

IN THE SUPREME COURT OF THE STATE OF NEVADA

ELINOR NEEL,
Appellant,
vs.
EMPLOYERS INSURANCE COMPANY
OF NEVADA,
Respondent.

No. 44336

FILED

SEP 21 2007

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY S. [Signature]
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court order denying judicial review in a workers' compensation case. Eighth Judicial District Court, Clark County; David Wall, Judge.

After obtaining treatment for her industrial injury from Dr. Raymond P. Nicholl for approximately one decade, appellant Elinor Neel was informed in 2002 by respondent Employers Insurance Company of Nevada (EICN) that it was rescinding its authorization for her to treat with that physician, because he was not a member of its new managed care provider network. Neel was told that she must choose a new treating physician from within the network. Neel administratively appealed, but an appeals officer upheld EICN's rescission. The district court subsequently denied judicial review of the appeals officer's decision. Neel has appealed.

On appeal from a district court order denying judicial review in a workers' compensation matter, we, like the district court, review the appeals officer's decision for abuse of discretion.¹ The appeals officer's

¹Construction Indus. v. Chalue, 119 Nev. 348, 352, 74 P.3d 595, 597 (2003); Ayala v. Caesars Palace, 119 Nev. 232, 235, 71 P.3d 490, 491 (2003).

purely legal determinations, however, including those of statutory construction, are reviewed de novo.² Our review is limited to the record before the appeals officer.³

Neel argues that the appeals officer erred as a matter of law in determining that EICN permissibly withdrew its authorization, because she had a substantive right to complete treatment with the same doctor, EICN had no power to rescind its authorization, and in any case, EICN waived any power it had to restrict treatment to network physicians when it initially authorized treatment with Dr. Nicholl. Neel also insists that public policy demands that she be allowed to continue treating her industrial injury with Dr. Nicholl. We disagree.

Recently, in Valdez v. Employers Insurance Co. of Nevada,⁴ we considered whether a workers' compensation claimant has any substantive right to continue treating with a previously authorized physician who is not a member of EICN's new provider network. After reviewing pertinent statutes and legislative history and recognizing issues of public policy, we concluded that no such right exists and that, therefore, unless an emergency exception applies,⁵ EICN permissibly may refuse to allow

²Chalue, 119 Nev. at 351-52, 74 P.3d at 597.

³Ayala, 119 Nev. at 235, 71 P.3d at 491.

⁴123 Nev. ___, 162 P.3d 148 (2007).

⁵See NRS 616C.090(4); see also NRS 616C.090(3) (noting certain other exceptions when a network physician is not available to treat the claimant's condition).

treatment with a non-network physician and instead require a claimant to choose a new treating physician from within its provider network.⁶

In Valdez,⁷ we also noted, without deciding, that a provision protecting physician choice in the pre-EICN era, S.B. 316, § 288, might have survived subsequent legislation. That provision provided that, under the former state industrial insurance system (SIIS), a workers' compensation claimant could not be required to participate in a plan for managed care until she was medically stable or changed physicians.⁸ Although not included in the NRS text, S.B. 316, § 288's protections were mentioned in the Reviser's Notes to former NRS 616B.515 (NRS 616.2211), which governed SIIS contracts with managed care organizations from 1993-99. As a provision relating to managed care and SIIS, however, NRS 616B.515 was repealed in 1999 legislation that privatized SIIS.⁹ While S.B. 316, § 288 was not specifically mentioned in the 1999 privatization legislation, we conclude that this provision was impliedly repealed as well, since it pertained to a now-obsolete system.¹⁰

⁶Valdez v. Employers Ins. Co. of Nev., 123 Nev. at ___, 162 P.3d at 154; NRS 616B.527(1)(c); NRS 616C.090(3).

⁷Valdez, 123 Nev. at ___ n.26, 162 P.3d at 154 n.26.

⁸1993 Nev. Stat., ch. 265, § 288, at 806.

⁹1999 Nev. Stat., ch. 388, § 127, at 1836; see also Valdez, 123 Nev. at ___, 162 P.3d at 153.

¹⁰See Washington v. State, 117 Nev. 735, 739, 30 P.3d 1134, 1137 (2001) (explaining that, when subsequent legislation entirely revises the subject matter contained in prior legislation, and the legislature intended the prior legislation to be repealed, those provisions are considered to be repealed by implication and that, although repeal by implication is disfavored, when the subsequent legislation expresses a comprehensive

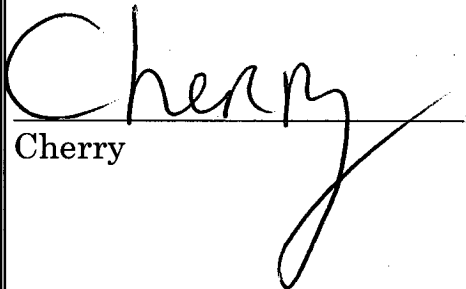
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As a result, even if Neel was treating with Dr. Nicholl when S.B. 316, § 288 became effective, that provision no longer applies to her claim.¹¹

Accordingly, here, as no emergency exception has been asserted, the appeals officer correctly concluded that EICN permissibly rescinded its authorization for Neel to treat with Dr. Nicholl and required Neel to choose a new treating physician. Thus, we affirm the district court's order denying judicial review.

It is so ORDERED.


_____, J.
Gibbons


_____, J.
Cherry


_____, J.
Saitta

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plan to regulate a particular subject matter, it may impliedly repeal prior legislation that deals with smaller aspects of that plan).

As further evidence of the Legislature's intent to repeal pre-EICN physician choice provisions, we note that another provision, NRS 616B.524, which prohibited SIIS from requiring a claimant to change physicians to receive benefits unless certain conditions were met, was expressly repealed in 1999. 1999 Nev. Stat., ch. 388, § 127, at 1836. No legislation governing contracts between private insurance carriers and managed care organizations appears to have ever protected physician choice. See NRS 616B.527 (1993 (NRS 616.297), 1995, 1999, 2001, 2003).

¹¹See Valdez, 123 Nev. at ___, 162 P.3d at 154-55 (concluding that "physician choice is a procedural mechanism for implementing a remedial scheme," and thus, any changes thereto apply to pending cases).

cc: Hon. David Wall, District Judge
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Nevada Attorney for Injured Workers/Las Vegas
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Eighth District Court Clerk