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Supreme Court, Appellate Division, Third Department, New York

In the Matter of

JAMES KLUGE, Appellant

v

TOWN OF TONAWANDA et al, Respondents

and

WORKERS' COMPENSATION BOARD

Decided October 17, 2019

Facts: The claimant slipped and fell, and his worker's compensation claim was established for injuries to the back and right hip. The claimant was classified with a permanent partial disability. In August 2017, the claimant's treating physician filed a MG-2 request for medical marijuana. The carrier denied the request and the claimant requested review. The WCLJ approved the variance. The Board Panel reversed stating that they could not approve a variance for treatment that was already rendered.

Holding: Reversed and remitted.

Discussion: A variance must be approved by the carrier, Special Fund or the Board before medical care that deviates from the guidelines is provided. A proper denial by the carrier is that the treatment was not requested before the medical care was provided. In this case, the report attached to the variance showed that the claimant was already using the medical marijuana. Therefore, the Board properly denied the request but only to the extent of the treatment that had already been provided. The Court remitted the case to the Board for consideration of the variance request for prospective treatment.