



Robert E. Beloten
Chair

ADMINISTRATIVE REVIEW DIVISION
WORKERS' COMPENSATION BOARD
20 PARK STREET
ALBANY NY 12207
www.wcb.state.ny.us

State of New York – Workers' Compensation Board

In regard to, DB Case #

MEMORANDUM OF BOARD PANEL DECISION
Keep for your records

Opinion by: Conrad W. Lower
Samuel G. Williams
Freida Foster

The claimant requests review of the Workers' Compensation Law Judge (WCLJ) decision filed on April 20, 2009. There is no timely rebuttal on file from the carrier.

ISSUE

The issue presented for administrative review is whether there is sufficient medical evidence that the claimant's gender reassignment surgery to treat her gender identity disorder condition was medically necessary.

FACTS

In a Full Board Memorandum of Decision filed on December 18, 2007, the claimant was directed to produce any medical reports from her psychiatrist, Dr. Reddy on the issue of medical necessity as well as any other relevant medical evidence on the issue of whether the claimant's gender reassignment surgery was medically necessary to treat her gender identity disorder.

A hearing was held on April 16, 2009. At the hearing the claimant produced a letter dated February 5, 2009 from her surgeon, Dr. Menard. The WCLJ found that the letter was insufficient evidence of medical necessity because Dr. Menard was not the doctor that made the determination as to whether the surgery that he performed was medically necessary but relied on the reports of other medical providers and that those reports were not produced.

Claimant:	Denise Rhone	Employer:	NY Air Brake Corp.
DB Case No.:	xxx-xx-0743	DB Carrier:	Hartford Life and Accident Ins. Co.
Claimed First Date of Disability:	5/30/2005	DB Carrier Case No.:	
District Office:	Syracuse		Date of Filing of this Decision: <i>May 17 2011</i>

ATENCION:

Puede llamar a la oficina de la Junta de Compensacion Obrera, en su area correspondiente, cuyo numero de telefono aparece al principio de la pagina y pida informacion acerca de su reclamacion (caso).



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The February 5, 2009 letter from Dr. Menard indicated that he performed gender reassignment surgery (GRS) on the claimant on May 30, 2005 and opined that the claimant's GRS was medically necessary. In addressing the issue of medical necessity the doctor indicated that the surgery is not performed without first having the patient qualify under the "Standards of Care of the Harry Benjamin International Gender Dysphoria Association." The doctor indicated that these standards included the following criteria: The hormonal sex reassignment must be recommended by a clinical behavioral scientist; the claimant must live full-time in the social role of a female for at least 12 months; recommendation for GRS must be made by two clinical behavioral scientists of which one must be a person possessing a doctoral degree such as a PhD, EdD, DSc, DSW, PsyD or MD in a clinical or behavioral science granted by an institution of education accredited by a national or regional accredited Board; and that the clinical behavioral scientist making the primary recommendation in favor of GRS must have known the claimant in a psychotherapeutic relationship for at least six months prior to making the recommendation. The doctor stated that the claimant had met these qualifications and that this qualified "her GRS as medically necessary."

In the WCLJ decision filed on April 20, 2009, the WCLJ found insufficient evidence of medical necessity for gender reassignment surgery at that time.

LEGAL ANALYSIS

The claimant asserts that the February 5, 2009 letter of Dr. Menard constituted sufficient evidence of medical necessity of GRS.

WCL § 205(3) states in pertinent part that no employee shall be entitled to disability benefits for any disability occasioned by the willful intention of the employee to bring about injury to or the sickness of himself. The statute does not specifically exclude disability associated with elective surgery from disability benefits. However, this issue has been addressed by the Court, and the Board Panel concludes that if the claimant's surgery is considered to be purely elective, disability benefits would not be payable, (*see Matter of Fullerton v General Motors Corporation*, 46 AD2d 251 [1974]).

If the surgery was medically necessary as a result of an illness or injury suffered by the claimant, then the claimant would not be precluded from disability benefits under WCL § 205(3), (*see Matter of Furner v*

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Simmonds Precision, 114 AD2d 363 [1985]; *Matter of White v Metropolitan Life Insurance Company*, 46 AD2d 964 [1974]). In *White*, the Court held that the Disability Benefits Law is entitled to liberal construction to achieve the legitimate goal of compensating disabled employees. The Court held that the claimant's inability to work resulted from following a medically prescribed course of treatment, and as such, it cannot be said that the claimant's inability to work was occasioned by the willful intent to bring about her own injury, (*White, supra*). Evaluation of the medical proof as to whether the claimant's surgery was elective or medically necessary is within the province of the Board, (*Fullerton, supra*).

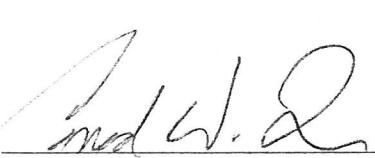
The Board Panel has reviewed the letter of Dr. Menard and finds that the letter constitutes sufficient medical evidence of necessity and that the claimant is therefore entitled to disability benefits.

Therefore, the Board Panel finds, upon review of the record, and based upon a preponderance of the evidence, that there is sufficient medical evidence of medical necessity for the claimant's GRS and that the claimant is entitled to disability benefits.

CONCLUSION

ACCORDINGLY, the WCLJ decision filed on April 20, 2009 is REVERSED. The case is reopened and return to the calendar for awards.

All concur.


Conrad W. Lower

566/REV/113/SYR


Samuel G. Williams


Freida Foster

Claimant: Denise Rhone
DB Case No.: xxx-xx-0743
Claimed First Date of Disability: 5/30/2005
District Office: Syracuse

Employer: NY Air Brake Corp.
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Copies To:

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748 Starbuck Avenue
Watertown, NY 13601

Carrier:

The Hartford Life & Accident
Insurance Company
PO Box 4925
Syracuse, NY 13221

Claimant Representative:

Catherine J. Palermo, Esq.
P. O. Box 599
Watertown, NY 13601

Claimant: Denise Rhone
DB Case No.: xxx-xx-0743
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