CASE NO. 6505 CRB-8-23-6 : COMPENSATION REVIEW BOARD
CLAIM NO. 800200287

JOHN MATTERA, DECEASED; : WORKERS' COMPENSATION
DENISE MATTERA, COMMISSION
ADMINISTRATRIX OF THE ESTATE
OF JOHN MATTERA; MARSHALL
MATTERA, SURVIVING ADULT CHILD;
ABBY BLEYTHING, SURVIVING ADULT CHILD;
NATASHA MATTERA, SURVIVING ADULT CHILD
CLAIMANTS/APPELLANTS

v. : MARCH 1, 2024

STATE OF CONNECTICUT/
DEPARTMENT OF CHILDREN AND FAMILIES
EMPLOYER
SELF-INSURED
RESPONDENT-APPELLEE

and

GALLAGHER-BASSETT SERVICES, INC.
THIRD-PARTY ADMINISTRATOR

APPEARANCES:

The claimants were represented by James H. McColl, Jr., Esq., The Dodd Law Firm, L.L.C., Ten Corporate Center, 1781 Highland Avenue, Suite 105, Cheshire, CT 06410.

The respondent was represented by Christopher K.C. Boyer, Assistant Attorney General, Office of the Attorney General, 165 Capitol Avenue, Suite 4000, Hartford, CT 06106.

This Petition for Review from the June 1, 2023 Finding and Dismissal of Peter C. Mlynarczyk, Administrative Law Judge acting for the Eighth District, was heard on October 20, 2023 before a Compensation Review Board panel consisting of Chief Administrative Law Judge Stephen M. Morelli and Administrative Law Judges Soline M. Oslena and William J. Watson III.

OPINION

STEPHEN M. MORELLI, CHIEF ADMINISTRATIVE LAW JUDGE. The claimants have petitioned for review from the June 1, 2023 Finding and Dismissal of Peter C. Mlynarczyk, Administrative Law Judge acting for the Eighth District (finding).[1] We affirm the decision.

At proceedings below, the administrative law judge identified the following issues for determination: (1) whether the decedent had reached maximum medical improvement (MMI) on March 9, 2022; and, if so, (2) whether the respondent was liable for payment of permanent partial disability (PPD) benefits. The trier made the following factual findings which are pertinent to our review. On January 5, 2018, the decedent sustained multiple work-related injuries when he attempted to assist fellow staff members in breaking up an altercation at the juvenile detention center where he was employed. The respondent accepted compensability for a claim of post-traumatic stress disorder (PTSD) as well as for injuries to the decedent's cervical and lumbar spine and left shoulder. On August 10, 2018, the Workers' Compensation Commission approved a voluntary agreement memorializing the respondent's acceptance of the claim. At all times relevant herein, the respondent paid temporary total disability benefits to the decedent.[2]

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[1] On September 15, 2022, claimants' counsel filed a notification of appearance for the estate of John Mattera. On December 5, 2022, claimants' counsel filed a notification of appearance on behalf of Marshall Mattera, surviving child of John Mattera. On December 6, 2022, claimants' counsel filed a notification of appearance on behalf of Denise Mattera, Administratrix of the Estate of John Mattera. No probate documents were submitted into the record. On December 16, 2022, claimants' counsel filed a notification of appearance on behalf of Abby Bleything, surviving child of John Mattera, and on December 19, 2022, claimants' counsel filed a notification of appearance on behalf of Natasha Mattera, surviving child of John Mattera. The petition for review filed on June 7, 2023, identifies the claimant in this matter as "John Mattera, Deceased."

[2] Although the evidentiary record suggests that, at some point after the date of injury, the decedent retired from state employment with a full disability pension, the respondent submitted into evidence a print-out

In May 2018, the decedent came under the care of Mark Waynik, a psychiatrist. Waynik's final appointment with the decedent occurred on March 9, 2022, via a telehealth appointment.[3] In the office note for this encounter, Waynik indicated that the decedent should follow up in one month and his medications should be refilled until his next visit. See Claimants' Exhibit A. Prior to the telehealth appointment of March 9, 2022, Waynik had not seen the decedent since October 26, 2021.[4] Waynik did not address the issue of whether the decedent had attained MMI in either the note of October 26, 2021, or March 9, 2022. The decedent also treated with John E. Went, a licensed clinical social worker, on a regular basis. The decedent was last seen by Went on March 4, 2022; Went did not address the issue of MMI in his note from that visit.

On March 29, 2022, claimants' counsel wrote to Waynik inquiring as to whether the decedent had reached MMI. On April 8, 2022, the decedent passed away from metastatic esophageal adenocarcinoma, which condition was unrelated to his compensable work injuries. On April 12, 2022, Waynik replied to claimants' counsel, stating that the decedent:

> continues under the psychiatric care of the undersigned and was last seen on March 9, 2022. He has not made any significant gains of late, and it is my medical opinion that he has reached maximum medical improvement. Continued psychiatric support and medication management is indicated.

Claimants' Exhibit B-2.

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itemizing ongoing temporary total disability benefit payments commencing on January 26, 2018, and continuing until April 29, 2022. See Claimants' Exhibit C [June 5, 2020 Case Progress Note of John E. Went, a Licensed Clinical Social Worker]; Respondent's Exhibit 1, p. 4.

[3] The evidentiary record indicates that the decedent moved to North Carolina in January 2020. See Respondent's Exhibit 1, p. 3.

[4] Similarly, in his Psychotherapy Evaluation/Management office note of October 26, 2021, Waynik recommended that the decedent follow up in one month and refill his medications. See Claimants' Exhibit A.

On May 12, 2022, Waynik completed a Physician's Permanent Impairment Evaluation (form 42) assigning the decedent a 15 percent impairment of the brain with no work capacity. See Claimants' Exhibit B-5. At formal proceedings, it was the claimants' position that the decedent reached MMI on March 9, 2022, and, as such, the PPD benefits for the decedent's brain impairment should be paid to his surviving children.

On the basis of the foregoing, the administrative law judge found neither credible nor persuasive Waynik's opinion that the decedent had reached MMI on March 9, 2022, given "that the medical records were devoid of MMI as a consideration only a few weeks prior to Mr. Mattera's demise." Conclusion, ¶ A. The trier also concluded that Waynik's assignment of a 15 percent PPD rating for the decedent's brain injury was "likewise neither credible nor persuasive because Mr. Mattera had not yet reached MMI. Therefore, it is not plausible that Dr. Waynik could make an accurate assessment of the [decedent's] permanency, if any." Conclusion, ¶ B. The administrative law judge determined that the decedent continued to be totally disabled as of April 8, 2022, and, as such, had neither attained MMI nor sustained a 15 percent permanent impairment to his brain as of March 9, 2022. Accordingly, the trier denied and dismissed in its entirety the claim for PPD benefits.

The claimants have appealed the finding, contending that the administrative law judge's denial of the claim for permanency benefits constituted error. They argue that the trier "improperly inserted his own opinion in place of that of the expert," Appellants' Brief, p. 10, and therefore rendered a decision that is "contrary to the case law." Id., 9. We are not persuaded, as we agree with the respondent that the decision in this matter

does not reflect a misinterpretation of the law but, rather, directly implicates the discretion of a trial judge in assessing the adequacy of evidentiary submissions.

The standard of appellate review we are obliged to apply to the findings and legal conclusions of a trial judge is well-settled. A trier'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), *quoting* Thalheim v. Greenwich, 256 Conn. 628, 656 (2001). Thus, "it is … immaterial that the facts permit the drawing of diverse inferences. The [trier] 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, *quoting* Del Vecchio v. Bowers, 296 U.S. 280, 287 (1935).

We begin our analysis by noting at the outset that General Statutes § 31-308 (b)[5] provides for awards of compensation to injured workers on the basis of a statutory schedule of benefits for injuries resulting in a permanent impairment to specific body parts. Eligibility for this compensation generally occurs when an injured worker has

[5] General Statutes § 31-308 (b) states in relevant part: "With respect to the following injuries, the compensation, in addition to the usual compensation for total incapacity but in lieu of all other payments for compensation, shall be seventy-five per cent of the average weekly earnings of the injured employee, calculated pursuant to section 31-310 … but in no case more than one hundred per cent, raised to the next even dollar, of the average weekly earnings of production and related workers in manufacturing in the state, as determined in accordance with the provisions of section 31-309, or less than fifty dollars weekly. All of the following injuries include the loss of the member or organ and the complete and permanent loss of use of the member or organ referred to …."

reached MMI. Our case law has also established that "there appears no principled reason why the date of maximum medical improvement could not be fixed in retrospect." Appellants' Brief, p. 9, *quoting* R. Carter, D. Civitello, J. Dodge, J. Pomeranz & L. Strunk, 19 Connecticut Practice Series: Workers' Compensation Law (2023-2024 Supplement) § 8:92, p. 328. In addition, it should be noted that General Statutes § 31-308 (d)[6] contemplates that PPD benefits may, under certain circumstances, be paid to the surviving adult children of a deceased injured worker.

The claimants in the present matter liken the circumstances of their appeal to the factual scenario in McCurdy v. State, 227 Conn. 261 (1993), wherein our Supreme Court reversed the denial of permanency benefits to the estate of an injured claimant who was deemed totally disabled and reached MMI before his death but died before being awarded permanency.[7] The court noted that two months before the decedent's death from causes unrelated to his compensable injury, his treating physician assigned a 70 percent PPD rating to his low back and, in subsequent correspondence, opined that the decedent had reached MMI. The decedent then sought payment of the PPD benefits; however, the "commissioner refused to award permanent partial disability benefits because the decedent remained totally disabled."[8] Id., 264-65.

In its review, the court noted that the commissioner had erroneously denied corrections to the finding proposed by the claimant seeking to include evidence which

[6] General Statutes § 31-308 (d) states: "Any award or agreement for compensation made pursuant to this section shall be paid to the employee, or in the event of the employee's death, whether or not a formal award has been made prior to the death, to his surviving spouse or, if he has no surviving spouse, to his dependents in equal shares or, if he has no surviving spouse or dependents, to his children, in equal shares, regardless of their age."

[7] The decision denying PPD benefits was affirmed by this board and our Appellate Court.

[8] Effective October 21, 2021, the Connecticut legislature directed that the phrase "administrative law judge" be substituted when referencing a workers' compensation commissioner. See Public Acts 2021, No. 18, § 1.

attested to the decedent's attainment of MMI and permanency rating. The court remarked that "[a] person may reach maximum medical improvement, have a *permanent* partial impairment, and be *temporarily* totally disabled from working, all at the same time." (Emphasis in the original.) Id., 267-8, *citing* Osterlund v. State, 129 Conn. 591, 600 (1943). The court pointed out that "[w]e have long held that an injured worker has a right to a permanent partial disability award once he or she reaches maximum medical improvement." Id., 268. As such, the court stated:

> In a case such as this … in which the worker has reached maximum medical improvement and his permanent partial disability award has thereby vested, we hold that the commissioner does not have discretion to deny such an award if the worker requests that award, as the decedent did in this case.

Id., 269.

Having determined that the decedent was entitled to the permanency award, the court went on to conclude that "[w]here, as here, there are no dependents, we hold that a permanent partial disability award that became due to the decedent before his death is payable to the estate."[9] Id., 270.

The claimants in the present matter further contend that a posthumous PPD award would be consistent with our Supreme Court's decision in Churchville v. Bruce R. Daly Mechanical Contractor, 299 Conn. 185, 192 (2010), wherein the court affirmed a decision concluding that the decedent, who had collected temporary total disability benefits until his death from causes unrelated to his compensable injury, was not required to make an affirmative request for permanency benefits during his lifetime in order for his

[9] The court also held that only the temporary total disability payments which had been made to the decedent between the date of entitlement to PPD and the date of death could be credited against the PPD award. See McCurdy v. State, 227 Conn. 261, 269 n.9 (1993).

entitlement to such benefits to vest. The decedent had been assessed as having reached MMI and received two permanency ratings to his lumbar spine as well as a permanency rating to his right shoulder. Although he never made a formal request for permanency, he had included proposed PPD payments as an option in a settlement demand prior to his death.

The respondents filed a notice of discontinuation of benefits (form 36) following the assignment of the second permanency rating to the decedent's lumbar spine. Shortly after the decedent's death, claimant's counsel withdrew his objection to the form 36. Following formal proceedings, the commissioner issued a finding and award approving the form 36; in addition, he ordered that all payments of temporary total disability since the filing date of the form 36 be taken as a credit against permanency and the remaining permanency benefits be paid to the decedent's estate. This board affirmed the commissioner's decision, holding "that the right to permanent partial disability benefits vests once a claimant reaches maximum medical improvement, and, therefore, no affirmative request was required." Id., 190, *citing* Churchville v. Bruce R. Daly Mechanical Contractor, 5365 CRB-8-08-8 (August 4, 2009), *aff'd*, 299 Conn. 185 (2010).

Our Supreme Court also affirmed, noting that in its prior analysis in McCurdy, supra, the court's focus on the claimant's request for PPD benefits "was limited to considering the effect that such a request has on the commissioner's discretion."[10] Id., 195. The Churchville court further noted that in McCurdy, it had concluded that:

> Once an employee whose right to a disability benefit award has vested because that employee has reached maximum medical improvement requests payment of the disability benefits, the

[10] The matter was transferred from the Appellate Court to the Supreme Court pursuant to General Statutes § 51-199 (c) and Practice Book § 65-1. See Churchville v. Bruce R. Daly Mechanical Contractor, 299 Conn. 185, 186 n.1 (2010).

> commissioner no longer has discretion to deny the award of the disability benefits regardless of whether the employee remains totally incapacitated.

Id.

The McCurdy court also clarified that in reaching this conclusion, it did not mean to "suggest that an employee's entitlement to disability benefits vested only upon the employee's request for such benefits." Id. Thus, in light of its prior reasoning in McCurdy, the Churchville court "[concluded], consistent with our applicable precedents, that a plaintiff's right to permanent partial disability benefits, as well as the attendant entitlement enjoyed by the plaintiff's surviving spouse or presumptive dependent, vests when the plaintiff reaches maximum medical improvement, and does not depend on an affirmative request for such benefits." Churchville, supra, 191.

There is little question that our Supreme Court's analysis in McCurdy, supra, and Churchville, supra, along with the provisions of § 31-308 (d), afforded the administrative law judge in the present matter the authority to award PPD benefits to the decedent's estate. This is particularly so given that, as was the case in both McCurdy and Churchville, the instant record does contain a medical opinion placing the decedent at MMI and assigning a permanency rating, albeit posthumously.

However, the salient difference between the present matter and the decisions relied upon by the claimants is that in neither of those two decisions was the sufficiency of the medical evidence as to permanency challenged by the trier.[11] By contrast, in the instant appeal, the administrative law judge, having examined Waynik's permanency

[11] It should be noted that in Churchville v. Bruce R. Daly Mechanical Contractor, 299 Conn. 185 (2010), the commissioner adopted the 32 percent rating assigned by the decedent's treating physician rather than the 20 percent rating assigned by the respondents' physician.

report, found it neither credible nor persuasive when viewed against the backdrop of the evidentiary record in its entirety. This assessment was well within his discretion, given that "[i]t is the quintessential function of the finder of fact to reject or accept evidence and to believe or disbelieve any expert testimony…. The trier may accept or reject, in whole or in part, the testimony of an expert." (Internal citations omitted.) Tartaglino v. Dept. of Correction, 55 Conn. App. 190, 195 (1999), *cert. denied*, 251 Conn. 929 (1999). It is equally well-settled that the trier "has the sole authority to decide which, if any, of the evidence is reliable, and he is always free to decide that he does not trust a particular medical opinion or a particular witness' testimony, even if there does not appear to be any evidence that directly contradicts it." Pallotto v. Blakeslee Prestress, Inc., 3651 CRB-3-97-7 (July 17, 1998).

The claimants in the present matter also attempt to distinguish their appeal from Esposito v. Stamford, 6470 CRB-7-22-4 (February 6, 2023), *appeal transferred*, S.C. 20928 (November 7, 2023), wherein we affirmed the denial of permanency benefits to the surviving spouse of a decedent who was awarded statutory total disability after sustaining a compensable head injury in 1982 which had resulted in a "reduction … to one-tenth or less of normal vision" in both eyes. General Statutes § 31-307 (c). Approximately sixteen years later, in 1998, in response to a form 36 filed by the respondents, the commissioner issued a finding and award ordering the respondents to continue paying statutory temporary total disability benefits to the decedent. That award was never appealed.

After the death of the Esposito claimant in 2020, the decedent's spouse, as the sole presumptive dependent, filed a claim for PPD benefits on the basis that the

decedent's permanency had vested no later than the date of the 1998 finding and award.[12] Following formal proceedings, the administrative law judge concluded that the decedent's permanency had vested as of the date of the finding; however, given that the amount of total disability benefits paid by the respondents since that date was greater than the amount of permanency due to the decedent, the trial judge dismissed the claim.

This board affirmed the denial, albeit on alternative grounds, concluding that the 1998 finding and award did not constitute an adjudication of the decedent's PPD but, rather, had established his ongoing entitlement to statutory temporary total disability. As such, the claimants in the present matter contend that Esposito can be distinguished on the basis that "the claimant in Esposito received a finding of statutory total incapacity, not a determination of maximum medical improvement and a corresponding PPD rating like Mr. Mattera." Appellants' Brief, p. 8. This observation is accurate. However, of more relevance to our analysis of this claim is the fact that this board's affirmance in Esposito was predicated on our Supreme Court's analysis in Brennan v. Waterbury, 331 Conn. 672 (2019).

In Brennan, the court reviewed an appeal brought by the executrix for the estate of her deceased spouse seeking unpaid PPD benefits in association with a heart and hypertension claim. See General Statutes § 7-433c.[13] The court noted that the decedent,

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[12] As of the date of the injury in 1982, General Statutes § 31-308 (b) provided for 235 weeks of compensation for an eye injury causing "the complete and permanent loss of the sight of one eye, or the reduction in one eye to one-tenth or less of normal vision …."

[13] General Statutes § 7-433c states in relevant part: "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

during his lifetime, had received only a portion of the PPD benefits ostensibly owed to him as a result of three permanency ratings obtained by the respondent and one rating obtained from the decedent's treating physician.[14] Despite negotiations spanning several years, the decedent and the respondent, a municipality, never entered into a full and final settlement of the claim, ostensibly due at least in part to "the city's ongoing financial difficulties …." Id., 677. As of the date of his death, the decedent had been collecting temporary total disability benefits for approximately three years.

Following formal proceedings, the commissioner, having determined that the decedent had reached MMI during his lifetime, ordered the respondent to pay PPD benefits consistent with the opinion of the decedent's treating physician. In addition, the commissioner granted a correction sought by the claimant indicating that the PPD benefits had vested as of the date of MMI. On review, our Supreme Court declined to dismiss the claim on the jurisdictional grounds sought by the respondent.[15] Rather, the court "[concluded] that matured § 7-433c benefits – those that accrued during the claimant's lifetime – properly pass to the claimant's estate. The question that remains for our consideration is whether the benefits at issue in the present case had matured before the decedent's death."[16] Id., 693.

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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 ….."

[14] A posthumous report from the decedent's treating physician increasing the amount of the disability rating by 10 percent was also entered into the evidentiary record.

[15] The matter was transferred from the Appellate Court to the Supreme Court pursuant to General Statutes § 51-199 (c) and Practice Book § 65-1. See Brennan v. Waterbury, 331 Conn. 672, 680 n.9 (2019).

[16] The court explained that it "typically has used the terms 'mature' and 'accrue' interchangeably … to describe the time when an employee has an enforceable right to receive payment for workers' compensation benefits." Brennan v. Waterbury, 331 Conn. 672, 684 n.11 (2019).

In attempting to determine whether the PPD benefits had matured, the court noted that the executrix had asserted that the amount due to the decedent "was certain, because the city and the decedent had reached a compromise disability rating … in the course of their settlement negotiations." Id., 694. However, the respondent disagreed, contending that the decedent's disability rating had not been established until after his death and the decedent had "[chosen] to negotiate for a lump sum payment during his lifetime rather than obtain a final adjudication of the exact weekly compensation that the city would be obligated to pay." Id. In light of this dispute, the court:

> [concluded] that, on the present record, we cannot state with certainty that the unpaid portion of the 80 percent permanent partial disability benefits necessarily matured before the decedent's death. Our uncertainty in this regard exists because the commissioner's decision does not include necessary findings on the critical issues, and we therefore leave open the possibility that the commissioner, on remand, may find that some portion of the benefits matured before the decedent's death.

Id.

The court reiterated "that our case law reflects that permanent disability benefits vest, or become due, when the claimant reaches maximum medical improvement." Id., 695. Given that "[a]n employer's payment obligations … are not fixed until the establishment of entitlement to permanent disability benefits," id., 696, the court stated that "we are compelled to conclude that permanent disability benefits mature only after the degree of permanency has been fixed by way of an award or an agreement between the parties sufficient to establish a binding meeting of the minds."[17] Id., 697. Having determined that the evidentiary record as presented "not only [failed] to establish that

[17] In reaching this conclusion, the court cited inter alia 1 A. Sevarino, Connecticut Workers' Compensation After Reforms (7th Ed. 2017) § 2.14.7, pp. 152–53, for the proposition that PPD "benefits are not owed until degree of permanent impairment has been established by award or agreement."

there was a meeting of the minds on the degree of permanency to be assigned to that disability, it [provided] a clear implication to the contrary," id., 699, the court remanded the claim "for further proceedings to decide the proper beneficiary of any benefits due."[18] Id., 700.

As previously referenced herein, the claimants have attempted to distinguish the present matter from Esposito, supra, on the basis that the instant decedent, unlike the Esposito decedent, was deemed to have reached MMI and assigned a PPD rating by his treating physician. However, the administrative law judge did not find this report persuasive, and the record contains no other evidence which would support the reasonable inference that the decedent ever reached MMI or became eligible for PPD benefits. We therefore lack a compelling basis to reverse the decision of the administrative law judge.

Moreover, given that the conditions precedent set forth in Brennan, supra, for the vesting of PPD benefits – i.e., either an award of a PPD rating or an agreement between the parties – were not satisfied, the trial judge in the current appeal was not required to reach the issue of whether the decedent had established an entitlement to the PPD benefits during his lifetime. "Hence the critical flaw in the appellant's argument – in prematurely focusing on an analysis of whether permanency has vested, it largely

[18] "On remand, following additional formal proceedings before this board, the administrative law judge, having found that the parties had stipulated to the date of maximum medical improvement and reached an agreement relative to permanent partial disability, concluded that 'there was a clear meeting of the minds' that the decedent had sustained a permanent partial disability of the heart and the decedent's entitlement to permanent partial disability benefits had 'vested and was matured' as of the stipulated maximum medical improvement date. May 21, 2021 Finding and Decision [of Charles F. Senich, Administrative Law Judge acting for the Fifth District], Conclusion, ¶¶ G, P. The trier awarded to the estate all unpaid permanency benefits. In Brennan v. Waterbury, 6430 CRB-5-21-6 (April 11, 2022), *appeal pending*, A.C. 45467 (May 2, 2022), this board affirmed in part and remanded in part (on other grounds) the decision of the administrative law judge." Esposito v. Stamford, 6470 CRB-7-22-4 (February 6, 2023), *appeal transferred*, S.C. 20928 (November 7, 2023).

assumes the key threshold premise that the [decedent] was actually at maximum medical improvement in the first place."[19] Appellee's Brief, p. 6.

There is no error; the June 1, 2023 Finding and Dismissal of Peter C. Mlynarczyk, Administrative Law Judge acting for the Eighth District, is accordingly affirmed.

Administrative Law Judges Soline M. Oslena and William J. Watson III concur in this Opinion.

[19] We note that in his finding, the administrative law judge stated that the decedent "had not yet reached MMI." Conclusion, ¶¶ B, C. We recognize that this phraseology could lend itself to the interpretation adopted by the claimants that the trier "inserted his own opinion in place of that of the expert." Appellants' Brief, p. 10. However, our review of the finding in its entirety clearly indicates that the denial of the claim for PPD benefits stemmed from the fact that the trier did not find persuasive the medical evidence proffered by the claimants. As such, we would posit that a more accurate characterization of the evidentiary record is that the claimants failed to sustain their burden that the decedent ever reached MMI.