

## When a Provider Failed to Supply Records for a Utilization Review Does a WC Judge have Jurisdiction to Decide a Petition to Review the UR Determination Because a Substantive Review was Performed?

The Commonwealth Court recently addressed this issue in *Allison v. WCAB (Fisher Auto Parts, Inc.)*, No. 704 C.D. 2017, and held that the WC Judge lacked jurisdiction to hear such a petition because of the initial failure of the provider to supply treatment records. The fact that a limited substantive review was later performed does not confer jurisdiction to hear this issue.

The law is very clear that when a treating doctor is the subject of a UR, medical records must be provided to the UR organization assigned to the matter. If the provider under review fails to provide the treatment records then the URO should not assign the matter to a physician for a substantive review of the reasonableness and necessity of the treatments at issue. Instead the URO should issue a determination that the treatments are not reasonable and necessary due to the failure of the provider to supply treatment records.

In *Allison* the provider under review failed to supply treatment records but the URO still assigned the UR to a physician to perform a substantive review of the treatments at issue. The reviewing physician then spoke to the provider regarding the current treatment and the patient's response. He also reviewed medical literature regarding the treatment and medications in issue. The reviewing physician provided a report concluding that the treatment was unreasonable and unnecessary, primarily due to the lack of contemporaneous treatment records. This was incorporated into a UR Determination that the treatment was unreasonable and unnecessary.

The injured worker filed a petition to review the UR determination. The employer responded with a motion to dismiss contending that the WC Judge lacked jurisdiction to hear the matter. The motion was dismissed by the WC Judge on the basis that a substantive review of the medical treatments had been performed. The WC Judge then took evidence and found the treatment reasonable and necessary. The employer appealed to the Workers' Compensation Appeal Board which reversed the WC Judge. The Board reasoned that the WC Judge lacked jurisdiction to hear the matter since the provider had failed to provide the treatment records and the fact that a substantive review had been performed did not create jurisdiction where none existed.

The case was then appealed by the injured worker to the Commonwealth Court. The injured worker raised two issues before the court. It rejected the injured worker's arguments and held that a WC Judge has no jurisdiction to hear a petition for review of UR Determination when the provider has not supplied the required medical records. The court also rejected the injured worker's procedural due process argument that he had been deprived of his property interest in the medical treatment without a hearing. The court reasoned that a property interest requiring procedural due process does not arise in medical benefits until they are determined to be reasonable and necessary.

**Comment:** A UR organization should issue a determination of unreasonable and unnecessary treatments if the necessary medical records are not supplied by the provider. However, if the UR organization makes an error resulting in a substantive physician review, the WC Judge still lacks jurisdiction to hear a subsequent petition for review of the UR Determination.