spine, and bilateral [knee sprain](#).

\*2 On March 21, 2019, the Board received another C-3 form in which the claimant alleged that, in addition to her back, she also injured her bilateral knees and buttocks on December 22, 2018.

In a decision filed on May 17, 2019, the WCLJ established the claim for a back injury. In a decision filed on October 30, 2019, the WCLJ amended the claim to include [injuries to the pelvis](#) and bilateral knees.

In a report of an examination on May 11, 2021, Dr. Hanan noted that the claimant “went to Kings County ED with abdominal pain on 05/07/2021, [and] was diagnosed with [uterine fibromas](#). She was seen by her OBGYN who recommended a fibroidectomy on 06/17/2021 [sic]” (ECF Doc ID #358352745, p. 3).

On June 17, 2021, the claimant had a posterolateral fusion (L4-L5-S1) performed by Dr. Lattuga, as authorized by the carrier.

On December 2, 2021, Dr. Hanan filed an Attending Doctor's Request for Approval of Variance and Insurer's Response (MG-2) to request approval for physical therapy to the back two times per week for eight weeks. On December 10, 2021, the carrier responded with an MG-2GP to grant the request in part, approving physical therapy to the back two times per week for six weeks.

On February 24, 2022, Dr. Hanan filed an MG-2 to request approval for physical therapy to the back two times per week for eight weeks. On March 1, 2022, the carrier responded with an MG-2GP to grant the request in part, approving physical therapy to the back two times per week for five weeks.

On May 17, 2022, the carrier filed several Notices of Disputed Bill Issue(s) (C-8.1B) objecting to bills for physical therapy on several dates of treatment (between January 17, 2022, and February 7, 2022; on February 8, 2022; between March 14, 2022, and April 4, 2022; and between April 5, 2022, and April 13, 2022). The carrier indicated that the treatment deviated from the Guidelines without securing a variance because the MG-2GP “dated 12/10/21 only approved 12 sessions up to 1/15/22” and the MG-2GP “dated 03/01/22 only approved 10 sessions up to 04/01/22.”

At the hearing on July 7, 2022, several issues, including the C-8.1B objections, were discussed. The WCLJ resolved the C-8.1Bs involving physical therapy in favor of the provider only to the extent approved by the MG-2GP. The carrier also requested a HIPAA release related to the claimant's fibroidectomy that was performed on June 17, 2021, indicating that it could cause back pain and is related as the claim is established for the back. When the WCLJ pressed the attorney about who stated that it can cause back pain, the carrier's attorney replied, “It's — it can cause back pain. I mean, it's -- it doesn't say it in the report but it does say -- in Dr. Hanan's report, it does reference the procedure” (Hearing Transcript, 7/7/22, p. 12). The WCLJ denied the

carrier's request for a direction for the claimant to produce a HIPAA release for her fibroidectomy of June 17, 2021, finding that it was not related.

\*3 The WCLJ's decision on the C-8.1B issues was set forth in the decision filed on July 12, 2022, but the denial of the carrier's request for the claimant to produce a HIPAA release was not.

The carrier filed an Application for Board Review and requested that the WCLJ decision be modified to resolve the C-8.1Bs involving physical therapy in favor of the carrier and to direct the claimant to produce HIPAA releases for the fibroidectomy procedure. The carrier argued that the C-8.1Bs should have been found in favor of the carrier for treatment in excess of the authorized physical therapy, which would have been completed by April 1, 2022, noting that a timely objection to treatment after that date was filed on May 17, 2022. Regarding the request for a HIPAA release, the carrier argued that a fibroidectomy procedure is “noted to cause pain in the back and pelvis for which this claim is established.” Therefore, “it was reversible error for the [[WCLJ] to deny the carrier's request [when these records] would enable the carrier to confirm whether this unrelated condition is contributing to the claimant's disability and to what extent.” In support of its request, the carrier relied on Dr. Hanan's report which noted the claimant's abdominal pain, the diagnosis of [Uterine Fibromas](#), and the subsequent recommended fibroidectomy. The carrier also referenced UCSF Health [[Fibroids Signs and Symptoms](#)], that indicates that low back and pelvis pain can be symptoms of [fibroids](#).

In rebuttal, the claimant requested that the WCLJ decision be affirmed. The claimant argued that the portion of the carrier's application regarding the C-8.1B issues is irrelevant, noting that the C-8.1Bs were only found in favor of the provider for the treatment that had been authorized by the carrier. As for the requested HIPAA release, the claimant argued that the carrier's request for a release of records of the claimant's gynecological issues was outrageous and properly denied by the WCLJ.

## LEGAL ANALYSIS

Initially, the claimant is correct that the C-8.1Bs were resolved in favor of the provider only to the extent approved by the carrier in its MG-2GP, and therefore, the Full Board finds that the carrier has not presented a basis to alter this finding.

Turning to the carrier's request for a HIPAA release, a Limited Release (C-3.3 form), which is part of form C-3, is “a completed and executed limited authorization to obtain relevant medical records regarding the prior medical history of the body part or illness at issue” in the claim (12 NYCRR 300.37[b][1][iii]). “The Limited Release is only required if the claimant files a completed Employee Claim form and indicates on the form that he or she had a prior injury to the same body part or similar illness to the one(s) listed on the form” (id.). “In accordance with the limited release, the parties may seek production of relevant medical records from medical professionals and hospitals that have treated the claimant for [a] previous injury to the same body part or similar illness to the one listed in the Employee Claim form” (12 NYCRR 300.38[c][1]).

\*4 Here, while the claimant denied any prior injury to the same body part on both of the C-3 forms received by the Board, she completed a C-3.3 limited release to authorize the release of records from Dr. Hanan who had previously treated her lower back.

In [Matter of Trusewicz v Delta Envtl.](#), 178 AD3d 1312 (2019), the Appellate Division found that “the Board erred in requiring [the claimant] to sign an open-ended HIPAA release, without limiting that release to treatment records pertaining to the claimed sites” as provided by 12 NYCRR 300.37(b)(1)(iii).

As noted herein, in support of its broader request for the claimant to authorize release of records related to a fibroidectomy procedure, the carrier relies only on Dr. Hanan's report which references emergency room treatment for abdominal pain, and the subsequent diagnosis and treatment. While the carrier relied on “UCSF Health” information that indicates that low back and pelvis pain can be symptoms of [fibroids](#), the carrier has pointed to no evidence in this record that would support a finding that the claimant's abdominal pain and subsequent treatment for such pain is relevant to her established back injury, as it argued before the WCLJ at the hearing on July 7, 2022.

Therefore, the Full Board finds that the relevant law, as set forth herein, as well as the evidence in the record, support the decision made by the WCLJ at the hearing held on July 7, 2022, to deny the carrier's request for the claimant to provide a HIPAA release with regard to her fibroidectomy treatment or surgery.

CONCLUSION

ACCORDINGLY, the WCLJ decision filed July 12, 2022, is MODIFIED solely to include the WCLJ's denial of the carrier's request for the claimant to produce a HIPAA release for her fibroidectomy treatment or surgery. The rest of the WCLJ decision remains in effect. No further action is planned at this time.

Clarissa Rodriguez

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