

**STATE OF VERMONT
DEPARTMENT OF LABOR AND INDUSTRY**

Joy Alexander)	Opinion No. 16-05WC
)	
)	By: Margaret A. Mangan
v.)	Hearing Officer
)	
Middlebury College)	For: Laura Kilmer Collins
)	Commissioner
)	
)	State File No. B-01091

Pretrial conference held on November 1, 2004
Hearing held on November 30, 2004 and January 13, 2005
Record Closed on January 28, 2005

APPEARANCES:

Joy Alexander, pro se
William J. Blake, Esq., for the Defendant

ISSUE:

Is continued chiropractic treatment reasonable and casually related to claimant's 1988 work related injury?

EXHIBITS:

Medical Records

CLAIM:

Continued chiropractic care

STIPULATED FACTS:

1. At the time of her 1988 injury claimant was an employee within the meaning of the Workers' Compensation Act.
2. At the time of claimant's 1988 injury, Middlebury College was claimant's employer within the meaning of the Act.

FINDINGS OF FACT:

1. On July 8, 1988, Joy Alexander was working at Middlebury College when she injured her back lifting a trash bag into a dumpster. She remains angry about the incident.
2. An MRI ruled out disc herniation and evidence of neurologic impingement. Claimant treated conservatively for her injury, primarily with chiropractic. She first treated with Dr. Gross and later with Dr. Foster, both chiropractors.
3. Early on in this treatment of the claimant, Dr. Foster noted that her subjective complaints outweighed her objective findings, that test results were inconsistent, her complaints were dramatic and that emotional issues played a part in her case.
4. Dr. Foster has continued to provide claimant with chiropractic treatment on an as needed basis for more than 16 years. In that time, he has treated claimant approximately 700 times.
5. At this point, it is undisputed that claimant is not receiving long-term improvement with the chiropractic. It is now palliative treatment, offering her symptomatic relief that allows her to continue functioning at home and at work, although she no longer works for Middlebury College.
6. Claimant plans to continue with chiropractic adjustments indefinitely and asks the employer's workers' compensation carrier to pay for the treatment.

Experts for the claimant

7. Chiropractors Dr. Foster and Dr. Gross and Physical Medicine/ Pain Management expert Dr. Bucksbaum all testified in favor of the claimant at hearing.
8. Curtis Gross, D.C. has practiced chiropractic since 1983. In those years of practice he has found that it is unusual for a patient to need chiropractic for more than a decade, but a few patients do. He noted that claimant's active life tends to cause symptoms that are relieved with chiropractic and ice. He also noted that her condition has deteriorated over the past 10 to 15 years. In his opinion, claimant is one of the few who should continue chiropractic care for the short-term benefit it provides.
9. Charles Foster, D. C. has practiced chiropractic since 1986 and has treated the claimant since 1989 on a referral from Dr. Gross. At first claimant was unable to work because of her symptoms, but was able to return to work because of the chiropractic treatment. He noted that her work "reaggravated" her condition to a point where she needed adjustments to keep her working.

10. At first Dr. Foster thought that claimant would have a reduction in symptoms in a matter of weeks, but later learned that longer term treatment was needed. He initially documented that claimant's subjective complaints outweigh objective findings and that she is afraid of reinjury, yet is able to work with the continuation of chiropractic. He anticipates that chiropractic for this claimant will continue indefinitely because it maintains her function, not because it improves her underlying condition. If she did not work, she could go longer periods between adjustments.
11. Mark Bucksbaum, M.D. also testified for the claimant in this case. He is board certified in Physical Medicine, Pain Management and Independent Medical Examinations. He performed an independent medical examination of the claimant when he observed an antalgic gait, but no muscles weakness. She has loss of range of motion in her spine and paraspinal muscle spasms. In his opinion, continued chiropractic care for this claimant is reasonable because she has been refractory to all other forms of treatment and cannot take medication. The only acceptable method for symptom relief is chiropractic. Dr. Bucksbaum noted that others with the claimant's symptoms might use narcotics, but she obtains the short-term relief with chiropractic.
12. Claimant's fear of reinjury, inconsistent test results and subjective complaints that exceed her objective signs are facts, which do not alter Dr. Bucksbaum's opinion that the treatments are reasonable.

Experts for the defendant

13. The defense offered the opinions of psychologist Steven Mann, Ph.D., psychiatrist Todd Lefkoe, M.D. and primary care physician Harold Rosenzweig, D.O.
14. Dr. Mann administered a battery of tests to the claimant that demonstrated that she has a fear of reinjury and perceives herself to be more disabled than what she is. Her general levels of anxiety and depression are normal, although he would expect changes in those levels for one with a significant injury.
15. Dr. Mann concluded that claimant had developed a neurotic attachment to chiropractic that now plays no role in furthering improvement in her condition. He opined that continued chiropractic supports an entrenched dependency and an unnecessary dependence on the patient's role.
16. Dr. Lefkoe is a board certified physical medicine expert who examined the claimant and reviewed her medical records. He found no objective signs of a physical injury, although the claimant perceives herself as suffering from a significant injury.

17. In Dr. Lefkoe's opinion, the chiropractic should be discontinued because it is no longer reasonable. The symptoms she manifested are from pain behaviors, not documented pathology.
18. The defense also called Dr. Rosensweig who performed two physical examinations of the claimant. He noted that claimant exhibited pain behaviors such as over-protective guarding. In his opinion, the soft tissue injury she sustained should have resolved years ago. Dr. Rosensweig recommended abdominal strengthening exercises, mood altering drugs and the discontinuation of chiropractic over a period of six months.
19. Dr. Rosensweig acknowledged that chiropractic keeps claimant functioning, but stated that it is unfair to ask a third party to pay for it because it increases cost to employers. He determined that the basis for treatment is not physical and not related to her work related injury.

CONCLUSIONS OF LAW:

1. In a typical Workers' Compensation case the claimant has the burden of establishing all facts essential to the rights asserted. *Goodwin v. Fairbanks*, 123 Vt. 161 (1963). However, if an employer accepts a claim and then seeks to relieve itself of responsibility for the claim, as is the case here, the burden of proof is on the employer to justify discontinuance. See *Merrill v. University of Vermont*, 133 Vt. 101 (1974).
3. Under 21 V.S.A. § 640(a), a claimant is entitled to "reasonable surgical, medical and nursing services and supplies" for injuries that arose out of and in the course of employment. 21 V.S.A. § 618(a).
4. One is entitled to continuing medical benefits as long as the causal relationship with work remains unbroken. As the leading commentator has written: "The progressive worsening or complication of a work-connected injury remains compensable so long as the worsening is not shown to have been produced by an intervening nonindustrial cause." 1 Larson's Workers' Compensation Law, § 10 at 10-1 (2003).
5. The records in this case contain references of claimant's continued work as aggravating her pain. That means that her perceived need for chiropractic is no longer related to her injury at Middlebury College, but to later work she has done. Accordingly, the defendant in this case is no longer responsible.
6. However, because it is clear that claimant has developed a dependency on chiropractic, the carrier should work with her to develop a plan for the gradual cessation of treatment over six months, as Dr. Rosensweig recommended, unless the claimant decides to continue the treatments at her own expense.

ORDER:

Therefore, based on the foregoing findings of fact and conclusions of law, this claim is DENIED with the condition that claimant be weaned from the treatment over six months.

Dated at Montpelier, Vermont this 11th day of February 2005.

Laura Kilmer Collins
Commissioner

Appeal:

Within 30 days after copies of this opinion have been mailed, either party may appeal questions of fact or mixed questions of law and fact to a superior court or questions of law to the Vermont Supreme Court. 21 V.S.A. §§ 670, 672.