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Supreme Court, Appellate Division, Third Department, New York

In the Matter of the Claim of CRUCITA OZORIA, Appellant,

v.

ADVANTAGE MANAGEMENT ASSOCIATION, et al., Respondents,

WORKERS' COMPENSATION BOARD, Respondent.

May 13, 2021

Facts: The claim is established for injuries to the neck and back. Depositions were completed of Drs. Gamberg and Sidhwani on further causally related degree of disability. During the pendency of the depositions, Dr. Ratzker submitted a C-4 authorization to perform a cervical discectomy and fusion of the cervical spine. The request was denied pursuant to a peer review of Dr. Cash. When the case came on calendar, the WCLJ found no further causally related disability and, after reviewing the reports of Dr. Ratzker and Cash, denied the request for cervical fusion. The Board Panel affirmed the WCLJ's findings. The claimant appealed solely on the issue of the neck surgery being denied.

Holding: *Modified by reversing the denial of the C-4 authorization request for surgery and remitted to the Workers' Compensation Board.*

Discussion: The Court found that the claimant was denied due process by not being allowed to cross-examine the carrier's consultants on the issue of the neck surgery denial. They noted that the purpose of the hearing was to address the outcome of the depositions on the issue of further causally related disability and that the issue of whether the claimant was a candidate for neck surgery was a separate issue. Accordingly, the case was remitted to the Board for development of the record on the need for neck surgery.