Commonwealth of Kentucky
Workers' Compensation Board

OPINION ENTERED: January 9, 2015

CLAIM NO. 200060010

SHELIA GREGORY PETITIONER

VS. **APPEAL FROM HON. ROBERT L. SWISHER, ADMINISTRATIVE LAW JUDGE**

MCDOWELL APPALACHIAN REGIONAL HOSPITAL
and HON. ROBERT L. SWISHER,
ADMINISTRATIVE LAW JUDGE RESPONDENTS

OPINION AND ORDER
DISMISSING
* * * * * *

BEFORE: ALVEY, Chairman, STIVERS and RECHTER, Members.

STIVERS, Member. On December 1, 2014, the Respondent, McDowell Appalachian Regional Hospital ("McDowell ARH") filed a motion to reopen, Form 112, and motion to join Dr. Sai Gutti as a party in this claim. In the motions and Form 112, McDowell ARH asserted it was contesting the reasonableness and necessity of the ongoing treatment of Dr. Gutti.

On December 8, 2014, the Hon. Miller Kent Carter, filed a motion to withdraw as attorney of record for the Petitioner, Shelia Gregory ("Gregory"), and to be deleted from the certificate of service. He indicates his file in the above-styled claim is closed and he is "no longer active" in the above-styled claim. Therefore, he requests to be relieved as attorney of record for Gregory. He also requests Gregory be granted time in which to seek representation.

On December 17, 2014, Gregory filed a *pro se* document in which she indicates she is appealing the decision made in the above-mentioned claim and requests a hearing before an Administrative Law Judge. In order to avoid any confusion regarding the nature and effect of this document, the Board treats Gregory's December 17, 2014, filing as a notice of appeal, thus necessitating entry of this order.

We first note there has been no ruling on McDowell ARH's motion to reopen and motion to join Dr. Gutti as a party. Clearly, no final order has been entered from which an appeal may be taken.

803 KAR 25:010, § 21(2)(a), provides as follows:

> Within thirty (30) days of the date of a final award, order or decision rendered by an administrative law judge

> pursuant to KRS 342.275(2) is filed, any party aggrieved by that award, order or decision may file a notice of appeal to the Workers' Compensation Board.

803 KAR 25:010, § 21(2)(b) defines a final award, order or decision as follows: "[a]s used in this section, a final award, order or decision shall be determined in accordance with Civil Rule 54.02(1) and (2)."

Civil Rule 54.02(1) and (2) state as follows:

> (1) When more than one claim for relief is presented in an action, . . . the court may grant a final judgment upon one or more but less than all the claims or parties only upon a determination that there is no just reason for delay. The judgment shall recite such determination and shall recite that the judgment is final. In the absence of such recital, any order or other form of decision, however designated, which adjudicates less than all the claims or the rights and liabilities of less than all the parties shall not terminate the action as to any of the claims or parties, and the order or other form of decision is interlocutory and subject to revision at any time before the entry of judgment adjudicating all the claims and the rights and liabilities of all the parties.
>
> (2) When the remaining claim or claims in a multiple claim action are disposed of by judgment, that judgment shall be deemed to readjudicate finally as of that date and in the same terms all prior interlocutory orders and judgments determining claims which are

> not specifically disposed of in such final judgment.

Hence, an order of an Administrative Law Judge ("ALJ") is appealable only if: 1) it terminates the action itself; 2) acts to decide all matters litigated by the parties; and, 3) operates to determine all the rights of the parties so as to divest the ALJ of authority. *Cf.* KI USA Corp. v. Hall, 3 S.W.3d 355 (Ky. 1999); Ramada Inn v. Thomas, 892 S.W.2d 593 (Ky. 1995); Transit Authority of River City v. Saling, 774 S.W.2d 468 (Ky. App. 1980).

Here, an order has not been entered ruling on the motion to reopen. That said, an order granting the motions to reopen and to join Dr. Gutti as a party would not be a final appealable order. Moreover, an order has not been entered deciding all outstanding issues and determining all the rights of the respective parties in this claim so as to divest the ALJ of any further authority to decide the overall merits of the medical dispute filed by McDowell ARH. As the ALJ has yet to rule on the motion to reopen, a notice of appeal is clearly premature. Further, the ALJ has not determined Gregory's entitlement to payment for past and future attendant and care services, and the reasonableness and necessity of the treatment by Dr. Gutti.

Therefore, as a matter of law, Gregory's appeal must be dismissed. Accordingly;

IT IS HEREBY ORDERED AND ADJUDGED that the appeal filed by Shelia Gregory, is **DISMISSED**. This claim is **REMANDED** to the Chief Administrative Law Judge ("CALJ") or an ALJ as designated by the CALJ for entry of an order ruling upon McDowell ARH's motion to reopen and motion to join Dr. Gutti as a party. Further, an order must be entered ruling upon the motion of the Hon. Miller Kent Carter.

DATE ENTERED: JANUARY 9, 2015

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FRANKLIN STIVERS, MEMBER
WORKERS' COMPENSATION BOARD

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