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Supreme Court, Appellate Division, Third Department, New York

In the Matter of the Claim of Keith Whitney, Respondent,
v.
Pregis Corp., Appellants,

WORKERS' COMPENSATION BOARD, Respondent.

December 9, 2021

Facts: Pursuant to a WCLJ Decision in 2017, claimant was found to have a causally related need for 24/7 home health aide. This Court previously found that the need for home health aide services could not be apportioned against unrelated multiple sclerosis (175 AD3d 1731 [2019]). Following various hearings and submission of documentation, the carrier was found responsible for reimbursing claimant for home health aide services provided to the claimant by various family members for a period thru October 2, 2017. In December 2019, claimant was classified as permanently totally disabled, and per the prior WCLJ Decision from October of 2017, claimant was found entitled to continued 24/7 home health care services. The carrier appealed the December 2019 findings entitling claimant to continued 24/7 home health care, as well as the 2019 finding regarding claimant's entitlement to reimbursement for the services.

Holding: *Modified and remitted.*

Discussion: While the Court notes that the October 2017 WCLJ Decision establishing the need for 24/7 home health care was never appealed, the Court also hints that the Board could modify such a finding pursuant to its continuing jurisdiction under WCL §123. The Court goes on to note that while the October 2017 WCLJ Decision had directed reimbursement thru October 2, 2017, that decision (nor any subsequent Board decision) ever directed a rate or amount of reimbursement for causally related home health aide services subsequent to October 2, 2017. The Court found that the Board failed to address the employer's request that information be provided to substantiate the actual home

health aide services being provided subsequent to October 2, 2017 in order to determine the actual reimbursement owed. As such, the matter was remitted to the Board to address the question of entitlement to and rate of reimbursement for home health services.

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