CASE NO. 5940 CRB-3-14-5 : COMPENSATION REVIEW BOARD
CLAIM NO. 300093310

REGINALD HOLSTON : WORKERS' COMPENSATION
CLAIMANT-CROSS APPELLANT COMMISSION

v. : MAY 27, 2015

CITY OF NEW HAVEN POLICE DEPARTMENT
EMPLOYER
SELF-INSURED

and

CONNECTICUT INTERLOCAL RISK MANAGEMENT AGENCY
ADMINISTRATOR
RESPONDENTS-APPELLANTS
CROSS-APPELLEE

APPEARANCES:

The claimant was represented by James F. Aspell, Esq., Law Offices of James F. Aspell, P.C., 61 South Main Street, Suite 310, West Hartford, CT 06107.

The respondents were represented by Jason M. Dodge, Esq., Strunk, Dodge, Aiken, Zovas, 100 Corporate Place, Suite 300, Rocky Hill, CT 06067.

This Petition for Review from the May 16, 2014 Finding and Orders by the Commissioner acting for the Third District was heard on November 21, 2014 before a Compensation Review Board panel consisting of Commission Chairman John A. Mastropietro and Commissioners Stephen B. Delaney and Michelle D. Truglia.

OPINION

JOHN A. MASTROPIETRO, CHAIRMAN. The claimant and the respondents have petitioned for review from the May 16, 2014 Finding and Orders by the Commissioner acting for the Third District. We find no error and accordingly affirm the findings of the trial commissioner.[1]

The trial commissioner made the following factual findings which are pertinent to our review. The claimant, who was hired on June 3, 1996, is a full-time patrolman with the respondent police department. The pre-employment physical examination of the claimant required as a condition of employment revealed no evidence of any heart-related condition such as hypertension or heart disease. On March 10, 2011, the claimant experienced extreme chest pain while at home and drove himself to the emergency room at Midstate Medical Center. At Midstate, he was informed he had suffered a heart attack and was transported to Hartford Hospital where he underwent an angioplasty and stent implantation following a diagnosis of coronary artery disease. The claimant remained at Hartford Hospital for approximately four days after the procedure and was out of work for three or four months for which he was paid in sick time. The claimant is currently taking several medications for his condition. On March 14, 2011, the claimant filed a notice of claim for compensation seeking benefits for heart and/or hypertension pursuant

[1] We note that a motion for extension of time was granted during the pendency of this appeal.

to § 7-433c C.G.S. and listing a date of injury as March 10, 2011, the date of his heart attack.[2]

The claimant's primary care physician is Roy Kellerman, M.D., with whom he first began treating in June 1995 for an ankle injury. On May 14, 1996, the claimant underwent an annual physical with Kellerman, who noted a "[s]ystolic murmur of unclear etiology." Claimant's Exhibit A. Kellerman scheduled the claimant for an echocardiogram, the results of which were normal. The claimant returned to Kellerman on May 11, 1998, at which time the doctor recorded a blood pressure reading of 140/88, and saw Kellerman again on August 3, 1998, when the doctor recorded a blood pressure reading of 130/86. On December 26, 2005, the claimant presented to Midstate Medical Center with sinusitis; at that visit, his blood pressure was 152/96. The claimant followed

[2] Section 7-433c(a) C.G.S. (Rev. to 2011) states: "Notwithstanding any provision of chapter 568 or any other general statute, charter, special act or ordinance to the contrary, in the event a uniformed member of a paid municipal fire department or a regular member of a paid municipal police department who successfully passed a physical examination on entry into such service, which examination failed to reveal any evidence of hypertension or heart disease, suffers either off duty or on duty any condition or impairment of health caused by hypertension or heart disease resulting in his death or his temporary or permanent, total or partial disability, he or his dependents, as the case may be, shall receive from his municipal employer compensation and medical care in the same amount and the same manner as that provided under chapter 568 if such death or disability was caused by a personal injury which arose out of and in the course of his employment and was suffered in the line of duty and within the scope of his employment, and from the municipal or state retirement system under which he is covered, he or his dependents, as the case may be, shall receive the same retirement or survivor benefits which would be paid under said system if such death or disability was caused by a personal injury which arose out of and in the course of his employment, and was suffered in the line of duty and within the scope of his employment. If successful passage of such a physical examination was, at the time of his employment, required as a condition for such employment, no proof or record of such examination shall be required as evidence in the maintenance of a claim under this section or under such municipal or state retirement systems. The benefits provided by this section shall be in lieu of any other benefits which such policeman or fireman or his dependents may be entitled to receive from his municipal employer under the provisions of chapter 568 or the municipal or state retirement system under which he is covered, except as provided by this section, as a result of any condition or impairment of health caused by hypertension or heart disease resulting in his death or his temporary or permanent, total or partial disability. As used in this section, the term "municipal employer" shall have the same meaning and shall be defined as said term is defined in section 7-467."

up with Kellerman on December 29, 2005, who concurred in the diagnosis of sinusitis and recorded a blood pressure reading of 118/80.

On October 28, 2009, the claimant presented to Kellerman for a physical examination. The doctor recorded a blood pressure reading of 130/95 and, in the "Impression" section of his report, indicated a diagnosis of Stage I hypertension. The "Plan" section states that the "[p]atient is to reduce his salt intake [and] increase his exercise activity. Comprehensive metabolic panel, lipid panel from the TSH and vitamin D level will be checked. Follow up evaluation in 2 months." Id. The claimant next saw Kellerman on June 30, 2010 for a rash on his scalp; at that time, the doctor reported a blood pressure reading of 130/82.

At trial, the claimant testified that he was never told by any medical provider that he had hypertension prior to his March 11, 2011 heart attack and that the first time he became aware that Kellerman had diagnosed Stage I hypertension in 2009 was during his deposition for his workers' compensation claim. The claimant stated that he never had any further discussions with Kellerman about his blood pressure following the October 2009 office visit and he was never prescribed blood pressure medication.

In correspondence to claimant's counsel dated April 27, 2012, Kellerman indicated that the claimant "suffers from hypertension as stated in my note on 10/28/2009 and he was advised to institute lifestyle changes for his condition." Id. Kellerman also stated that the claimant's subsequent normal blood pressure readings did not change his diagnosis and the claimant had registered pre-hypertensive readings going back to May 1998. Kellerman opined that the claimant's hypertension was a significant

contributing factor to his coronary artery disease and also noted that "[b]oth acute or chronic blood pressure elevation can be precipitating factors in coronary artery disease." Id.

At a deposition held on May 30, 2013, Kellerman defined hypertension as a blood pressure reading of 140/90 or higher and pre-hypertension as blood pressure readings between 120 and 139 for the top number ("systolic") and between 80 and 89 for the bottom number ("diastolic"). Kellerman testified that the claimant's blood pressure readings taken on May 11, 1998 and August 3, 1998 were pre-hypertensive while the Midstate Medical Center reading of 152/96 taken on December 26, 2005 was hypertensive. Kellerman also opined that the blood pressure reading of 130/95 taken on October 28, 2009 was hypertensive because the diastolic reading was over 90. Kellerman confirmed his diagnosis that the claimant was suffering from Stage I hypertension, as indicated in his report of that date.

Kellerman also testified that it was his standard protocol to discuss a diagnosis with the patient at the time of the office visit and that he would have discussed the diagnosis of Stage I hypertension with the claimant on October 28, 2009. Kellerman indicated that he advised the claimant to reduce his salt intake and do a regular exercise program. Kellerman confirmed the contents of his April 27, 2012 correspondence to claimant's counsel and opined that hypertension substantially increases the likelihood of developing coronary artery disease and/or having a heart attack. Kellerman testified that his diagnosis was based upon a combination of the elevated reading of October 2009 and

the prior elevated readings, remarking that most practitioners prefer to have at least two elevated readings before making a diagnosis of hypertension.

Kellerman conceded that he could not recall specifically what he may have told the claimant at the office visit of October 28, 2009 but his notes appeared to reflect that he discussed the diagnosis with the claimant. Kellerman also indicated that while he might not have used the word "hypertension," in his opinion, the terms "elevated blood pressure" and "hypertension" are synonymous. When pressed as to his exact terminology, Kellerman testified that he intended to convey that the claimant's blood pressure was high and "clearly" communicated to the claimant that something was wrong. Respondents' Exhibit 5, p. 32. Kellerman also opined that hypertension and myocardial infarction are two separate conditions. An individual could suffer from hypertension and never have a heart attack, and an individual who has a heart attack may have never had a history of hypertension.

On February 21, 2012, Martin Krauthamer, M.D., performed a records review for the respondents. Krauthamer diagnosed the claimant as suffering from coronary heart disease and opined that the claimant's "hypertension is a significant factor in the causation of his coronary artery disease." Respondents' Exhibit 4. At a deposition held on August 19, 2013, Krauthamer testified that the terms "high blood pressure" and "hypertension" are synonymous and confirmed that it was standard protocol in the field of cardiology to explain to patients the reason why a physician is recommending lifestyle changes. Krauthamer also concurred with Kellerman that high blood pressure, age, male gender, diabetes, obesity, and physical inactivity are all risk factors in the development of

coronary artery disease, and testified that the claimant's particular risk factors were his high blood pressure, male gender and high cholesterol reading. Krauthamer further opined that the claimant's coronary artery disease and hypertension were substantial factors in his March 2011 myocardial infarction. Krauthamer indicated that both hypertension and coronary heart disease are separate diseases but one could flow directly from the other.

In addition to the foregoing, the trial commissioner found that no evidence was presented regarding the onset date of the claimant's coronary artery disease or indicating that the claimant was simultaneously suffering from coronary artery disease when he was diagnosed with hypertension in October 28, 2009. The trier also found that there was no evidence presented that the claimant was diagnosed with or informed that he had coronary artery disease prior to his myocardial infarction on March 11, 2011; nor was any evidence presented that the claimant's hypertension was the sole cause of his coronary artery disease or myocardial infarction.

The trial commissioner, having heard the evidence, concluded that the opinions of both Kellerman and Krauthamer were credible and persuasive. The trier found that Kellerman had diagnosed the claimant with hypertension/high blood pressure on October 28, 2009 and conveyed this diagnosis to the claimant. While the trier believed that the claimant was credible relative to his testimony that he did not recall Kellerman telling him about the diagnosis, he concluded that "the most likely scenario" is that the doctor conveyed the diagnosis to the claimant using either the term "high blood pressure" or "hypertension." Conclusion, ¶ CC. The trier determined that because the claimant

was aware that he had elevated blood pressure readings and had received a diagnosis of hypertension that might require future medication, the claimant had sustained an accidental injury and should have put the respondent on notice for a claim for potential benefits for hypertension at this time. As such, the notice of claim filed on March 14, 2011 for a date of injury of March 10, 2011 was untimely as to the hypertension claim given that it was filed more than one year after the claimant became aware of his hypertensive condition on October 28, 2009.

The trial commissioner also concluded that, based on the opinions of Kellerman and Krauthamer, the claimant's pre-existing hypertension was a significant contributing factor in the development of his coronary artery disease and myocardial infarction of March 10, 2011. However, also in accordance with Krauthamer's opinion, the trial commissioner found that there were additional substantial contributing factors in the development of the claimant's coronary artery disease and myocardial infarction, including the claimant's high cholesterol and the fact that the claimant was male. The trier concluded that because hypertension and coronary artery disease are two separate maladies, the claimant had sustained two different injuries, with the first occurring in October 2009 when he was diagnosed with high blood pressure, and the second on March 10, 2011, when he suffered the myocardial infarction. As such, the claimant was not required to report the hypertension diagnosis of October 2009 in order to pursue a claim for the myocardial infarction of March 10, 2011, and the claimant had satisfied his burden of proof that he qualified for benefits for heart disease pursuant to § 7-433c C.G.S.

The respondents and the claimant filed Motions to Correct which were denied in their entirety, and this appeal and cross-appeal followed. On appeal, the respondents contend that because the trier found the claimant was diagnosed with hypertension on October 28, 2009, which hypertension was subsequently identified as a substantial contributing factor to the claimant's coronary artery disease and myocardial infarction of March 10, 2011, the statute of limitations for filing a claim for benefits pursuant to § 7-433c C.G.S. began to run in October 2009. As such, the trial commissioner therefore erred in concluding that the Form 30C filed on March 14, 2011 seeking benefits pursuant to § 7-433c C.G.S. was timely. In addition, the respondents cite as error the trier's refusal to grant their Motion to Correct. Relative to his cross-appeal, the claimant argues that the trial commissioner erroneously concluded that the claimant was made aware of the hypertension diagnosis in October 2009 such that he was required to file a claim for hypertension benefits pursuant to § 7-433c C.G.S. within one year of that date.

We begin our analysis with a recitation of the well-settled standard of review we are obliged to apply to a trial commissioner's findings and legal conclusions. "The trial commissioner's factual findings and conclusions must stand unless they are without evidence, contrary to law or based on unreasonable or impermissible factual inferences." Russo v. Hartford, 4769 CRB-1-04-1 (December 15, 2004), citing Fair v. People's Savings Bank, 207 Conn. 535, 539 (1988). Moreover, "[a]s with any discretionary action of the trial court, appellate review requires every reasonable presumption in favor of the action, and the ultimate issue for us is whether the trial court could have reasonably concluded as it did." Burton v. Mottolese, 267 Conn. 1, 54 (2003). Thus, "it is …

immaterial that the facts permit the drawing of diverse inferences. The [commissioner] alone is charged with the duty of initially selecting the inference which seems most reasonable and his choice, if otherwise sustainable, may not be disturbed by a reviewing court." Fair, supra, 540 (1988), quoting Del Vecchio v. Bowers, 296 U.S. 280, 287 (1935).

Turning first to the respondents' appeal, we note at the outset that the respondents do not dispute the trial commissioner's dismissal of the claimant's claim for hypertension benefits pursuant to § 7-433c C.G.S. on the basis that the claimant should have filed for those benefits within one year of the diagnosis by Kellerman in October 2009. However, the respondents do claim as error the trial commissioner's conclusion that the claimant's Form 30C for heart disease benefits pursuant to § 7-433c C.G.S. was timely filed, given that the claimant had been diagnosed with hypertension in October 2009 and the hypertension was subsequently found to be a significant contributing factor to the claimant's coronary artery disease and his myocardial infarction of March 2011.

> The respondents contend that the language of the statute allows for the claimant to bring a claim for compensation either for hypertension or heart disease and that, as in the case here, where the claimant has failed to timely bring a claim for hypertension benefits and subsequently develops heart disease, which is substantially related to the hypertension benefits, he is barred from pursuing the claim for the heart condition.

Appellants' Brief, p. 13.

The respondents principally rely on Suprenant v. New Britain, 28 Conn. App. 754 (1992) for their assertions. In Suprenant, our Appellate Court held that in order to be eligible for § 7-433c C.G.S. benefits for either hypertension or heart disease, a claimant

must have passed the pre-employment physical without showing any evidence of either hypertension or heart disease. We do not find the reliance on Suprenant persuasive relative to the matter at bar given that the record shows, and the trier so found, that the instant claimant successfully passed his pre-employment physical. As such, the court's reasoning relative to the factual circumstances governing the Suprenant claimant's eligibility for benefits are not applicable here. Rather, we are inclined to agree with the claimant that this board's analysis in Mayer v. East Haven, 4620 CRB-3-03-2 (March 3, 2004), *appeal dismissed for lack of final judgment*, A.C. 25244 (September 15, 2005), *cert. denied*, 276 Conn. 918 (2005), is more relevant to the present inquiry.

In Mayer, the claimant was diagnosed with hypertension in 1987 and coronary artery disease in 1995, and filed a Form 30C in 1995. There, as here, the respondents argued that because the claimant's hypertension was a significant contributing factor to the claimant's coronary artery disease, the claimant was ineligible for § 7-433c C.G.S. benefits because his claim was untimely.[3] This board affirmed the trier's award of § 7-433c C.G.S. benefits, noting that "[t]he statute does not in itself create a bar for collecting benefits for one of the two ailments when a claimant has previously suffered from the other. Although related, hypertension and heart disease are separate maladies."[4]

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[3] We disagree with the respondents' assertion that Mayer v. East Haven, 4620 CRB-3-03-2 (March 3, 2004), *appeal dismissed for lack of final judgment*, A.C. 25244 (September 15, 2005), *cert. denied*, 276 Conn. 918 (2005), "is factually inconsistent with the present case [given] that in Mayer the board determined that there was no relationship between the prior diagnosis of hypertension and the later diagnosed coronary artery disease." Appellants' Brief, p. 17. In fact, in Mayer, we noted that "[t]he respondents claim the testimony of their independent medical examiner proves the claimant's prior hypertension was a substantial cause of the claimant's later heart disease, therefore requiring the heart disease claim be barred as untimely." Mayer, supra.

[4] In Mayer v. East Haven, 4620 CRB-3-03-2 (March 3, 2004), *appeal dismissed for lack of final judgment*, A.C. 25244 (September 15, 2005), *cert. denied*, 276 Conn. 918 (2005), we stated, "[w]e read the statute to

Id. We applied a similar analysis in Kaminski v. Naugatuck, 4956 CRB-5-05-6 (June 28, 2006), wherein we affirmed the trier's denial of benefits to a claimant suffering from contemporaneous hypertension and tachycardia who "was unable to satisfy his burden of proving to the trial commissioner that his heart disease claim was a separate causal entity from his hypertension claim."[5] Id.

Turning to the matter at bar, there is no question that both Kellerman and Krauthamer testified that the claimant's hypertension was a significant contributing factor to the development of the claimant's coronary artery disease. See Respondents' Exhibit 4, pp. 11-12; Respondents' Exhibit 5, pp. 17, 28. However, the record indicates, and the trier so found, that Krauthamer testified that other additional risk factors such as the claimant's elevated cholesterol and male gender also may have played a role. Respondents' Exhibit 4, pp. 11, 14, 19-20. In addition, Kellerman, in his report of April 27, 2012, stated that "[a]lthough hypertension is probably not the only causative factor for his coronary artery disease, I believe it was a significant contributing factor." Claimant's Exhibit A. Moreover, both doctors testified that hypertension and heart disease are separate diseases in and of themselves and patients can suffer from one and not the other. Respondents' Exhibit 4, p. 21; Respondents' Exhibit 5, pp. 24-25. As such, we find the record adequately supports the trier's inference that the development of the claimant's heart disease could be attributed to risk factors other than his hypertension

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mean once the claimant passes the prerequisite initial test of showing a pre-employment physical examination without *any evidence* of *either* hypertension *or* heart disease, and is later diagnosed with *either* hypertension *or* heart disease, benefits for either shall be granted." (Emphasis in the original.) Id.

[5] In Kaminski v. Naugatuck, 4956 CRB-5-05-6 (June 28, 2006), the board remanded the matter for additional findings on the issue of the claimant's pre-existing hypertension.

and was therefore, consistent with this board's analysis in Mayer, supra, a "separate malady."

The respondents have also claimed as error the trier's denial of ¶¶ 1 & 2 of their Motion to Correct, contending that the trial commissioner's finding that the claimant's hypertension was not "the sole cause of his coronary artery disease or his myocardial infarction," Findings, ¶ 52; Conclusion, ¶ Y, was "not relevant or material to the ultimate conclusion in this case and misstate[s] the rule of proximate causation under the Connecticut Workers' Compensation Act." Appellants' Brief, p. 23. The respondents base this claim of error on our Supreme Court's observation in Sapko v. State, 305 Conn. 360 (2012), *citing* Birnie v. Electric Boat Corp., 288 Conn. 392 (2008), that the substantial factor standard "does *not* connote that the employment must be the *major* contributing factor in bringing about the injury; … nor that the employment must be the *sole* contributing factor in development of an injury." (Emphasis in the original; internal citation omitted.) Sapko, supra, 391, *citing* Birnie, supra, at 412. "The respondents assert that if the commissioner had properly applied the commission's rule regarding proximate causation then he would have dismissed the heart claim…." Appellants' Brief, p. 24.

We confess to being somewhat puzzled by this claim of error. A claimant's eligibility for heart and hypertension benefits depends on satisfying the statutory requirements of § 7-433c C.G.S.; a claimant is not required to prove the causal connection between the heart disease/hypertension and the employment.

> It is well settled that the "special compensation," or the "outright bonus," of § 7-433c "is that the claimant is not required to prove that the heart disease is causally connected to [his or her] employment , which he [or she] would ordinarily have to establish in order to receive benefits pursuant to the Workers' Compensation Act.

O'Connor v. Waterbury, 286 Conn. 732, 752 (2008).

Thus, when viewed in the context of the inquiry presently before us, the subject finding is not, as the respondents allege, a misstatement of fundamental workers' compensation law. Rather, the finding simply provides additional support for the inference drawn by the trier that although the claimant's hypertension played a role in the development of his heart disease, other factors also contributed to the claimant's heart disease such that it could be considered a separate disease process.

Having reviewed the totality of the evidence in this matter, we find that the record provides an adequate basis for affirming the trier's conclusions in this appeal. As such, the Form 30C filed on March 14, 2011 following the myocardial infarction of March 10, 2011 was timely and the award of § 7-433c C.G.S. benefits on the basis of the claimant's heart disease is sustained.

As mentioned previously herein, the claimant filed a cross-appeal, contending that the trier's dismissal of the claim for § 7-433c C.G.S. benefits for the claimant's hypertension constituted error. The claimant argues that contrary to the inferences drawn by the trier, a review of the record in its totality "more logically leads to the conclusion that the Claimant was never made aware that he was diagnosed with either hypertension

or high blood pressure at any time preceding the heart attack." Cross-Appellant's Brief, p. 5. We do not agree.

In Ciarlelli v. Hamden, 299 Conn. 265 (2010), our Supreme Court conducted an examination of the evolution of heart and hypertension law, "[concluding] that the one year limitation period for claims under § 7-433c begins to run only when an employee is informed by a medical professional that he or she has been diagnosed with hypertension." Id., 300. In so doing, the Supreme Court expressly rejected a prior "standard that essentially authorizes workers' compensation commissioners to accept a post hoc diagnosis of hypertension based on a claimant's symptoms and then impute knowledge of that diagnosis retroactively to the claimant." Id., 296. As this board recently remarked in Conroy v. Stamford, 5900 CRB-7-13-12 (November 24, 2014), *appeal pending,* AC 37474, a "post-Ciarlelli" assessment of whether a claimant's notice of claim for § 7-433c C.G.S. benefits is timely must be "viewed through the prism of the actions taken by the claimant's treating physician." Id.

Having examined the instant record, we concede that Kellerman's testimony regarding the claimant's hypertension diagnosis was at times less than definitive. For instance, Kellerman stated that "[o]bviously, I can't recall specifically what I said to him at that point except what I have in my notes," Respondents' Exhibit 5, p. 22, and that he had "no specific recollection" of the "exact conversation" he may have had with the claimant. Id., 29. In addition, Kellerman testified that he might not have used the words "hypertension" or "high blood pressure" in speaking with the claimant, id., pp. 22, 29. Furthermore, the record reflects that an actual diagnosis of hypertension only occurred

once, in October 2009, and the claimant was never prescribed high blood pressure medication. However, the record also reflects that Kellerman advised the claimant "to reduce his salt intake and to do a regular exercise program," id., 14, and at trial, the claimant acknowledged that Kellerman had recommended he reduce his salt intake because his blood pressure was higher than it had been at prior office visits. See September 25, 2013 Transcript, pp. 17, 22-23.

More important, Kellerman testified that it would have been his "normal" or "standard" protocol, to discuss a diagnosis of Stage I hypertension at the time it was made.[6] Id., 13, 26. Kellerman also stated that, "[c]learly, I communicated that something was wrong. What I intended to communicate was that his blood pressure was high; so it's likely that I used the term, "high blood pressure." Id., 32.

Having reviewed the evidence submitted in this matter, we find the record establishes an adequate basis for the trier's inference that the claimant was advised that he was suffering from high blood pressure at the office visit of October 2009 such that he was obligated to put the respondents on notice within one year of their potential exposure. Moreover, relative to the issue of the exact terminology used by Kellerman, the Ciarlelli court appears to have anticipated the eventuality that a diagnosis of hypertension might be imprecisely conveyed, in that the Ciarlelli court remarked, "[o]f course, this standard is not so inflexible as to require a finding in all cases that the

[6] At his deposition, Roy Kellerman, M.D., testified as follows:
Q: "And just as you had indicated previously, it is your standard protocol to discuss your impression or assessment or diagnosis with the patient at the time of the visit?
A: Yes, sir."
Respondents' Exhibit 5, p. 13.

medical professional used the term 'hypertension' in communicating the diagnosis to the employee." Id., 301, fn. 18. Thus, in light of the foregoing analysis, we find no basis for reversing the trial commissioner's dismissal of the claim for § 7-433c C.G.S. benefits for hypertension.

There is no error; the May 16, 2014 Finding and Orders by the Commissioner acting for the Third District are accordingly affirmed.

Commissioners Stephen B. Delaney and Michelle D. Truglia concur in this opinion.