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Supreme Court, Appellate Division, Third Department, New York

Matter of CHARLENE DAVIS, Appellant

v.

HUTCHINGS CHILDREN SERVICES, Respondent

and

WORKERS' COMPENSATION BOARD, Respondent

February 16, 2023

**Facts:** The claimant sustained two injuries at work in 2010. The first involved her face and neck and the second involved her back. In 2013 she was classified as a permanent partial disability with a 76% loss of wage-earning capacity. Prior to the exhaustion of her benefits, in 2020 she submitted a C-35 form claiming a "hardship." The carrier opposed same having maintained the forms were incomplete, untimely and that redetermination was unwarranted. The judge classified the claimant as permanent total disability. On appeal to the Board by the carrier, that decision was rescinded with a finding the claimant failed to demonstrate and extreme financial hardship and that the claimant was not entitled to reclassification. The claimant appealed this decision to the court.

**Holding:** *Affirmed.*

**Decision:** The Court confirmed that it would not disturb a Board determination on extreme hardship warranting a reclassification if supported by substantial evidence. In determining if there is an extreme hardship the Board considers the claimant's assets, monthly expenses, household income and other relevant factors. The Court noted the Board properly considered the claimants assets, monthly income and monthly expenses in rendering its decision. In addition, it was noted that the claimant was able to continue to pay her expenses after her benefit payments stopped.