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May 21, 2025

Spring Update 2025

Items:

1: Overview of SSA Fairness Act and implementation
https://www.ssa.gov/benefits/retirement/social-security-fairness-act.html
2: BWC Update: State Ex Rel. Dillon and OAC changes
3: The role an umbrella policy can play where UI/UM claims are involved
4: OPERs Drop Legislation
5: OP&F disability.

If anyone has questions during our time together please chime in, any questions afterwards I can be reached at the office or on my cell: 614-496-9667.

Mark Heinzerling
MEH/MTF

State ex rel. Dillon v. Indus. Comm'n of Ohio

Supreme Court of Ohio

August 22, 2023, Submitted; March 5, 2024, Decided

No. 2023-0152

Reporter
176 Ohio St. 3d 10 *; 2024-Ohio-744 **; 246 N.E.3d 413 ***

THE STATE EX REL. ***DILLON***, APPELLANT, ***v.*** ***INDUSTRIAL COMMISSION*** OF OHIO ET AL., APPELLEES.

Notice: THIS SLIP OPINION IS SUBJECT TO FORMAL REVISION BEFORE IT IS PUBLISHED IN AN ADVANCE SHEET OF THE OHIO OFFICIAL REPORTS.

Prior History: APPEAL from the Court of Appeals for Franklin County, 204 N.E.3d 1131, 2022-Ohio-4773.

State ex rel. ***Dillon*** ***v.*** Indus. Comm'n, 2022-Ohio-4773, 2022 Ohio App. LEXIS 4433, 204 N.E.3d 1131, 2022 WL 17986540 (Ohio Ct. App., Franklin County, Dec. 29, 2022)

Disposition: Judgment affirmed.

Headnotes/Summary

Headnotes

Workers' compensation—Total-temporary-disability compensation—R.C. 4123.511(K) requires Bureau of Workers' Compensation to recoup overpayment of total-temporary-disability compensation paid to an injured worker between time injured worker reached maximum medical improvement and date of termination of total-temporary-disability compensation—Court of appeals' judgment denying writ of mandamus affirmed—State ex rel. Russell v. Indus. Comm. *overruled.*

Counsel: Knisley Law Offices, and Kurt A. Knisley, for appellant.

Dave Yost, Attorney General, and Natalie J. Tackett, Assistant Attorney General, for appellee ***Industrial Commission*** of Ohio.

Porter, Wright, Morris & Arthur, L.L.P., and Diane C. Reichwein, for appellee Jefferson Industries Corporation.

Judges: KENNEDY, C.J. FISCHER, DEWINE, and DETERS, JJ., concur. BRUNNER, J., dissents, with an opinion joined by DONNELLY and STEWART, JJ.

Opinion by: KENNEDY

Opinion

[*11] [*414] KENNEDY, C.J.**

[P1]** An order awarding appellant, Loretta ***Dillon***, temporary-total-disability ("TTD") compensation was reversed on appeal by appellee ***Industrial Commission*** of Ohio because the commission determined that she had reached maximum medical improvement and was no longer temporarily disabled. R.C. 4123.511(K) then required the Bureau of Workers' Compensation to recoup the overpayment of compensation that ***Dillon*** had received after she had reached maximum medical improvement. ***Dillon*** filed an action in the Tenth District Court of Appeals,

requesting a writ of mandamus to compel the commission to vacate the order that declared an [***415] overpayment [*12] of TTD compensation and to issue a new order dissolving the overpayment. Based on the plain language of R.C. 4123.511(K), the Tenth District correctly denied ***Dillon*** a writ of mandamus. We therefore affirm its judgment.

I. FACTS AND PROCEDURAL HISTORY

[**P2] On April 2, 2019, ***Dillon*** suffered a work-related back injury, and the bureau allowed her claim for "strain muscle, fascia, tendon lumbar." On appeal, a district hearing officer allowed her claim for lumbar sprain and strain and awarded TTD compensation for those conditions to continue with ***Dillon***'s submission of supporting medical proof of her disability. ***Dillon*** appealed the disallowance of her additional conditions, and her employer obtained an independent medical examination. The reviewing physician opined that ***Dillon*** had reached maximum medical improvement. Following a hearing on October 28, 2019, a staff hearing officer affirmed the disallowance of ***Dillon***'s additional conditions, agreed that she had attained maximum medical improvement, and terminated her TTD compensation as of August 8, 2019. However, by the time of the staff hearing officer's determination, ***Dillon*** had received TTD compensation after August 8, and the bureau therefore issued an order seeking to recoup the $5,549.40 that it had overpaid to her. ***Dillon*** appealed this determination. A district hearing officer and three staff hearing officers found that recoupment was appropriate, and the commission denied further review.

[**P3] ***Dillon*** then sought a writ of mandamus from the Tenth District Court of Appeals to compel the commission to vacate the order that declared an overpayment of TTD compensation and to issue a new order dissolving the overpayment. The court of appeals denied the writ.

A. Standard of Review

[**P4] ***Dillon*** is entitled to a writ of mandamus if she shows by clear and convincing evidence that she has a clear legal right to the requested relief, that the commission has a clear legal duty to provide it, and that there is no adequate remedy in the ordinary course of the law. *State ex rel. Zarbana Indus. v. Indus. Comm'n of Ohio*, 166 Ohio St.3d 216, 2021-Ohio-3669, 184 N.E.3d 81, ¶ 10. A writ of mandamus may lie when there is a legal basis to compel the commission to perform its duties under the law or when the commission has abused its discretion in carrying out its duties. *State ex rel. GMC v. Indus. Comm'n*, 117 Ohio St.3d 480, 2008-Ohio-1593, 884 N.E.2d 1075, ¶ 9. "Where a commission order is adequately explained and based on some evidence, even evidence that may be persuasively contradicted by other evidence of record, the order will not be disturbed as manifesting an abuse of discretion." *State ex rel. Mobley v. Indus. Comm.*, 78 Ohio St.3d 579, 584, 1997- Ohio 181, 679 N.E.2d 300 (1997). But "[a] mandatory writ may issue against the ***Industrial Commission*** if the commission has incorrectly interpreted Ohio law." *State ex rel. Gassmann v. Indus. Comm.*, 41 Ohio St.2d 64, 65, 322 N.E.2d 660 (1975).

[**P5] Our consideration of the court of appeals' decision involves a question of statutory interpretation, so our review is de novo. *See Ceccarelli v. Levin*, 127 Ohio St.3d 231, 2010-Ohio-5681, 938 N.E.2d 342, ¶ 8. "The question is not what did the general assembly intend to enact, but what is the meaning of that which it did enact." *Slingluff v. Weaver*, 66 Ohio St. 621, 64 N.E. 574 (1902), paragraph two of the syllabus. "When the statutory language [***416] is plain and unambiguous, and conveys a clear and definite meaning, we must rely on what the General Assembly has said," *Jones v. Action Coupling & Equip.*, 98 Ohio St.3d 330, 2003-Ohio-1099, 784 N.E.2d 1172, ¶ 12, and apply the statute as written, *Summerville v. City of Forest Park*, 128 Ohio St.3d 221, 2010-Ohio-6280, 943 N.E.2d 522, ¶ 18.

B. TTD Compensation

[P6]** TTD compensation "compensates for the loss of earnings a claimant sustains while his or her injury heals." *State ex rel. Am. Std., Inc. v. Boehler*, 99 Ohio St.3d 39, 2003-Ohio-2457, 788 N.E.2d 1053, ¶ 22. It "is payable only to those with temporary disabilities." *Id.* at ¶ 28. Maximum medical improvement "describes a condition that has become permanent, i.e., one that will, '"with reasonable probability, continue for an indefinite period of time without any **[*13]** present indication of recovery therefrom."'" *Id.*, quoting *Vulcan Materials Co. v. Industrial Com. of Ohio*, 25 Ohio St. 3d 31, 33, 25 Ohio B. 26, 494 N.E.2d 1125 (1986), quoting *Logsdon v. Industrial Com.*, 143 Ohio St. 508, 57 N.E.2d 75 (1944), paragraph two of the syllabus. After maximum medical improvement has been attained, TTD compensation is no longer available—the condition is no longer temporary. *See State ex rel. Advantage Tank Lines v. Indus. Comm.*, 107 Ohio St.3d 16, 2005-Ohio-5829, 836 N.E.2d 550, ¶ 8. That does not leave the claimant without recourse; rather, he or she can then seek compensation for permanent disability, such as permanent-total-disability compensation. *See* R.C. 4123.58; *State ex rel. Matlack, Inc. v. Industrial Com. of Ohio*, 73 Ohio App.3d 648, 655, 598 N.E.2d 121 (10th Dist.1991).

C. Recoupment of Overpayments of TTD Compensation

[P7]** R.C. 4123.511(K) addresses when the bureau or a self-insuring employer must recoup compensation payments made in accordance with an order that is subsequently reversed on appeal. Its language is unambiguous and provides:

> Upon the final administrative or judicial determination under this section or section 4123.512 of the Revised Code of an appeal of an order to pay compensation, if a claimant is found to have received compensation pursuant to a prior order which is reversed upon subsequent appeal, the claimant's employer, if a self-insuring employer, or the bureau, shall withhold from any amount to which the claimant becomes entitled pursuant to any claim, past, present, or future, under Chapter 4121., 4123., 4127., or 4131. of the Revised Code, the amount of previously paid compensation to the claimant which, due to reversal upon appeal, the claimant is not entitled * * *.

[P8]** Here, ***Dillon*** "received compensation pursuant to a prior order which [was] reversed upon subsequent appeal." The bureau "previously paid compensation to [***Dillon***] which, due to reversal upon appeal, [***Dillon***] is not entitled." Because the order was reversed, she was not entitled to TTD compensation after August 8, 2019. Nor was she allowed to retain what she had previously been paid under the reversed order; R.C. 4123.511(K) required the bureau to "withhold from any amount to which the claimant becomes entitled pursuant to any claim * * * the amount of previously paid compensation to the claimant." Under the plain language of the statute, then, the bureau correctly recouped the "previously paid" TTD compensation that ***Dillon*** received after she reached maximum medical improvement from any future benefits she might receive, such as **[***417]** an award of permanent-total-disability compensation.

D. R.C. 4123.56(A) and *Russell*

[P9]** **[*14]** In support of her argument that recoupment is not warranted in this case, ***Dillon*** relies on *State ex rel. Russell v. Indus. Comm.*, 82 Ohio St.3d 516, 696 N.E.2d 1069 (1998), in which this court construed a prior version of R.C. 4123.56(A) and the predecessor to R.C. 4123.511(K), former R.C. 4123.511(J). (This opinion will refer to both former R.C. 4123.511(J) and R.C. 4123.511(K) as R.C. 4123.511(K).)

[P10]** According to *Russell*, "R.C. 4123.511[K] simply provides for withholding future payments to recoup an overpayment when a claimant is found to have received compensation to which [the claimant] was not entitled." *Russell* at 521. This court stated that "[t]he question of [a] claimant's entitlement to receive ongoing TTD compensation until a hearing officer rules otherwise is governed by R.C. 4123.56, not [R.C.] 4123.511[K]." *Russell* at 521.

[P11]** R.C. 4123.56(A) states:

> In the case of a self-insuring employer, payments shall be for a duration based upon the medical reports of the attending physician. If the employer disputes the attending physician's report, payments may be terminated only upon application and hearing by a district hearing officer pursuant to division (C) of section 4123.511 of the Revised Code. Payments shall continue pending the determination of the matter, however payment shall not be made for the period * * * when the employee has reached the maximum medical improvement.

[P12]** Based on the prior version of this provision and prior precedent, the court in *Russell* explained:

> (1) that continuing TTD compensation may not be terminated prior to a hearing before a commission hearing officer so long as [the] claimant's attending physician continues to certify TTD, (2) that the hearing officer may not terminate the claimant's TTD retroactive to a date prior to the date of the hearing, (3) that [the] claimant is entitled to all compensation paid to the date of the hearing, and (4) that any eventual discounting of the attending physician's reports certifying TTD does not transform those payments into a recoupable overpayment.

Russell, 82 Ohio St.3d at 519, 696 N.E.2d 1069. Relying on R.C. 4123.56(A), the court in *Russell* concluded that "the appropriate date on which to terminate disputed **[*15]** TTD compensation on the basis of maximum medical improvement is the date of the termination hearing, and the commission may not declare an overpayment for payments received by the claimant before that date." *Id.*

[P13]** Initially, by its terms, the relevant part of R.C. 4123.56(A) is limited to "the case of a self-insuring employer." ***Dillon***'s case does not involve a self-insuring employer. But in *Russell*, we relied on former R.C. 4121.31(C) for the proposition that "uniformity of application [between state fund and self-insuring employers] is required" to explain that R.C. 4123.56(A) also applies to payments made by the bureau. *Russell* at 520, fn. 1. The version of R.C. 4121.31(C) in effect at the time that the court decided *Russell*, now recodified as R.C. 4121.31(A)(3), directed the administrator **[***418]** of workers' compensation and the ***Industrial Commission*** to "adopt rules covering the following general topics with respect to [R.C. Chapters 4121 and 4123]: * * * All claims, whether of a state fund or self-insuring employer, be processed in an orderly, uniform, and timely fashion." Am.Sub.H.B. No. 107, 145 Ohio Laws, Part II, 2990, 3077. A requirement to adopt rules to process claims in a uniform fashion is a far cry from a statutory requirement to treat the bureau and self-insuring employers the same for all purposes in workers' compensation law.

[P14]** But even if this court in *Russell* correctly determined that the relevant statutory language applies to payments made by the bureau, R.C. 4123.56(A) does not permit a claimant to receive TTD compensation after reaching maximum medical improvement. If the employer disputes the attending physician's report, TTD compensation is paid to the claimant until payments are terminated following a hearing before the district hearing officer. Although R.C. 4123.56(A) requires payments to continue "during the determination of the matter," the provision contains an exception: TTD compensation may not be paid for the period after the employee has reached maximum medical improvement. This means that ***Dillon*** was not entitled to receive TTD compensation once she reached maximum medical improvement and her condition became permanent.

[P15]** This court reasoned in *Russell* that a claimant who has received an award of TTD compensation remains "entitled" to receive payments for purposes of R.C. 4123.511(K) until TTD compensation is formally terminated after a hearing. *State ex rel. Russell v. Industrial Comm'n*, 82 Ohio St.3d at 519-523, 696 N.E.2d 1069. And because the claimant was entitled to receive TTD compensation during that time, the court explained, the bureau was not permitted to recoup payments made after the claimant reached maximum medical improvement but before TTD compensation was terminated. *Id.* But that conclusion cannot be squared with R.C. 4123.56(A)'s prohibition on a claimant's receiving payments after attaining maximum medical improvement. If TTD payments may not be made after the claimant reaches maximum medical improvement, then the claimant is not entitled to them. And if **[*16]** the claimant is not entitled to those payments, then R.C. 4123.511(K) requires the bureau to withhold the amount previously paid from compensation that the claimant may receive in the future.

[P16]** Moreover, this court in *Russell* ignored language in R.C. 4123.511(K) when it held that the statute does not permit recoupment of payments made under an order before its reversal, *Russell* at 521. The statute provides

criteria under which payments will be recouped, stating that "[t]he administrator and self-insuring employers, as appropriate, are subject to the repayment schedule of this division only with respect to an order to pay compensation that was *properly paid under a previous order*, but which is subsequently reversed upon an administrative or judicial appeal" (emphasis added), R.C. 4123.511(K). This language clarifies that payments "properly paid" to the claimant before the order was reversed on appeal may nonetheless be recouped. Even under *Russell*'s reasoning that an injured worker is entitled to receive TTD compensation until it is formally terminated, recoupment is required.

[P17]** As this analysis shows, this court's reasoning in *Russell* runs counter to the plain language of R.C. 4123.511(K) and R.C. 4123.56(A). Because *Russell* was wrongly decided, we overrule it and its progeny today. By applying the plain language of R.C. 4123.511(K), the bureau correctly ordered the recoupment of TTD **[***419]** compensation payments that ***Dillon*** received after she reached maximum medical improvement from any future benefits she might receive.

III. CONCLUSION

[P18]** After the ***Industrial Commission*** reversed on appeal the order awarding ***Dillon*** TTD compensation, R.C. 4123.511(K) required the bureau to recoup the overpayment of compensation that she received between the time she reached maximum medical improvement and the time her TTD compensation was terminated. The Tenth District Court of Appeals therefore correctly denied ***Dillon***'s request for a writ of mandamus ordering the commission to vacate the order that declared an overpayment of TTD compensation and to issue an order dissolving the overpayment. For this reason, we affirm its judgment.

Judgment affirmed.

FISCHER, DEWINE, and DETERS, JJ., concur.

BRUNNER, J., dissents, with an opinion joined by DONNELLY and STEWART, JJ.

Dissent by: BRUNNER

Dissent

BRUNNER, J., dissenting.

[P19]** **[*17]** Today the majority eliminates more than 25 years of precedent that allowed an injured worker to continue receiving temporary-total-disability compensation under R.C. 4123.56 while a dispute regarding whether the injured worker has reached maximum medical improvement is pending before the ***Industrial Commission*** of Ohio. The majority, on its own initiative, has summarily concluded that *State ex rel. Russell v. Indus. Comm.*, 82 Ohio St.3d 516, 696 N.E.2d 1069 (1998), "and its progeny" were wrongly decided. Majority opinion, ¶ 17. This decision to overrule our long-standing precedent is unnecessary and unwarranted.

[P20]** No party in this case has directly or implicitly asked this court to overrule *Russell*. We did not receive any written argument or hear any oral argument from the parties requesting that we gratuitously reshape a quarter of a century's worth of jurisprudence in workers' compensation law. The majority opines, unbidden, that *Russell* was wrongly decided—a decision that will have a grave impact on injured workers. Today's decision defies practical workability, does not demonstrate *why Russell* was wrongly decided *at the time it was decided*, and clearly creates a hardship for appellant, Loretta ***Dillon***, and other injured workers who rely on it. We have generally adhered to the principal of stare decisis unless, after careful consideration, we find that the following factors have been met:

> (1) the decision was wrongly decided at that time, or changes in circumstances no longer justify continued adherence to the decision, (2) the decision defies practical workability, and (3) abandoning the precedent would not create an undue hardship for those who have relied upon it.

Westfield Ins. Co. v. Galatis, 100 Ohio St.3d 216, 2003-Ohio-5849, 797 N.E.2d 1256, ¶ 48. Overruling *Russell* without considering those factors is an attack on the rule of law, and doing so damages one of the essential principles of stare decisis—predictability. The Tenth District Court of Appeals recently eloquently explained the importance of stare decisis:

> Under the legal doctrine of stare decisis, courts follow controlling precedent, thereby creating stability and predictability in our legal system. Courts adhere to stare decisis as a **[***420]** means of thwarting the arbitrary administration of justice as well as providing a clear rule of law by which the citizenry can organize their affairs. The doctrine is of fundamental importance to the rule of law. This court is bound by the doctrine of stare decisis **[*18]** and must follow our own court's precedent. We will not depart from the doctrine of stare decisis without special justification.

(Internal citations omitted.) *Liberty Mut. Ins. Co. v. Three-C Body Shop, Inc.*, 10th Dist. Franklin No. 19AP-775, 2020-Ohio-2694, ¶ 13. This court too is bound by stare decisis and should only depart from it when special justification exists.

[P21]** In this case, ***Dillon*** argues that our holding in *Russell* should be applied here and that it supports her right to relief in mandamus. In response, appellee ***Industrial Commission*** argues that our analysis in *Russell* can be distinguished and does not control the overpayment issue presented in this case. Therefore, this court is presented with only one question: whether our holding in *Russell* should be applied to this case or distinguished from it. None of the parties argue that our holding in *Russell* is no longer good law. And the majority can—in fact, the majority *does*—reach its decision to deny ***Dillon***'s request for a writ of mandamus without even looking to *Russell*. *See* majority opinion at ¶ 1, 14. This makes the majority's overruling of *Russell* even more dubious.

[P22]** I acknowledge that circumstances arise that invoke our duty to reexamine this court's precedents, such as when a prior decision of this court becomes irreconcilable with the circumstances presented in a case, *see Galatis* at ¶ 43, and in those instances, we are called on to review and, if necessary, overrule those precedents. But that duty has not shown its face here. And we should be even more cautious in reversing precedent involving our interpretation of statutes, especially when those statutes remain unchanged by their creators, the legislature. *See Allen v. Milligan*, 599 U.S. 1, 39, 143 S.Ct. 1487, 216 L.Ed.2d 60 (2023) ("Congress is undoubtedly aware of our construing [the Voting Rights Act] to apply to districting challenges. It can change that if it likes. But until and unless it does, statutory *stare decisis* counsels our staying the course").

[P23]** It is fair to say that the General Assembly has been aware of our interpretation and application of R.C. 4123.56 for more than 25 years, and the ***Industrial Commission*** has incorporated our holding in *Russell* into its adjudicatory policies and procedures. The commission instructs its hearing officers that "[w]hen terminating ongoing temporary total disability compensation due to a finding of maximum medical improvement, temporary total disability compensation shall be paid through the date of the hearing at which the compensation is being terminated," and it specifically references this court's decision in *Russell*. *Adjudications Before the Ohio* ***Industrial Commission*** (updated July 2022), at 14, available at https://www.ic.ohio.gov/about-ic/resource-library/resource-pdfs/adjudications-before-oic.pdf (accessed Jan. 25, 2024).

[P24]** **[*19]** Seeing as how the General Assembly has not taken action to modify R.C. 4123.56 since this court's interpretation of that statute in *Russell*, we have no basis for now concluding that our interpretation of the statute was unjust or inappropriate when we decided *Russell*. The law calls for applying our holding in *Russell* here, and we are bound to stay the course.

[P25]** The majority, before turning to any analysis of *Russell*, looks to R.C. 4123.511(K) to find authority for the overpayment **[***421]** assessed against ***Dillon***. But R.C. 4123.511(K) does not apply here. That statutory division

provides that "if a claimant is found to have received compensation pursuant to a prior order *which is reversed upon subsequent appeal*," the Bureau of Worker's Compensation must withhold "from any amount to which the claimant becomes entitled * * * the amount of previously paid compensation to the claimant which, due to reversal upon appeal, the claimant is not entitled [to]." (Emphasis added.) R.C. 4123.511(K). The order under which ***Dillon*** was receiving compensation has never been reversed.

[P26]** In a decision issued June 18, 2019, a district hearing officer allowed ***Dillon***'s claim for lumbar sprain and strain, awarding her temporary-total-disability compensation from April 9, 2019, through May 9, 2019, and allowing compensation "to continue with the submission of supporting medical proof." ***Dillon*** appealed the district hearing officer's disallowance of her other claims. The employer took no action to challenge the district hearing officer's order.

[P27]** ***Dillon***'s appeal was heard by a staff hearing officer on October 28, 2019. The staff hearing officer affirmed the decision issued by the district hearing officer allowing ***Dillon***'s claim for lumbar sprain and strain and disallowing her other claims. The staff hearing officer then made *new* findings, based on evidence that had been submitted *after* the hearing before the district hearing officer. The staff hearing officer determined that based on a physician's report dated August 21, 2019, ***Dillon*** was no longer eligible for continuing compensation, because she had reached maximum medical improvement on August 8, 2019. But this determination affected only ongoing compensation that was paid to ***Dillon*** after the district-level hearing in June—compensation that would have eventually terminated at some future date. The staff hearing officer's determination did not *reverse* any prior decision of the commission.

[P28]** Thus, the legal question raised in ***Dillon***'s mandamus action is not within the purview of R.C. 4123.511(K)—***Dillon*** did not receive any benefits she was not entitled to "due to reversal upon appeal." The commission does not argue that R.C. 4123.511(K) controls the issue of ***Dillon***'s overpayment. R.C. 4123.511(K) is not even mentioned in the commission's merit brief—because it simply does not apply here.

[P29]** **[*20]** ***Dillon*** instead relies on *Russell* and our interpretation of the language in R.C. 4123.56(A), which provides that "payments shall continue pending the determination of the matter." In *Russell*, a dispute arose regarding the attending physician's report, and we determined that the injured worker could not be assessed an overpayment for compensation received prior to the date of the hearing terminating the compensation. *Russell*, 82 Ohio St.3d 516, 696 N.E.2d 1069, at syllabus. The same result should follow here. Until the General Assembly legislates otherwise or we are presented with a case that cannot be reconciled with our prior interpretation of R.C. 4123.56(A), we are bound to apply our holding in *Russell* and find that ***Dillon*** has a clear legal right to receive compensation until the date of the hearing that resulted in the decision to terminate her temporary-total-disability compensation.

[P30]** Even if ***Dillon***'s case can or should be distinguished from *Russell* in the manner argued by the commission, nothing compels us to overrule *Russell*. The General Assembly holds the power to change the law when it disagrees with our decisions interpreting a statute. To remain neutral arbiters, we must be careful to not judge "the wisdom of the legislature's policy **[***422]** choices," *Erickson* ***v.*** *Morrison*, 165 Ohio St.3d 76, 2021-Ohio-746, 176 N.E.3d 1, ¶ 34. Here, we must respect that the General Assembly has not spoken for 25 years since we interpreted the statute's application in *Russell*.

[P31]** The majority commits grave damage to the rule of law in gratuitously overruling *Russell*. ***Dillon***'s petition for a writ of mandamus should be granted because, based on the law as it has existed for the past 25 years under this court's holding in *Russell*, she has a clear right to the relief she has requested and the commission has a clear legal duty to provide that relief. Today, a majority of this court despoils a settled area of the law that Ohio's injured workers have relied on for more than a quarter of a century. The majority's decision today is nothing more than raw judicial activism, and I therefore respectfully dissent.

DONNELLY and STEWART, JJ., concur in the foregoing opinion.

End of Document

Rule 4123-6-31 | Payment for miscellaneous medical services and supplies.

Ohio Administrative Code / 4123 / Chapter 4123-6 | Health Partnership Program

***Effective:** June 1, 2024* ***Promulgated Under:** 119.03*

(A) Acupuncture.

Acupuncture is eligible for reimbursement when prior authorized and administered by a licensed doctor of medicine, doctor of osteopathic medicine and surgery, or doctor of podiatric medicine, a doctor of chiropractic who holds a certificate to practice acupuncture from the Ohio state chiropractic board, or a non-physician acupuncturist licensed pursuant to and practicing in compliance with Chapter 4762. of the Revised Code.

(B) Orthotic devices.

(1) Payment is made only for those orthotic devices prescribed in writing by the physician of record or treating physician for treatment of an allowed injury or occupational disease.

(2) Orthotic devices are eligible for reimbursement only when custom fitted or custom fabricated and delivered to the satisfaction of the prescribing physician and the administrative agencies. Repairs, modifications, and adjustments to secure satisfactory application of the orthotic appliance will be made within sixty days of fitting and application without additional charge by the supplier of the orthotic device.

(3) Measurement, transportation, or other expenses incurred by the supplier-orthotist are not eligible for reimbursement, except when the supplier-orthotist needs to travel beyond the limits of the metropolitan community in which they maintain their place of business by reason of the physical incapacity of the claimant or by reason of direct prescription by the attending physician. The supplier-orthotist in those circumstances

will be paid for traveling expenses on a round-trip basis when separately specified on the supplier-orthotist's billing, including the points of travel and the name of the physician prescribing the travel. Payment will be made for a maximum of three round-trip calls.

(C) Dental care.

(1) Payment for dental care will be made in the following cases:

(a) Where the work related accident causing the injury also results in the damage or loss of the injured worker's artificial teeth or other denture. Once the artificial teeth or other denture(s) have been repaired, replaced, or adjusted, no further repair, replacement, or adjustment will be approved.

(b) Where a work related injury or occupational disease has caused damage or adversely affected the injured worker's natural teeth.

(2) Responsibility for the repair of both natural and artificial teeth is limited to the damage done at the time of the accident, or to the damage caused by an allowed injury or occupational disease.

(D) Eyeglasses and contact lenses.

(1) Payment for eyeglasses or contact lenses will be made in the following cases:

(a) Where the work related accident causing the injury also results in the damage or loss of the injured worker's eyeglasses or contact lenses. Once the eyeglasses or contact lenses have been repaired, replaced, or adjusted, no further repair, replacement, or adjustment will be approved.

(b) Where loss of vision is the result of an allowed injury or occupational disease.

(2) Refractions will be approved in situations described in paragraph (D)(1)(b) of this rule.

(3) When medical evidence indicates a need due to an allowed injury or occupational disease contact lenses may be approved instead of eyeglasses.

(4) Glasses or contact lenses will be approved for treatment purposes, when necessary, as a result of the allowed injury or occupational disease. Any subsequent adjustment or change in an injured worker's glasses or contact lenses, if medically necessary for treatment of the allowed injury or occupational disease, will also be approved.

(E) Hearing aids.

Payment for hearing aids will be made in the following cases:

(1) Where the work related accident causing the injury also results in the damage or loss of the claimant's hearing aid(s) Once the hearing aid(s) have been repaired, replaced, or adjusted, no further repair, replacement or adjustment will be approved.

(2) When a partial loss of hearing is the result of an allowed injury or occupational disease.

(F) Diagnostic testing, nerve injections, and imaging.

(1) Requests for diagnostic electromyography (EMG), nerve conduction study (NCS), epidural injections, nerve blocks, and medical imaging will be reimbursed when medical evidence shows that the diagnostic EMG, NCS, epidural injection, nerve block, or medical imaging is medically necessary either to develop a plan of treatment for, or to pursue more specific diagnoses reasonably related to, an allowed condition and the criteria of paragraphs (B)(1) to (B)(3) of rule 4123-6-16.2 of the Administrative Code are met.

(2) When the results of the diagnostic EMG, NCS, epidural injections, nerve block, or medical imaging indicate a non-allowed condition, therapeutic treatment for such non-allowed condition will not be reimbursed unless the condition is additionally allowed in the claim.

(3) Requests for duplicative diagnostic EMG, NCS, or medical imaging will not be reimbursed absent evidence of new or changed medical circumstances since the last diagnostic EMG, NCS, or medical imaging, or other medical evidence supporting the need for additional diagnostic testing or imaging that meets the criteria of paragraphs (B)(1) to (B)(3) of rule 4123-6-16.2 of the Administrative Code.

(4) With medical evidence supporting the necessity, reimbursement for diagnostic epidural injections or nerve blocks:

(a) May include up to three spinal levels, unilaterally or bilaterally, contiguous to the level of the allowed condition; and

(b) May include one repeat diagnostic injection to confirm a pain relief response prior to submission of requests for reimbursement of therapeutic treatment at the allowed level.

(5) Medical imaging includes magnetic resonance imaging (MRI), computed tomography scan (CT), discogram, positron emission tomography (PET), myelogram, X-ray, and ultrasound.

(G) Once payment for orthotic devices, artificial teeth or other dentures, eyeglasses, contact lenses, or hearing aids has been made, replacement requests may be denied in instances of malicious damage, neglect, culpable irresponsibility, or wrongful disposition.

Last updated June 3, 2024 at 8:32 AM

Rule 4123-6-31.1 | Supportive care.

Ohio Administrative Code / 4123 / Chapter 4123-6 | Health Partnership Program

Effective: *February 1, 2025* ***Promulgated Under:*** *119.03*

This rule governs the identification and medical management of claims necessitating supportive care, including medical treatment reimbursement authorization. The objective is to ensure the timely and efficient provision of medically necessary and appropriate treatment reasonably related to the allowed conditions, in order to maintain or improve the injured worker's level of function, minimize or prevent regression or relapse, effectively manage symptoms, minimize disease or impairment progression, provide continuity of care, and minimize reliance on medication treatment.

(A) As used in this rule, "supportive care" means care that is medically necessary and that cannot be administered or performed by the injured worker independently and is needed to maintain therapeutic benefit, prevent or treat exacerbations, maintain function, or return to baseline function.

(B) A claim necessitating supportive care is a claim in which the injured worker has reached a plateau in recovery and which requires some level of ongoing care or medical treatment.

Such claims can be manifested by reduced function due to ongoing impairment, pain, or distress related to the allowed condition which diminishes quality of life, mobility, the ability to perform activities of daily living (ADLs), or work activity.

(C) The MCO shall evaluate the request for supportive care services through a review of the medical documentation in the file which must include the following applicable information:

(1) A comprehensive history and physical exam by the physician of record or treating physician that includes:

(a) The nature of the reported symptoms of the allowed conditions, their onset, duration, exacerbations, and any alleviating or aggravating circumstances;

(b) Objective findings of recent examinations;

(c) Report of current level of functioning using validated instruments and tools to assess life function and disruption of function due to the allowed conditions and the expected impact of the proposed plan of care on the current limitations caused by the allowed conditions;

(d) Prior treatment and response to treatment, including the results of any withdrawal of treatment; and

(e) Confounding factors, if any, affecting treatment plan decision-making.

(2) Clinical rationale for the treatment being requested;

(3) A treatment plan that includes:

(a) A description of the interventions requested, including proposed frequency and duration of treatment;

(b) Lifestyle modifications, if appropriate;

(c) A description of a home exercise program, if appropriate; and

(d) Specific goals to be achieved by the treatment being requested.

(D) The MCO shall consider the following while reviewing the medical documentation and determining if the claim necessitates supportive care:

(1) The allowed conditions;

(2) Changes in the injured worker's medical condition, which have occurred over the course of care, if any, including medication utilization, and physical and/or psychological function;

(3) Improvement or regression in function compared to baseline;

(4) Any confounding factors which may have impeded or aggravated the injured worker's progress; and

(5) Prior treatment and response to treatment, including the results of any withdrawal of treatment.

(E) The MCO shall, when approving or denying a request for supportive care, consider and document:

(1) Prior industrial commission decisions relating to prior requests for the same treatments;

(2) Any new or updated circumstances or information which support a different decision than the prior decision(s) of the industrial commission;

(3) Consistency or lack thereof of the current treatment reimbursement request with previously authorized requests; and

(4) Denial of any request for supportive, non-surgical care when a request for the same treatment has previously been granted by the industrial commission must be supported by documentation as to how the injured worker's current circumstances, which could include any new or updated information, differ from those present or presented when the industrial commission issued its order.

(F) Frequency and duration of medical treatment reimbursement requests for supportive care meeting the criteria outlined in this rule shall be approved regardless of whether they

exceed treatment guidelines adopted by the bureau pursuant to rule 4123-6-16.1 of the Administrative Code.

Last updated February 3, 2025 at 8:36 AM

Supplemental Information

Authorized By: 4121.12, 4121.121, 4121.30, 4121.31, 4121.44, 4121.441, 4123.05, 4123.66
Amplifies: 4121.12, 4121.121, 4121.44, 4121.441, 4123.66
Five Year Review Date: 2/1/2030

An umbrella insurance policy provides extra liability coverage, extending beyond the limits of standard auto insurance. This supplementary coverage is particularly important for City employees who drive employer-owned vehicles, as many City auto insurance policies do not include uninsured or underinsured motorist coverage. Additionally, personal auto insurance policies often exclude coverage for work-related use of such vehicles.

For instance, if a police officer driving a city-owned cruiser is involved in an accident caused by an uninsured or underinsured driver, the City's insurance will not cover the gap, and your personal auto insurance will likely not apply. In such cases, an umbrella policy can provide critical coverage for medical expenses and costs that exceed the at-fault driver's liability limits.

under section 145.71 of the Revised Code, pursuant to action of the public employees retirement board vests a right in such person, so long as the person remains the recipient of any benefit of the funds established by section 145.23 of the Revised Code, to receive such retirement allowance, annuity, pension, or other benefit at the rate fixed at the time of granting such retirement allowance, annuity, pension, or other benefit. Such right shall also be vested with equal effect in the recipient of a grant heretofore made from any of the funds named in section 145.23 of the Revised Code. Subject to sections 145.75 and 145.76 of the Revised Code, a person participating in the deferred retirement option plan vests in the right to obtain and receive the amount accrued to the benefit of the person when the person ceases participating in the plan.

(B) This section does not apply to an increase made under section 145.323 of the Revised Code for a recipient whose benefit effective date is on or after ~~the effective date of this amendment~~January 7, 2013.

Sec. 145.71. (A) As used in sections 145.71 to 145.77 of the Revised Code, "deferred retirement option plan" means the deferred retirement option plan established under this section.

(B) The public employees retirement board shall establish and administer a deferred retirement option plan for PERS law enforcement officers. In establishing and administering the plan, the board shall comply with sections 145.72 to 145.77 of the Revised Code and may do all things necessary to meet the requirements of section 401(a) of the "Internal Revenue Code of 1986," 26 U.S.C. 401(a), applicable to governmental plans.

(C) The board shall adopt rules to implement this section and sections 145.72 to 145.77 of the Revised Code. The board

shall specify in the rules the date of initial implementation of the deferred retirement option plan. The board may specify in the rules a period during which an election made under section 145.72 of the Revised Code may be rescinded.

Sec. 145.72. (A) A PERS law enforcement officer who is eligible to apply for retirement under section 145.332 of the Revised Code, at any time before applying for retirement under that section, may elect to participate in the deferred retirement option plan. However, eligibility to apply for a reduced benefit under division (E) of section 145.332 of the Revised Code does not make a PERS law enforcement officer eligible to elect to participate in the plan.

(B) The PERS law enforcement officer shall make the election by filing with the public employees retirement board an election form provided by the board. The election is effective on the first day of the employer's first payroll period immediately following the board's receipt of the notice of election.

(C) At the time of electing to participate, the PERS law enforcement officer also shall make an election under section 145.46 of the Revised Code. Except as provided in that section, the election under section 145.46 of the Revised Code is irrevocable from the date it is received by the board.

(D) A PERS law enforcement officer electing to participate in the deferred retirement option plan must agree to terminate active service as a PERS law enforcement officer and begin receiving the officer's retirement allowance not later than the date that is eight years after the effective date of the election to participate. If the officer refuses or neglects to terminate active service in accordance with the agreement, the

board shall consider the officer's service terminated for purposes of sections 145.71 to 145.77 of the Revised Code.

(E) While participating in the deferred retirement option plan, a PERS law enforcement officer shall not be considered to have elected retirement under section 145.332 of the Revised Code.

Sec. 145.721. (A) A PERS law enforcement officer who elects to participate in the deferred retirement option plan shall continue in active service as a PERS law enforcement officer but shall not be granted service credit under this chapter for employment after the election's effective date. While the officer is in active service as a PERS law enforcement officer, the officer shall contribute, and the employer shall contribute and report, to the public employees retirement system in accordance with section 145.49 of the Revised Code.

(B) On and after the effective date of the PERS law enforcement officer's election to participate in the deferred retirement option plan, the officer is ineligible to purchase service credit under this chapter or transfer to this system service credit earned under Chapter 742., 3307., 3309., or 5505. of the Revised Code or under the Cincinnati retirement system.

(C) Neither the PERS law enforcement officer nor the officer's spouse and dependents are eligible for any benefit under section 145.58 of the Revised Code while the officer is participating in the deferred retirement option plan.

(D) A PERS law enforcement officer participating in the deferred retirement option plan is eligible to vote in elections for the employee members of the public employees retirement board, but the officer is not eligible to vote in elections for

the retirant members of the board.

Sec. 145.722. For each PERS law enforcement officer who elects to participate in the deferred retirement option plan, the public employees retirement board shall determine the officer's retirement allowance under section 145.332 of the Revised Code. In determining the retirement allowance, the board shall use the officer's total service credit and final average salary as of the last day of the employer's payroll period immediately before the effective date of the officer's election to participate in the plan. The retirement allowance shall be calculated using the election made by the officer under section 145.46 of the Revised Code.

Sec. 145.73. (A) During the period beginning on the effective date of an election to participate in the deferred retirement option plan and ending on the date participation ceases, a PERS law enforcement officer's monthly retirement allowance amount determined under section 145.722 of the Revised Code shall accrue to the officer's benefit. To this amount shall be added any benefit increases the officer would be eligible for under section 145.323 of the Revised Code had the officer, on the effective date of the officer's election, retired under section 145.332 of the Revised Code.

(B)(1) The amounts contributed under division (A)(2) of section 145.49 of the Revised Code by a PERS law enforcement officer participating in the deferred retirement option plan shall be credited as follows:

(a) Ten per cent of the officer's earnable salary accrues to the officer's benefit;

(b) Any amount of the officer's earnable salary that is in

excess of ten per cent shall be credited to the employers' accumulation fund.

(2) The public employees retirement system shall credit to the employers' accumulation fund the amounts contributed by employers under division (B) of section 145.49 of the Revised Code on behalf of an officer participating in the deferred retirement option plan.

(C) During the period beginning on the election's effective date and ending on the date the PERS law enforcement officer ceases participation in the deferred retirement option plan, the amounts described in divisions (A) and (B)(1)(a) of this section earn interest at an annual rate established by the public employees retirement board and compounded annually using a method established by rule adopted under section 145.71 of the Revised Code.

Sec. 145.74. A PERS law enforcement officer's participation in the deferred retirement option plan ceases on the occurrence of the earliest of the following:

(A) Termination of the officer's active service as a PERS law enforcement officer;

(B) The last day of the eight-year period that begins on the effective date of the officer's election to participate in the plan;

(C) Acceptance by the officer of a disability benefit awarded by the public employees retirement board under section 145.36 or 145.361 of the Revised Code;

(D) The officer's death.

Sec. 145.75. (A) A PERS law enforcement officer

participating in the deferred retirement option plan who terminates active service as a PERS law enforcement officer shall notify the public employees retirement board of the date of termination on a form prescribed by the board. The officer is not eligible to make another election under section 145.72 of the Revised Code.

(B)(1) With regard to a PERS law enforcement officer who was younger than fifty-two years of age on the effective date of the election to participate in the deferred retirement option plan, if the date of termination of the officer's active service occurs on or after the first day of the fourth year after the effective date of the election, the entire amount that has accrued to the officer's benefit under the plan shall be distributed to the officer pursuant to the officer's selection under section 145.751 of the Revised Code.

If the date of termination occurs earlier than four years after the effective date of the election to participate, the officer forfeits the interest credited under division (C) of section 145.73 of the Revised Code.

(2) With regard to a PERS law enforcement officer who, on the effective date of the election to participate in the deferred retirement option plan, was fifty-two years of age or older, if the date of termination of the officer's active service occurs on or after the first day of the third year after the effective date of the election, the entire amount that has accrued to the officer's benefit under the plan shall be distributed to the officer pursuant to the officer's selection under section 145.751 of the Revised Code.

If the date of termination occurs earlier than three years after the effective date of the election to participate, the

officer forfeits the interest credited under division (C) of section 145.73 of the Revised Code.

(C) Once a PERS law enforcement officer ceases participation in the deferred retirement option plan as described in division (A) or (B) of section 145.74 of the Revised Code, the officer's retirement allowance determined under section 145.722 of the Revised Code shall be paid to the officer, commencing the day following the officer's last day of active service as a PERS law enforcement officer.

Sec. 145.751. (A) On ceasing participation in the deferred retirement option plan as described in division (A) or (B) of section 145.74 of the Revised Code, a PERS law enforcement officer shall select as the method of distribution of the amount accrued to the officer under the plan one of the distribution options provided under section 401(a) of the "Internal Revenue Code of 1986," 26 U.S.C. 401(a), applicable to governmental plans.

(B) The public employees retirement system shall distribute the amount accrued to a PERS law enforcement officer's benefit under the deferred retirement option plan as follows:

(1) For an officer who was younger than fifty-two years of age on the date of the election to participate in the plan, distribution shall not commence until the first day of the fourth year after the effective date of the officer's election to participate in the plan.

(2) For an officer who was fifty-two years of age or older on the date of the election to participate in the plan, distribution shall not commence until the first day of the third

year after the effective date of the officer's election to participate in the plan.

Sec. 145.76. (A) A PERS law enforcement officer participating in the deferred retirement option plan who qualifies for a disability benefit under section 145.35 of the Revised Code and whose disabling condition was incurred in the line of duty shall elect to receive one of the following:

(1) The applicable retirement allowance determined under section 145.722 of the Revised Code, plus any amounts that have accrued under section 145.73 of the Revised Code to the officer's benefit under the plan.

(2) The disability benefit provided for by section 145.36 or 145.361 of the Revised Code.

(B) For purposes of division (A)(2) of this section, acceptance of a disability benefit requires forfeiture of all amounts accrued under section 145.73 of the Revised Code to the officer's benefit under the deferred retirement option plan, and those amounts shall be treated as if the officer had continued in the active service as a PERS law enforcement officer and not participated in the plan. The officer shall be granted service credit for the period the officer was participating in the plan.

(C) A PERS law enforcement officer participating in the deferred retirement option plan who qualifies for a disability benefit under section 145.35 of the Revised Code and whose disabling condition was incurred not in the line of duty shall receive the applicable retirement allowance determined under section 145.722 of the Revised Code, plus any amounts that have accrued under section 145.73 of the Revised Code to the officer's benefit under the plan.

Sec. 145.77. If a PERS law enforcement officer dies while participating in the deferred retirement option plan, all of the following apply:

(A) The amounts accrued to the officer's benefit under the plan shall be paid to the officer's surviving spouse or, if there is no surviving spouse, the beneficiary designated by the officer on a form provided by the public employees retirement board. An officer may designate an individual or a trust as a beneficiary. If there is no surviving spouse or designated beneficiary, the amounts accrued to the officer's benefit shall be paid to the officer's estate.

Any payment made under this division to an officer's estate shall be made in the form of a single lump sum payment. A surviving spouse or designated beneficiary may select as the method of distribution of the amount accrued to the officer under the plan one of the distribution options provided under section 401(a) of the "Internal Revenue Code of 1986," 26 U.S.C. 401(a), applicable to governmental plans.

(B) Survivor benefits shall be paid in accordance with section 145.45 of the Revised Code.

(C) The death benefit described in section 145.451 of the Revised Code shall be paid to the person or persons according to the order and in the amounts prescribed under that section.

Sec. 742.63. The board of trustees of the Ohio police and fire pension fund shall adopt rules for the management of the Ohio public safety officers death benefit fund and for disbursements of benefits as set forth in this section.

(A) As used in this section:

(1) "Member" means all of the following: