

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

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| Shirley Brackin, | : | |
| Petitioner | : | |
| | : | |
| v. | : | No. 1949 C.D. 2013 |
| | : | Submitted: April 25, 2014 |
| Workers' Compensation Appeal | : | |
| Board (Simon & Schuster), | : | |
| Respondent | : | |

BEFORE: HONORABLE DAN PELLEGRINI, President Judge
HONORABLE ROBERT SIMPSON, Judge
HONORABLE ANNE E. COVEY, Judge

OPINION NOT REPORTED

**MEMORANDUM OPINION
BY JUDGE SIMPSON**

FILED: May 23, 2014

Shirley Brackin (Claimant) petitions for review of an order of the Workers' Compensation Appeal Board (Board) that affirmed the decision of a Workers' Compensation Judge (WCJ) to partially grant Claimant's petition for review of a utilization review (UR) determination. The WCJ determined all pain management treatment rendered by Claimant's treating physician, with the exception of one prescription drug, was not reasonable or necessary. Claimant argues the WCJ erred by not determining the rejected treatment is palliative and, thus, reasonable and necessary. Discerning no error, we affirm.

In January 2000, Claimant sustained a work injury in the nature of a low back strain while working for Simon & Shuster (Employer). Employer accepted the injury through the issuance of a notice of compensation payable (NCP). In March 2009, the parties resolved the indemnity portion of the claim

pursuant to a WCJ-approved, compromise and release agreement (C&R). However, Employer agreed to remain liable for payment of Claimant's medical benefits.

In September 2010, Employer filed a UR petition requesting review of any and all pain management treatment provided by Claimant's treating physician, Sophia Lam, M.D. (Claimant's Physician), from August 2010 ongoing. The disputed treatment consisted of transforaminal epidural steroid injections; lumbar facet injections; sacroiliac joint injections; decompressive epidural neuroplasty; radiofrequency lesioning right SI joint/lumbar facets; and, prescriptions for Lorcet, Ambien, and Xanax.

In November 2010, a UR organization physician, Stephen M. Thomas, M.D. (Reviewer), reviewed the reasonableness and necessity of the treatments. Reviewer determined the following treatments were not reasonable or necessary: transforaminal epidural steroid injections greater than four times a year; lumbar facet injections at L1-2 and L2-3; lumbar facet injections at L3-4 and L5-S1 greater than four times a year; sacroiliac joint injections greater than four times a year, decompressive epidural neuroplasty, radiofrequency lesioning right SI joint/lumbar facets; and, prescriptions for Ambien and Xanax. Reproduced Record (R.R.) at 15.

From this decision, Claimant filed a petition for review. Hearings ensued before a WCJ.

The parties agreed the accepted injury was a low back sprain. WCJ's Op., 8/31/2011, Finding of Fact (F.F.) No. 1. Employer presented Reviewer's UR report. In the report, Reviewer opined that injection and medication therapies are reasonable and necessary for Claimant's diagnoses. However, Reviewer noted Claimant's Physician assigned Claimant's diagnoses broader than the accepted injury. F.F. No. 2(b), (f).

With regard to injection therapy, Reviewer opined there are no specific injection therapies for the diagnosis of lumbar sprain/strain. Upper lumbar levels were injected, but no reason was given for injecting that area. Because Claimant did not respond to transforaminal epidural steroid injections, the performance of decompressive epidural neuroplasty is not medically reasonable and necessary for the treatment of her condition. Reviewer further indicated if a diagnosis of sacroiliac joint pain is confirmed, sacroiliac joint injections, no greater than four times per year, would be reasonable and necessary. F.F. Nos. 2(b)-(i).

With regard to prescription therapy, Reviewer indicated treatment with opioid analgesics, such as Lorcet, in chronic back pain syndromes is medically reasonable and necessary to the extent they are effective. Use of Lorcet two to three times daily is minimally effective and, therefore, is reasonable and necessary. However, Reviewer reported there is no documentation that Ambien is effective in the treatment of Claimant's sleep disturbance, nor is there any documentation that the use of Xanax is effective for the treatment of Claimant's anxiety. Therefore, Reviewer opined ongoing use of Ambien and Xanax is not reasonable and necessary. F.F. Nos. 2(j), (k).

Additionally, Employer submitted two reports of Wilhelmina C. Korevaar, M.D., Board certified in anesthesiology and a pain management specialist (Employer's Physician), who reviewed Claimant's medical records and treatment plan. In the first report, Employer's Physician opined epidural injections may be useful in the management of acute to subacute radicular pain, but only up to nine months after onset of the pain. Sacroiliac joint injections are used to treat pain from sacroiliac joint disruption, subluxation, or arthritic involvement, which this injury did not cause. Facet injections are used in the initial diagnosis of a root cause for axial pain. However, Claimant's Physician did not perform facet injections in a manner designed to diagnose a root cause for the complaints; if facet joint was the source of Claimant's pain, physical exercise and conditioning should be prescribed. Further, Employer's Physician opined decompressive neuroplasty was not verified as an accepted procedure for any condition. Thus, Employer's Physician did not find any of the injection treatments reasonable or necessary. F.F. No. 3(c)-(e), (g)-(i).

With regard to prescription medications, Employer's Physician opined there is no indication that Claimant's prescription use decreased in the past or is expected to decrease in the future as a result of ongoing injections. Ambien and Xanax are not recognized treatment for chronic back or lower back extremity pain; therefore, they are not related to the work injury. Lorcet contains acetaminophen, which is not recommended for long term use. While narcotic medications may be useful in short-term management of chronic pain, a prescription exceeding three months cannot be considered reasonable or necessary because of the side effects and addiction potential. F.F. Nos. 3(a)-(b), (f), (i).

Ultimately, Employer's Physician opined that the procedures and medications prescribed cannot be considered reasonable and necessary because there is no documentation as to any overall improvement in pain, quality of life, or function. The treatments and medications do not fit the definition of palliative treatment. F.F. No. 3(i).

In the second report, Employer's Physician stated she reviewed additional medical records, none of which reported any relief of pain or improvement in Claimant's function. The medical articles and books, on which Claimant's Physician relies, do not support ongoing injections and prescriptions based on the absence of any improvement in complaints or activity level. Further, Employer's Physician observed there does not appear to be a specific diagnosis or treatment plan with well-defined objectives, which are periodically reviewed to ascertain whether the ongoing treatment is resulting in improvement. F.F. No. 4.

For her part, Claimant submitted two reports of her Physician. In the first report, Claimant's Physician offered diagnoses exceeding the accepted lumbar sprain or strain. Claimant's Physician opined the treatment provides Claimant with significant relief and allows her to live life as normal as possible. She reported Claimant receives some pain relief with the nerve block and medication regimen. F.F. Nos. 5(a), (b).

In the second report, Claimant's Physician noted that although Employer's Physician is board-certified in pain management, she lacks current practical experience, and did not examine Claimant. F.F. No. 6(b).

In addition to the medical reports, Claimant testified she treated with her Physician for the last several years. Since injuring her back in 2000, she experienced excruciating pain, which has not changed since 2002. Claimant receives cortisone shots every four to five weeks and is 40 to 50 percent better. The week before she receives the shot she is in excruciating pain again. She receives an epidural shot once a year. Lorcet, Soma, and Percocet are prescribed for her pain. She cannot sleep because of the pain and takes Ambien. She takes Xanax, a stress pill, that “helps the stress—the pain.” F.F. No. 7.

The WCJ found the opinions of Reviewer and Employer’s Physician more competent and credible than those of Claimant’s Physician. To the extent the opinions of Reviewer and Employer’s Physician conflicted, the WCJ specifically credited Reviewer’s opinion regarding the reasonableness and necessity of Lorcet, but accepted Employer’s Physician’s opinion regarding the lack of documentation as to any overall improvement in pain, quality of life, or function with regard to the other treatments. The WCJ further found Claimant’s testimony regarding the benefits of injections less than credible. F.F. Nos. 8, 9.

Ultimately, the WCJ determined Employer sustained its burden of proving that all treatment, with the exception of the prescription drug Lorcet, is not reasonable and necessary. The WCJ concluded Lorcet is the only reasonable and necessary treatment. WCJ Op., Concl. of Law (C.L.) No. 2. Thus, the WCJ granted Claimant’s UR petition in part. Claimant appealed to the Board, which affirmed.

On appeal,¹ Claimant argues the WCJ erred in determining the treatment was not reasonable or necessary. Claimant maintains her Physician prescribed injections and medication to manage her ongoing, constant pain and that such treatment was reasonable and necessary as palliative in nature. She contends the WCJ disregarded case law, which holds that treatment that is strictly palliative in nature can be reasonable and necessary. She also asserts the WCJ improperly considered causation in her decision. Finally, Claimant argues the WCJ erred by crediting the opinions of Employer's Physician over those expressed by Claimant's Physician.

The WCJ's authority over questions of credibility, conflicting evidence and evidentiary weight is unquestioned. Bedford Somerset MHMR v. Workers' Comp. Appeal Bd. (Turner), 51 A.3d 267 (Pa. Cmwlth. 2012) (citing Minicozzi v. Workers' Comp. Appeal Bd. (Indus. Metal Plating Inc.), 873 A.2d 25 (Pa. Cmwlth. 2005)). The WCJ, as fact-finder, may accept or reject the testimony of any witness, including a medical witness, in whole or in part. Id. We are bound by the WCJ's credibility determinations. Id.

Moreover, "it is irrelevant whether the record contains evidence to support findings other than those made by the WCJ; the critical inquiry is whether there is evidence to support the findings actually made." Id. at 272 (quoting Minicozzi, 873 A.2d at 29). We examine the entire record to see if it contains

¹ Our review is limited to determining whether the WCJ's findings of fact were supported by substantial evidence, whether an error of law was committed or whether constitutional rights were violated. Dep't of Transp. v. Workers' Comp. Appeal Bd. (Clippinger), 38 A.3d 1037 (Pa. Cmwlth. 2011).

evidence a reasonable person might find sufficient to support the WCJ's findings. Id. If the record contains such evidence, the findings must be upheld, even though the record may contain conflicting evidence. Id. This Court cannot, nor will we, consider the existence of other testimony that might support findings different from those found by the WCJ. Id.

The UR process is the sole method for determining if disputed treatment is reasonable and necessary. Id. The UR process is set forth in Section 306(f.1)(6) of the Workers' Compensation Act (Act),² and the regulations found at 34 Pa. Code §§127.401-127.556. Section 306(f.1)(6) of the Act provides, in pertinent part:

(6) [D]isputes as to reasonableness or necessity of treatment by a health care provider shall be resolved in accordance with the following provisions:

(i) The reasonableness or necessity of all treatment provided by a health care provider under this act may be subject to prospective, concurrent or retrospective utilization review at the request of an employe, employer or insurer. The department shall authorize utilization review organizations to perform utilization review under this act. Utilization review of all treatment rendered by a health care provider shall be performed by a provider licensed in the same profession and having the same or similar specialty as that of the provider of the treatment under review.

77 P.S. §531(6).

² Act of June 2, 1915, P.L. 736, as amended, 77 P.S. §531(6).

Medical treatment may be reasonable and necessary, even if the treatment does not cure the underlying injury, so long as it acts to relieve the pain and treats symptomatology; such treatment is palliative in nature. Womack v. Workers' Comp. Appeal Bd. (Sch. Dist. of Phila.), 83 A.3d 1139 (Pa. Cmwlth. 2014); Ryndycz v. Workers' Comp. Appeal Bd. (White Eng'g), 936 A.2d 146 (Pa. Cmwlth. 2007); Trafalgar House & St. Paul Fire & Marine Ins. v. Workers' Comp. Appeal Bd. (Green), 784 A.2d 232 (Pa. Cmwlth. 2001), Cruz v. Workers' Comp. Appeal Bd. (Phila. Club), 728 A.2d 413 (Pa. Cmwlth. 1999). However, "the Courts have also recognized that a lack of progress in pain improvement is a factor that the WCJ may consider in making the factual determination of whether palliative care is reasonable and necessary." Womack, 83 A.3d at 1151.

The employer bears the burden of demonstrating the medical treatment was unreasonable and unnecessary in order to avoid being required to pay for the treatment. Turner. The claimant bears no burden of proof in the UR process. Id. (citing Topps Chewing Gum v. Workers' Comp. Appeal Bd. (Wickizer), 710 A.2d 1256 (Pa. Cmwlth. 1998)).

While the UR process is the proper method for determining if the disputed treatment is reasonable and necessary, it is not the proper method for determining causation. 34 Pa. Code §127.406; J.D. Landscaping v. Workers' Comp. Appeal Bd. (Heffernan), 31 A.3d 1247 (Pa. Cmwlth. 2011); Bloom v. Workmen's Comp. Appeal Bd. (Keystone Pretzel Bakery), 677 A.2d 1314 (Pa. Cmwlth. 1996). Rather, the proper method for challenging whether medical

treatment is causally related to a work injury is through a petition to review medical treatment, not through a UR. J.D Landscaping; Bloom.

Here, the WCJ determined the treatments provided by Claimant's Physician were not reasonable or necessary. In reaching this determination, the WCJ found the opinions of Reviewer and Employer's Physician more competent and credible than those of Claimant's Physician. The WCJ explained:

[Reviewer] indicated that there are no specific injection therapies for the diagnosis of lumbar strain and sprain. He does agree that treatment with Lorcet is reasonable and necessary to the extent it is effective. This opinion is accepted over that of [Employer's Physician]. [Employer's Physician]'s opinion is accepted to the extent she identifies that there is no documentation as to any overall improvement in pain, quality of life, or function. [Claimant's Physician]'s vague description of Claimant's statement of improvement supports [Employer's Physician]'s opinion. Further, [Employer's Physician] noted the lack of a specific diagnosis or treatment plan with well defined objectives periodically reviewed to determine whether the treatment is working.

F.F. No. 8. The WCJ concluded Employer met its burden to prove that all treatment rendered by Claimant's Physician, except for the prescription of the narcotic Lorcet, is not reasonable or necessary. C.L. No. 2.

The record adequately supports the WCJ's findings. More specifically, the WCJ's determination that the treatment, other than Lorcet, was not reasonable and necessary is supported by Employer's Physician's opinions and Reviewer's UR Determination. With regard to the medications prescribed,

Employer's Physician and Reviewer opined Xanax and Ambien were not effective in the treatment of Claimant's sleep disturbance or anxiety. R.R. at 15, 54.

As for the injection therapies, Employer's Physician opined none of these treatments were reasonable or necessary because they did not reduce Claimant's pain. R.R. at 54. Employer's Physician explained there was no documentation as to any overall improvement in pain, quality in life or function. Id.

Although Claimant testified and her Physician opined that the treatment helped to relieve Claimant's pain, the WCJ did not credit this evidence. F.F. No. 8, 9. In rejecting Claimant's testimony, the WCJ explained there is no evidence of reduction of prescription drug intake during the time Claimant alleges a 40-50 percent improvement after injection. F.F. No. 9. The WCJ further noted Claimant testified her back pain has not changed since 2002, despite the treatment. F.F. No. 7; R.R. at 22, 26. As for the conflicting medical evidence, the WCJ's decision to credit Reviewer and Employer's Physician's opinions over Claimant's Physician's opinion is binding on appeal. See Turner (requiring deference to WCJ's credibility determinations where medical evidence is conflicting as to reasonableness and necessity of medical treatment). Claimant's attempts to challenge the WCJ's credibility determinations are unavailing and beyond our standard of review.

Further, contrary to Claimant's assertions, the WCJ did not base her decision on the lack of causality, but rather on the lack of palliative value of the

treatment. Although Employer's experts questioned the causal connection between the work injury and some of the treatments, the WCJ properly considered the palliative effect of the treatments and found them not beneficial. F.F. No. 8.

Finally, the WCJ did not apply a more restrictive definition of "palliative" than that used by the courts. Rather, the WCJ examined whether the treatments act to relieve the pain and treat symptomatology. The WCJ found the treatments were not effective in alleviating Claimant's pain or improving her quality of life or function. F.F. No. 8. On this basis, the WCJ did not find the treatments reasonable or necessary. Although we sympathize with Claimant, we find no support for her allegations of error.

Accordingly, we affirm.

ROBERT SIMPSON, Judge

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ORDER

AND NOW, this 23rd day of May, 2014, the order of the Workers' Compensation Appeal Board is **AFFIRMED**.

ROBERT SIMPSON, Judge