

**BEFORE THE KANSAS WORKERS COMPENSATION APPEALS BOARD**

<b>LORENA COVARRUBIAS</b>	)	
Claimant	)	
V.	)	
	)	
<b>RES-CARE, INC.</b>	)	AP-00-0474-364
Respondent	)	CS-00-0444-066
AND	)	
	)	
<b>INDEMNITY INS. CO. OF N. AMERICA</b>	)	
Insurance Carrier	)	

**ORDER**

Claimant requested review of the March 10, 2023, preliminary hearing Order entered by Administrative Law Judge (ALJ) Kenneth J. Hursh.

**APPEARANCES**

Yasmin Herdoiza appeared for Claimant. Kim Poirier appeared for Respondent and its insurance carrier.

**RECORD AND STIPULATIONS**

The Board adopted the same stipulations and considered the same record as the ALJ, consisting of the transcript of Preliminary Hearing, held March 8, 2023, with exhibits attached, and the documents of record filed with the Division.

**ISSUE**

Does the Board have jurisdiction to review Claimant's appeal regarding her request for pain management?

**FINDINGS OF FACT**

Claimant provided personal care for clients with special needs. Clients sometimes were combative. On June 21, 2018, Claimant was training other employees how to safely restrain a combative client. During an act-it-out combative scenario with another employee,

Claimant felt a pop in her right knee and fell to the ground, landing on her right shoulder and right hip.

Claimant had seven surgeries to her right knee, which involved multiple complications dealing with infection. Kenneth Jansson, M.D., an orthopedic surgeon, performed Claimant's last two surgeries. Dr. Jansson placed Claimant at MMI, with restrictions, on March 18, 2021. Using the *AMA Guides to the Evaluation of Permanent Impairment*, 6<sup>th</sup> edition (*Guides*, 6<sup>th</sup> ed.), Dr. Jansson gave Claimant 5% functional impairment to the lower extremity. Dr. Jansson evaluated Claimant's knee sometime after he released her at MMI. He recommended another surgery, which Claimant declined.

Due to continued right shoulder complaints, Claimant was referred to Daniel J. Prohaska, M.D., an orthopedic surgeon, for treatment. Dr. Prohaska performed arthroscopic surgery to repair a torn rotator cuff. He placed Claimant at MMI, without restrictions, on November 19, 2020. Using the *Guides*, 6<sup>th</sup> ed., Dr. Prohaska gave Claimant 7% functional impairment to the upper extremity.

Claimant received authorized pain management treatment from Richard Snodgrass, M.D., beginning April 21, 2019. Pain management continued until September 25, 2020, when Respondent declined to approve additional pain management.

At Respondent's request, David Hufford, M.D., performed an independent medical evaluation on March 25, 2021. Dr. Hufford provided conservative treatment to Claimant's lumbar spine, with limited benefit. Dr. Hufford placed Claimant at MMI on December 22, 2021, and recommended a referral for pain management for palliative care.

In April 2022, Respondent provided Dr. Hufford with medical records regarding back treatment received by Claimant prior to her June 21, 2018, work-related accident. Dr. Hufford stated it was clear from review of records Claimant did have a history of prior back injury and low back pain. Dr. Hufford opined Claimant did not require pain management for any element of low back pain related to the work injury of June 21, 2018. He rescinded his order for evaluation by a pain management physician provided in his December 21, 2021 report.

At Claimant's attorney's request, Claimant was evaluated by George G. Fluter M.D., on October 31, 2022, regarding the need for pain management. Dr. Fluter opined the prevailing factor for the injury and the need for medical treatment was the June 21, 2018 work-related accident. He stated Claimant would benefit from the use of medications to modulate pain symptoms on an ongoing basis. He opined Claimant might benefit from other pain management procedures, such as steroid injections and nerve blocks.

The Administrative Law Judge found Claimant needed ongoing pain management for the injuries she sustained to her right knee and shoulder, and ordered Respondent to designate an authorized treating physician. He denied Claimant's request for pain management for her back complaints. The ALJ stated:

The evidence did not show a compensable injury to the low back. Clearly there were pre-existing back problems from the 2005 car accident. There was also a subsequent injury car accident in 2019. The claimant maintained her low back pain was due to limping from the knee injury. However, the court did not consider the claimant a credible witness regarding the low back because she tried to conceal her pre-existing back problems.<sup>1</sup>

Claimant seeks review of the ALJ's March 10, 2023, Order denying pain management for her back complaints and seeks an order for pain management for her back, in addition to her right knee and shoulder. Respondent maintains the ALJ's Order should be affirmed.

#### **PRINCIPLES OF LAW AND ANALYSIS**

#### **The Board does not have jurisdiction to review Claimant's appeal regarding the denial of pain management for her back complaints.**

The Board's authority to consider appeals of preliminary orders is limited to questions of whether the employee suffered an accident, repetitive trauma, or resulting injury; whether the injury arose out of and in the course of employment; whether notice was given; or whether "certain defenses" apply.<sup>2</sup> In general, preliminary orders granting or denying medical benefits are not subject to Board review. The authority to make a determination regarding medical care rests clearly within the authority granted to the ALJ by K.S.A. 44-534a.<sup>3</sup>

Claimant scheduled a preliminary hearing seeking additional medical treatment. At the hearing, Claimant presented her testimony and medical evidence in support of her request. After reviewing the evidence and listening to the arguments, the ALJ issued an order for additional medical treatment, pain management for Claimant's right knee and shoulder. The ALJ denied Claimant's request for pain management for her back.

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<sup>1</sup> ALJ Award (Mar.8, 2023) at 3.

<sup>2</sup> See K.S.A. 44-534a(a)(2).

<sup>3</sup> See *Vizcarra v. LoanSmart, LLC*, No. 1,079,548, 2017 WL 5126039 (Kan. WCAB Oct. 18, 2017).

The ALJ had jurisdiction to address Claimant's request for medical treatment. The Board does not have jurisdiction to review the ALJ's order regarding medical treatment. Claimant's appeal is dismissed for lack of jurisdiction.

**DECISION**

**WHEREFORE**, it is the finding, decision and order of the undersigned Board Member, Claimant's Application for Review is dismissed, and the Order of ALJ Kenneth J. Hursh, dated March 10, 2023, remains in force and effect.

**IT IS SO ORDERED.**

Dated this day of May, 2023.

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CHRIS A. CLEMENTS  
BOARD MEMBER

c: Via OSCAR

Yasmin Herdoiza, Attorney for Claimant  
Kim Poirier, Attorney for Respondent and its Insurance Carrier  
Hon. Kenneth J. Hursh, Administrative Law Judge