CASE NO. 5965 CRB-5-14-10 : COMPENSATION REVIEW BOARD
CLAIM NO. 500150554

GALE CORBIN
CLAIMANT-APPELLEE : WORKERS' COMPENSATION COMMISSION

v.

: JULY 7, 2015

SAINT MARY'S HOSPITAL
EMPLOYER
SELF-INSURED

and

PMA MANAGEMENT CORPORATION
ADMINISTRATOR
RESPONDENTS-APPELLANTS

APPEARANCES:

The claimant was represented by Edward T. Dodd, Jr., Esq., and Laura Ondrush, Esq., The Dodd Law Firm, LLC, Ten Corporate Center, 1781 Highland Avenue, Suite 105, Cheshire, CT 06410.

The respondents were represented by Michael W. Vernile, Esq., Montstream & May, LLP, 655 Winding Brook Drive, Glastonbury, CT 06033.

This Petition for Review from the September 29, 2014 Finding and Award of the Commissioner acting for the Fifth District was heard February 27, 2015 before a Compensation Review Board panel consisting of the Commission Chairman John A. Mastropietro and Commissioners Stephen M. Morelli and Jack R. Goldberg.

OPINION

JOHN A. MASTROPIETRO, CHAIRMAN. The respondents-appellants, PMA Management Corporation and Saint Mary's Hospital have appealed from a Finding and Award which determined that the claimant was entitled to transportation to and from her Neurofeedback therapy sessions in Middletown, which could include the use of taxicab or limousine services. The respondents argue that this order is beyond the permissible remedies allowed under § 31-312 C.G.S. We conclude that given the factual circumstances herein the trial commissioner could authorize this transportation so that the claimant could complete her medical treatment. Therefore, we affirm the Finding and Award.

The commissioner reached the following factual findings at the conclusion of the formal hearing. The parties acknowledge that the claimant sustained a compensable injury for which a voluntary agreement was approved on November 23, 2010. The claimant is now treating with Dr. Roslyn Einbinder, a neurologist. The claimant also treats with Dr. Robert F. Reynolds resulting from a commissioner's examination opinion by Dr. Peter J. McAllister. Dr. Reynolds performs '"Biofeedback' therapy sessions designed to improve the Claimant's 'short term memory' loss as well as 'sleeping' problems and 'dizziness' due to the compensable injury." This modality of treatment has been authorized by the respondents and has yielded positive results. The sessions were held three times per week.

In an April 22, 2014 letter provided to Attorney Dodd, Dr. Reynolds indicates that the claimant "is about halfway recovered from her injury." He opined that the Claimant's "short term memory has improved." Dr. Reynolds is now recommending "30

Neurofeedback" therapy sessions in order to complete the recovery process. The respondents have authorized this additional treatment.

The claimant testified as to her need for transportation to these therapy sessions. She testified that her family owns one motor vehicle. This family vehicle is used by her husband, Charles, to drive back and forth to work at Federal Express in Watertown. He works "six" days a week for "twelve" hours per day. Charles has worked this schedule for the last "seven years." The claimant said her husband and son drove her to her first thirty-three appointments at Dr. Reynolds' office in Middletown. The claimant testified that her husband is no longer able to drive her for her therapy session "because he works." She further testified that there is no one else, including her son, available to provide transportation to and from the additional sessions.

The claimant is not aware of any public transportation between Dr. Reynolds' office in Middletown and her home in Waterbury. She further testified that she is not able to afford round trip taxi cab fare. She did note on cross-examination that her husband used a company vehicle during the work day and the family car was parked at the Federal Express employee lot during the day.

The trial commissioner noted that the parties have stipulated that there is no medical evidence that provides there is a medical necessity for the claimant to be driven to and from medical appointments. The commissioner also cited the text of § 31-312(a) C.G.S. in the Finding.

> The employer shall furnish or pay for the transportation of the employee by ambulance or taxi where transportation is medically required from the point of departure for treatment and return. In **all other cases**, the employer shall furnish the employee transportation **or** reimbursement for the cost of transportation actually used . . . for a private motor vehicle or the cost incurred

> for public transportation, from the employee's point of departure, whether from the employee's home or place of employment, and return . . . .

Findings, ¶ 14. (Emphasis in original.)

Based on these facts the trial commissioner concluded the claimant offered credible testimony, particularly her testimony that no one, including her husband and son, was available to drive her to and from her medical appointments in Middletown. He found there was no public transportation between the claimant's residence and Dr. Reynolds's office, and the claimant's trips to Dr. Reynolds were for the purpose of receiving reasonable and necessary medical care for her injuries. The commissioner cited § 31-312 C.G.S. and Evensen v. City of Stamford, 5541 CRB-7-10-4 (March 31, 2011) for the proposition that the respondents had the ability to choose between furnishing the claimant with transportation by hiring their own transportation provider or reimbursing the claimant the cost of transportation by way of a private vehicle or other reasonable method of public or private transportation. He directed the parties to cooperate as to determining the most cost-effective means to transport the claimant to and from her appointments in Middletown. The commissioner pointed out the claimant could not be asked to utilize a manner of transportation that was not feasible; nor be directed to seek reimbursement if she was unable to pay the initial expense of a taxi cab.

The respondents filed a Motion to Correct seeking corrections that limited their obligations to provide or reimburse for transportation for the claimant's medical appointments. The Motion was denied in its entirety. The respondents have commenced this appeal, arguing the trial commissioner misapplied the law and reached conclusions unsupported by facts on the record. We note the standard of deference we are obliged to

apply to a trial commissioner's findings and legal conclusions is well-settled. "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).

The appellant's position herein is essentially that the trial commissioner was obligated to adopt and implement a very restrictive interpretation of § 31-312 C.G.S. which limits the use of taxicab service only to claimants who are medically incapacitated at the time they seek transportation. In all other occasions, the claimant was obligated to use a private automobile or public transportation and then seek subsequent reimbursement. The trial commissioner did not believe under the facts herein that this was a reasonable interpretation of the statute. We concur.

The Supreme Court in Derrane v. Hartford, 295 Conn. 35 (2010) explained, in a case interpreting the terms of Chapter 568, the appropriate standard for interpreting a statute. We believe it is applicable to the dispute herein.

> When a statute is not plain and unambiguous, we also look for interpretive guidance to the legislative history and circumstances surrounding its enactment, to the legislative policy it was designed to implement, and to its relationship to existing legislation and common law principles governing the same general subject matter . . . .

Id., 43.

In another case interpreting the provisions of Chapter 568, Gamez-Reyes v. Biagi, 136 Conn. App. 258 (2012), the Appellate Court held "... [i]n determining the meaning of a statute . . . we look not only at the provision at issue, but also to the broader statutory scheme to ensure the coherency of our construction.'' Id., 274. Southern New England Telephone Co. v. Cashman, 283 Conn. 644 (2007); supra, is also in accord with this approach.

> As we repeatedly have stated, "the legislature is always presumed to have created a harmonious and consistent body of law. . . ." (Internal quotation marks omitted.) *Renaissance Management Co. v. Connecticut Housing Finance Authority*, 281 Conn. 227, 238, 915 A.2d 290 (2007). This requires the court "to read statutes together when they relate to the same subject matter. . . . Accordingly, [i]n determining the meaning of a statute . . . we look not only at the provision at issue, but also to the broader statutory scheme to ensure the coherency of our construction. . . . In applying these principles, we are mindful that the legislature is presumed to have intended a just and rational result." (Internal quotation marks omitted.) *Teresa T. v. Ragaglia*, 272 Conn. 734, 748, 865 A.2d 428 (2005); cf. General Statutes § 1-2z. "When more than one construction [of a statute] is possible, we adopt the one that renders the enactment effective and workable and reject any that might lead to unreasonable or bizarre results." (Internal quotation marks omitted.) *Graff v. Zoning Board of Appeals*, 277 Conn. 645, 653, 894 A.2d 285 (2006).

Id., 652-653.

When a claimant sustains a compensable injury, it is the employer's unequivocal legal obligation under § 31-294d(a)(1) C.G.S. to provide the injured worker reasonable or necessary medical treatment. It is also black letter law that it is the trial commissioner's decision as to what modalities of treatment are most appropriate for a claimant. See Cervero v. Mory's Association, Inc., 5357 CRB-3-08-6 (May 19, 2009), *aff'd*, 122 Conn. App. 82 (2010), *cert. denied*, 298 Conn. 908 (2010). The trial commissioner in the present case determined, consistent with the *respondents' authorization***,** that the

claimant's continued treatment with Dr. Reynolds at a location distant from her home in Waterbury[1] was necessary medical care. The trial commissioner also concluded, based on the facts presented on the record, that the claimant was unable to attend these appointments utilizing the family's automobile or public transportation.[2] Having reviewed the claimant's testimony, the trial commissioner could reasonably conclude that the single car owned by her family was needed for her husband's commuting and it was not reasonable for her to drive him to work in a direction going away from Middletown, turn around, then drive to her therapy sessions, and then double back to Watertown to pick her husband up at the end of his shift. When evaluating a trial commissioner's determination of factual evidence we are bound by a standard that it must be upheld unless it is "clearly erroneous." Berube v. Tim's Painting, 5068 CRB-3-06-3 (March 13, 2007). The commissioner's determination as to the availability to the claimant of a private automobile or public transportation herein was not clearly erroneous.

The respondents argue that the trial commissioner erred on applying the law and that he was bound by the precedent in Krajewski v. Atlantic Machine Tool Works, Inc. a/k/a Atlantic Aerospace Textron, 4500 CRB-6-02-3 (March 7, 2003) to deny the claimant's transportation request. We are not persuaded. We note that in Krajewski the trial commissioner reached a factual finding on the issue of parking and taxicab

[1] Accordingly to Google Maps, the driving distance between the claimant's residence and Dr. Reynolds' office is approximately 24 miles.

[2] We have independently confirmed from reviewing publicly available bus schedules that there is no scheduled public bus service between Waterbury and Middletown and any use of public transportation would require changing buses in Hartford, as well as substantial walking distance. http://www.cttransit.com/tripPlanner (accessed June 12, 2015). In any event, the trial commissioner could determine, as matter of common knowledge, Lee v. Standard Oil of Connecticut, Inc., 5284 CRB-7-07-10 (February 25, 2009) that the claimant was correct in believing that public transportation between these two communities was not a logistically viable alternative to using an automobile or taxi.

reimbursement adverse to the claimant. Therefore, that case may be distinguished on the facts as in this case the trial commissioner ruled in favor of the claimant. In addition, in Krajewski the claimant failed to prosecute his appeal on that issue and the Compensation Review Board essentially affirmed the trial commissioner's ruling on this issue by default. To the extent dicta in Krajewski suggests the trial commissioner erred in this matter, we extend that case little weight.

The case the trial commissioner cited in support of his decision, Evensen v. City of Stamford, 5541 CRB-7-10-4 (March 31, 2011), stands for the proposition that this Commission should reach a reasonable decision based on the facts presented as to what mode of transportation will best enable a claimant to receive the medical care he or she is entitled to. We noted in Evensen that the applicable statute was written in the disjunctive.

> In considering the actual text of this statute we note that it is the obligation of the employer to "furnish the employee transportation *or* reimbursement for the cost of transportation actually used." (Emphasis added.) We also note that the remainder of the statute provides for a variety of feasible alternative means for the claimant to travel to a medical appointment such as public transportation, common carriers, ambulance or taxi. The statute herein is written in the disjunctive. The employer may choose to "furnish" . . . transportation *or* reimburse the claimant for travel expenses.

Id. (Emphasis in original.)

In the present case the trial commissioner determined that based on the facts presented that it was not feasible for the claimant to be reimbursed for travel to her authorized medical appointments. The only feasible means that existed for the respondents to fulfill their obligations under the statute would be for the respondents to furnish transportation to the claimant. Given the fact the statute is written in the

disjunctive we find no error in the trial commissioner's application of § 31-312 C.G.S., as it is consistent with the public policy delineated in Evensen.

Recently, in Gill v. Brescome Barton, Inc., 317 Conn. 33 (2015) the Supreme Court reiterated the powers trial commissioners have to resolve lacunae or ambiguities in our statute in a manner that promotes an equitable result, citing § 31-278 C.G.S. Id., 38-39. The statutory interpretation of § 31-312 C.G.S. advanced by the respondents, that a commissioner may order use of livery or taxicab transportation **only** when compelled by medical necessity, would be a statutory interpretation that would thwart the purpose of § 31-294d C.G.S., and lead to an unreasonable result. The seminal case of Marbury v. Madison, 5 U.S. 137 (1803) discusses the concept that when one has a legal right, one must also be afforded a remedy to vindicate that right. Id., 163. Mrs. Corbin under our statutes has the right to obtain medical treatment for her compensable injury. If she cannot reach the medical provider that provides that treatment, she is no better off than had she been denied treatment. A *de facto* denial of treatment is no better than a *de jure* denial of treatment. The trial commissioner's Finding and Award vindicates the claimant's rights under § 31-294d C.G.S. We find the remedy herein is statutorily authorized under § 31-312 C.G.S and pursuant to Cervero, supra, falls within the discretion of the trial commissioner to determine the venue and modality of reasonable medical treatment. Most importantly, the trial commissioner's decision advances the remedial purpose of Chapter 568.

Therefore, we affirm the Finding and Award.

Commissioners Stephen M. Morelli and Jack R. Goldberg concur in this opinion.