



California Workers' Compensation Institute

1333 Broadway Suite 510, Oakland, CA 94612 • Tel: (510) 251-9470 • Fax: (510) 763-1592

October 29, 2015

Significant Decision 15-06

STEVENS V WCAB
COURT OF APPEAL, FIRST APPELLATE DISTRICT,
DIVISION ONE
A143043

FILED: OCTOBER 28, 2015

The independent medical review process is a constitutional exercise of the Legislature's plenary power.

SIGNIFICANCE: The court found that the structure and application of the review process for medical treatment, utilization review and independent medical review (IMR), are a constitutional exercise of the Legislature's authority to create a complete workers' compensation system.

FACTS: The case involved a 100% PD award with extensive future medical care for a 1997 lower extremity injury with psychiatric overlay and chronic pain. The treating physician prescribed pain medication and home health care, which UR denied in July of 2013. IMR upheld the denial in February 2014. The petition alleges that section 4610.6 is a denial of due process because it violates the right to a fair hearing and the right to cross examine the reviewing physician.

HOLDING: The court ruled that Steven's state constitutional challenges "failed because the Legislature has plenary powers over the workers' compensation system under article XIV, section 4 of the state Constitution (Section 4)." The federal due process challenge failed as well because the UR/IMR process is "fundamentally fair and affords workers sufficient opportunities to present evidence and be heard."

The court remanded the question of the need for home health care to the Board to consider whether the request was denied without authority.

DISCUSSION: The court addressed every assertion by the injured worker and rejected each in turn. The court was methodical and precise in its rationale, which bodes well for the other cases challenging the UR/IMR process on similar grounds. The court began its review by focusing on the litigious and lengthy dispute resolution process prior to the reforms instituted in 2003. In the CWCI/PCI brief, we chronicled the chaotic environment for the determination of medical necessity and the clear intent of the specific reforms contained in SB 228, SB 899 and SB 863.

The Court noted that the medical treatment review, including the appeals process, was structured to ensure review by physicians and protect the injured worker by permitting the employee to file any evidence and appeal the IMR determinations on various grounds.

The court reviewed the constitutional challenges one by one and rejected the injured worker's arguments regarding separation of powers, due process, the right to cross examine the reviewer, and the section 4 mandate that the workers' compensation system provide "substantial justice in all cases expeditiously, inexpensively and without encumbrance of any character." This comprehensive opinion thoroughly documents the Legislature's power to address system failures and delays in a variety of ways.

With regard to the assertion that the inability to enforce the statutory time limits for IMR is unconstitutional, the court reasoned in accordance with Commissioner Zalewski's opinion in the Arredondo panel decision: "In the absence of a penalty, consequence, or contrary intent, a time limit is typically considered to be directory, and its violation does not require the invalidation of the action to which the time limit applies." This rationale may be helpful when the Third Appellate District Court of Appeal addresses this issue in the Hallmark case.

With regard to the issue of home health care, the court held that if the IMR determination upheld the UR denial based on an erroneous interpretation of the MTUS and there was no other basis supporting the denial, the Board would have the authority to reverse that determination and send it back through the IMR process.

MMc/