STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC. WORKERS' COMPENSATION COURT
APPELLATE DIVISION

ROBERT BRITTO	)	
	)	
VS.	)	W.C.C. 04-05385
	)	
BOYS AND GIRLS CLUB OF PROVIDENCE	)	

DECISION OF THE APPELLATE DIVISION

OLSSON, J. This matter is before the Appellate Division on the appeal of the employee from a decision and decree of the trial judge which ordered the respondent to pay up to a certain amount for corrective eyeglasses which had not yet been purchased, and did not award a counsel fee or costs for prosecution of the petition. After thoroughly reviewing the record in this matter and thoughtfully considering the arguments of the parties, we find that the trial judge lacked jurisdiction to address the subject matter of this petition. Consequently, we hereby vacate the trial judge's decision and decree and dismiss the petition without prejudice.

On November 4, 2003, Robert Britto sustained a contusion and corneal abrasion to his right eye during his employment with the respondent. He received initial treatment at Miriam Hospital and then followed up with Dr. Kent Anderson, an ophthalmologist. The employee returned to work on November 6, 2003 and continued working until August 2004. The records of Dr. Anderson were admitted into evidence and reflect that on December 19, 2003, the employee's condition had improved to the point that he was told to return in a year. The doctor recommended glasses and provided a prescription for the lenses. On June 22, 2004, the

employee informed the doctor that he had lost the prescription and would like a new one. Dr. Anderson provided a new prescription.

Mr. Britto then took his prescription to Rhode Island Eye Institute and obtained estimates for two (2) pairs of glasses with different frames and different types of lenses. On July 15, 2004, counsel for the employee sent a letter to Beacon Mutual Insurance Company enclosing copies of the two (2) estimates as well as a note from Dr. Anderson dated July 2, 2004 stating that Mr. Britto needs corrective lenses to visually rehabilitate his eye as a result of the injury. The letter makes the following demand: "Please make payment for the corrective lenses so Mr. Britto may obtain the necessary eyewear."

On July 19, 2004, Christine Montone, an adjuster at Beacon, responded with a letter requesting all medical records documenting treatment for the eye injury. Counsel forwarded reports of Dr. Anderson and Miriam Hospital on July 26, 2004. In a letter dated July 29, 2004, Ms. Montone advised counsel for the employee that Beacon would pay for corrective lenses which were "medically reasonable and necessary to correct Mr. Britto's right eye vision." She also requested a breakdown of the invoices from Rhode Island Eye Institute before issuing payment. In response, attorney Lawrence L. Goldberg returned her letter after penning a handwritten note on the bottom of Ms. Montone's letter stating: "How nice since it is required by law! See you at the Comp Court."

On August 12, 2004, Ms. Montone sent letters to Dr. Anderson and Rhode Island Eye Institute requesting additional information. In the letter to Rhode Island Eye Institute, she indicates that it is her understanding that Mr. Britto has purchased eyeglasses and she is seeking clarification of what was paid since she received two (2) receipts from his attorney.

This petition to review was filed on August 16, 2004, alleging "failure to pay for eyewear." Mr. Britto testified that he has never worn prescription eyeglasses and as of the date of his testimony on December 8, 2004, he had not obtained any eyeglasses.

In addition to the reports and records of Dr. Anderson and the Miriam Hospital and the correspondence referred to previously, the parties submitted the depositions of two (2) opticians, Kenneth J. Adam and Michael P. King. Mr. Adam testified that he is the managing optician of Rhode Island Eye Institute's optical department. Mr. Adam stated that the prices of Three Hundred Forty-nine and 00/100 ($349.00) Dollars and Four Hundred Sixty-eight and 00/100 ($468.00) Dollars on the two (2) documents from his company were fair and reasonable costs for the type of frames and lenses listed. He also indicated that the prescription provided by Dr. Anderson included corrective lenses for both eyes. *See* Pet. Exh. 5, p. 26.

Mr. Adam explained that one of the invoices was for polycarbonate lenses with an anti-reflective coating for general wear and the other was for special thicker polycarbonate Transitions lenses for playing sports. He noted that frames can range in price from Forty and 00/100 ($40.00) Dollars to Six Hundred Fifty and 00/100 ($650.00) Dollars. The invoices listed frames costing Two Hundred Nineteen and 00/100 ($219.00) Dollars and Two Hundred Forty-eight and 00/100 ($248.00) Dollars which were Nike titanium frames which are extremely flexible, lightweight and durable, making them well-suited for active wear.

Michael P. King testified that he has been a licensed optician for thirty (30) years. He explained that the prescription written by Dr. Anderson was for both eyes and indicated that Mr. Britto is slightly nearsighted and has a little bit of astigmatism in both eyes. The prescription itself does not make any mention of sensitivity to light or glare. Mr. King stated that the optician

generally inquires of the patient as to when the glasses will be worn and issues of light sensitivity and then makes recommendations as to types of coatings or tints for the lenses.

The trial judge found that the petition was filed prematurely because the employee had not provided sufficient information to the insurer to allow it to make a decision whether to pay for eyeglasses. However, rather than dismissing the petition on that basis, the trial judge proceeded to make a finding that, due to the effects of the injury to his right eye, the employee needed one (1) pair of eyeglasses with Transitions lenses and she ordered the insurer to pay up to Three Hundred Sixty and 00/100 ($360.00) Dollars for the eyeglasses. Citing the premature filing of the petition, the failure to prove the necessity of two (2) pairs of glasses, the failure to prove that the charges stated in the two (2) invoices were fair and reasonable, and the fact that the insurer agreed to pay a reasonable amount for eyeglasses before the filing of the petition, the trial judge declined to award a counsel fee or costs to the employee's attorney.

The employee claimed an appeal from this decision arguing that the trial judge misconstrued and misapplied the statutes regarding the documentation required for a 21-day demand as a condition to the filing of a petition for medical expenses by an employee thereby erroneously refusing to award a counsel fee and costs, despite the fact that she did grant the petition in part. We need not address the issues raised by the employee, however, because we find that the trial court lacked jurisdiction to adjudicate this matter in the first instance.

Section 28-33-5 of the Rhode Island General Laws mandates that the employer shall provide a variety of medical services and apparatus to an employee who sustains a compensable injury.

> ". . . The employer shall also provide all medical, optical, dental and surgical appliances and apparatus required to cure or relieve the employee from the effects of the injury, including but not being limited to the following: ambulance and nursing service,

> eyeglasses, dentures, braces and supports, artificial limbs, crutches and other similar appliances; . . . ."

If an employee's injury results in incapacity of three (3) days or less and a dispute arises as to the payment of any medical expense or service, R.I.G.L. § 28-33-9 provides that the employee may file a petition with the court to adjudicate the controversy. However, we do not believe this statute authorizes the court to order payment of a set amount prior to the service or apparatus being provided to the employee.

Although the wording of the petition and the correspondence sent by employee's counsel to the insurer did not adequately state the exact nature of the employee's request, it became clear during the trial that the employee was not seeking reimbursement of the cost of eyeglasses he had purchased, but apparently was asking the insurer to provide some sort of payment to him based upon the two (2) estimates from the Rhode Island Eye Institute, which he would presumably use to purchase eyeglasses. We are unaware of any provision in the statute which authorizes the court to order the pre-payment of an anticipated medical expense.

The Rhode Island Supreme Court has indicated that the Workers' Compensation Court shall hear disputes between employees and employers as to whether a particular proposed medical treatment or service is necessary to cure, rehabilitate or relieve the employee from the effects of the work-related injury pursuant to R.I.G.L. § 28-33-5. *See* Mendes v. ITT Royal Elec., 648 A.2d 1358 (R.I. 1994); McAree v. Gerber Prods. Co., 115 R.I. 243, 342 A.2d 608 (1975). However, the Court has noted that there is a distinction between seeking authorization to undergo prescribed treatment and seeking pre-payment for medical services to be provided sometime in the future. Mendes, 648 A.2d at 1359; McAree, 115 R.I. at 250, 342 A.2d at 612. In deciding a dispute as to proposed medical treatment, the court simply makes a finding as to whether the proposed treatment is necessary to treat the injury and orders the employer to pay the

reasonable cost of the services provided. As stated in McAree, a dispute may still arise after the service is provided as to the reasonableness of the cost, and the provider of the medical service must still comply with the reporting provisions of R.I.G.L. § 28-33-8 in order to obtain payment. McAree, 115 R.I. at 250, 342 A.2d at 612. The clear inference from the content of these two (2) opinions is that an order for pre-payment of a particular medical service or apparatus is not authorized by the statute.

The Workers' Compensation Court is a court of limited jurisdiction whose powers are strictly limited to those conferred upon it by the legislature. Our reading of the Workers' Compensation Act does not reveal any provision that grants the court the authority to determine and order the payment of the reasonable cost of a medical service or apparatus or appliance prior to the rendering of the actual service or provision of the apparatus or appliance. Consequently, we must conclude that the trial judge lacked jurisdiction to hear and decide the petition as it was presented in this matter. It is well-settled that the question whether the court has subject matter jurisdiction may be raised by the court *sua sponte* at any time, even during appellate proceedings. Warwick Sch. Comm. v. Warwick Teachers' Union Local 915, 613 A.2d 1273, 1276 (R.I. 1992). Due to the fact that the court never had jurisdiction to hear this petition, the entire proceeding is void and the decision and decree have no force and effect. State v. Kenney, 523 A.2d 853, 855 (R.I. 1987). The employee is therefore not precluded from seeking reimbursement from the insurer of the reasonable cost of the prescribed eyeglasses after he obtains them.

As an aside we would note that prior to the filing of this petition, the insurance adjuster did advise employee's counsel by letter that she would pay the reasonable cost of eyeglasses that were medically necessary to correct the vision in the employee's right eye. *See* Resp. Exh. 6.

She was not obligated to do anything more. Interestingly, the prescription from Dr. Anderson was for prescription lenses for both eyes to correct nearsightedness and astigmatism, despite Dr. Anderson's statement that the left eye was not affected by the injury. In addition, Dr. Anderson's reports reflect that the vision in the right eye improved from December 19, 2004, when he first issued the prescription for eyeglasses, to June 22, 2004, when the doctor gave the employee a replacement prescription. The trial judge did not make mention of this evidence in her decision, but it would clearly have an impact upon the extent of the insurer's liability for the cost of eyeglasses.

In light of our conclusion that the trial judge lacked jurisdiction to address the subject matter of this petition, we need not respond to the employee's reasons of appeal. In accordance with our decision, the decision and decree of the trial judge are vacated and a new decree shall enter containing the following findings and orders:

1. That the court lacks jurisdiction to hear and adjudicate the employee's petition to review, the subject matter of which is a request for pre-payment of the cost of prescription eyeglasses to rehabilitate his right eye from the effects of an injury sustained on November 4, 2003.

It is, therefore, ordered:

1. That the decision and decree of the trial judge entered on May 13, 2005 is hereby vacated.

2. That the employee's petition to review is denied and dismissed.

We have prepared and submit herewith a new decree in accordance with our decision. The parties may appear on at 10:00 a.m. to show cause, if any they have, why said decree shall not be entered.

Healy, C. J. and Connor, J. concur.

ENTER:

_____
Healy, C. J.

_____
Olsson, J.

_____
Connor, J.

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FINAL DECREE OF THE APPELLATE DIVISION

This cause came on to be heard before the Appellate Division upon the appeal of the petitioner/employee from a decree entered on May 13, 2005.

Upon consideration thereof, the appeal of the petitioner/employee is denied and dismissed, and in accordance with the Decision of the Appellate Division, the following findings of fact are made:

1. That the court lacks jurisdiction to hear and adjudicate the employee's petition to review, the subject matter of which is a request for pre-payment of the cost of prescription eyeglasses to rehabilitate his right eye from the effects of an injury sustained on November 4, 2003.

It is, therefore, ordered:

1. That the decision and decree of the trial judge entered on May 13, 2005 is hereby vacated.

2. That the employee's petition to review is denied and dismissed.

Entered as the final decree of this Court this day of

PER ORDER:

_____
John A. Sabatini, Administrator

ENTER:

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Healy, C. J.

_____
Olsson, J.

_____
Connor, J.

I hereby certify that copies of the Decision and Final Decree of the Appellate Division were mailed to Lawrence L. Goldberg, Esq., and Berndt W. Anderson, Esq., on

_____