

The review authority further exhibited its prejudice in the case of this patient by the erroneous decision that no medical opinion was required. The review authority determined that a medical opinion was not necessary to substantiate the appellant's claim and also determined that no reasonable possibility exists that such assistance would aid in substantiating the claim. The reasoning for this determination is obscure, at best; for how can a decision be made about the value of an expert medical opinion without there being a medical review of the file, at least.

In my review of the entire case file, I contend, as a Board Certified Neurological Surgeon, a Board Certified Psychiatrist and as a practicing licensed physician for 50 years, there is abundant evidence of record to trigger a duty to obtain a medical opinion. The review authority stated, "there is simply no competent suggestion from any medical professional that the patient's traumatic encephalopathy so impacted his body in any way that would have made it materially less able to withstand the colon cancer."

However, within that very statement is the revelation that the review authority had no understanding of the nature of a brain injury, the pathophysiology, clinical course and the most common impairments of such an injury and how it would impact the behavior, judgment, insight and decision making process of the patient.

This patient's injury had everything to do with how he processed information, understood the implications of medical information given to him and made decisions. It is quite fair to say that if this man had been without his progressive impairment from his traumatic encephalopathy, the course of his illness would have been entirely different because he would have asked other questions and demanded to know his options. But the providers repeatedly failed to recognize the nature of his pre-existing impairments (from the brain trauma and dementia), or they failed in their responsibility to this man for other prejudicial reasons.