

**STATE OF VERMONT  
DEPARTMENT OF LABOR**

Patricia Jacobs

Opinion No. 02-12WC

v.

By: Jane Woodruff, Esq.  
Hearing Officer

Metz and Associates, Ltd.  
d/b/a Valley Vista

For: Anne M. Noonan  
Commissioner

State File No. Z-01481

**OPINION AND ORDER**

Hearing held in Montpelier, Vermont on September 19 and 20, 2011  
Record closed on November 14, 2011

**APPEARANCES:**

Charles Powell, Esq., for Claimant  
Corina Schaffner-Fegard, Esq., for Defendant

**ISSUES:**

1. Does Claimant suffer from chronic regional pain syndrome causally related to her accepted work injury?
2. Is Claimant entitled to a spinal cord stimulator trial as reasonable and necessary medical treatment for her accepted work-related injury?

**EXHIBITS**

|                        |  |
|------------------------|--|
| Joint Exhibit I:       | Medical records  |
| Claimant's Exhibit 1:  | Dr. Lake's medical records   |
| Claimant's Exhibit 2:  | Harden RN <i>et al.</i> , <i>Proposed New Diagnostic Criteria for Complex Regional Pain Syndrome</i> , Pain Medicine, 2007; 8(4):326-331 |
| Defendant's Exhibit A: | <i>Curriculum vitae</i> , Dr. Leon Ensalada  |
| Defendant's Exhibit B: | <i>Curriculum vitae</i> , Dr. Albert Drukteinis  |
| Defendant's Exhibit C: | Video of Dr. Ensalada's Examination  |
| Defendant's Exhibit D: | Video of Dr. Drukteinis' Examination   |

**CLAIM:**

Medical benefits pursuant to 21 V.S.A. § 640

Costs and attorney fees pursuant to 21 V.S.A. §678

**FINDINGS OF FACT:**

1. At all times relevant to these proceedings, Claimant was an employee and Defendant was her employer as those terms are defined in Vermont's Workers' Compensation Act.
2. Judicial notice is taken of all relevant forms contained in the Department's files relating to this claim.
3. Claimant worked for Defendant as a dietary aide. On December 17, 2007 she felt and heard a pop in her right wrist as she was loading a five-gallon crate of milk into a dispenser. Her wrist swelled and pain radiated up to her shoulder. The emergency room physician diagnosed tendonitis of the right wrist. Defendant accepted this injury as compensable and began paying workers' compensation benefits accordingly.

Medical Treatment

4. Initially Claimant treated conservatively for her injury. Thereafter, between April 2008 and February 2009 she underwent three surgeries – first a carpal tunnel release, then surgical repair of a cartilage (TFCC) tear in her wrist, and finally an ulnar nerve decompression. After each surgery Claimant underwent additional conservative treatment, including physical and occupational therapy, injections and pain medications. Despite her full compliance with all treatment recommendations, none provided long-lasting relief of symptoms. To the contrary, Claimant's right upper extremity became increasingly painful.
5. By January 2010 Claimant's treating physician had concluded that she was suffering from chronic pain, at a level beyond what seemed reasonable for the surgeries she had undergone. Claimant thus was referred for pain management services to Dr. Lake, a board certified anesthesiologist. Dr. Lake concluded that Claimant was suffering from chronic regional pain syndrome (CRPS) in her right upper extremity.
6. CRPS is a disorder of the sympathetic nervous system. It is characterized by continuing regional pain that (a) occurs both spontaneously and with movement; (b) extends beyond the territory of a specific peripheral nerve; and (c) is disproportionate in time or degree to the usual course of any inciting injury.<sup>1</sup>

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<sup>1</sup> CRPS can be diagnosed as either Type I, in which evidence of obvious nerve damage is lacking, or Type II, in which nerve damage is objectively established. Claimant here was diagnosed with CRPS, Type II based on electrodiagnostic confirmation of an injury to her right ulnar nerve. See Finding of Fact No. 18, *infra*.

7. The signs and symptoms of CRPS tend to predominate at the far end of an affected extremity. Clinical findings indicative of the syndrome are generally categorized as follows:
- Sensory, including hyperesthesia (heightened sensitivity of skin to touch) and allodynia (pain from stimuli that are not normally painful);
  - Vasomotor, including asymmetry of skin temperature and either changes and/or asymmetry of skin color;
  - Sudomotor and edema, including edema and/or sweating changes and/or sweating asymmetry; and
  - Motor/trophic, including decreased range of motion and/or motor dysfunction (weakness, tremor, involuntary muscle contractions) and/or trophic changes to hair, nails or skin.
8. The currently accepted diagnostic criteria for CRPS, as reflected in the *AMA Guides to the Evaluation of Permanent Impairment (6<sup>th</sup> ed.)*, were developed in 2007 at an invitation-only conference in Budapest. Known as the Harden criteria<sup>2</sup>, before diagnosing CRPS the clinician must make the following clinical findings:
- Continuing pain that is disproportionate to the inciting event;
  - Patient reports at least one symptom in three of the four categories listed above;
  - Patient displays at least one sign at the time of evaluation in two or more of the four categories listed above; and
  - There is no other diagnosis that better explains the signs and symptoms.<sup>3</sup>

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<sup>2</sup> Harden RN *et al.*, *Proposed New Diagnostic Criteria for Complex Regional Pain Syndrome*, *Pain Medicine*, 2007; 8(4):326-331.

<sup>3</sup> *Id.*, Table 3 at p. 330. The Harden criteria are somewhat more liberal than the criteria specified in the prior edition of the *AMA Guides*, which are used in Vermont to diagnose CRPS for the purpose of rating permanent impairment. See *Bruno v. Directech Holding Co.*, Opinion No. 18-10WC (May 19, 2010).

9. In Claimant's case, Dr. Lake's CRPS diagnosis was based on the following clinical findings:
- Significant color change in the outside region of the right wrist as compared to the left wrist;
  - Hypersensitivity to touch (allodynia);
  - Nail changes in the fourth and fifth digits on the right hand as compared with all other digits;
  - Some limited strength with grip; and
  - Hair changes in the right wrist area.
10. In addition to these observations, Dr. Lake also determined (a) that Claimant's pain was out of proportion to what ordinarily would be expected following her three right upper extremity surgeries; and (b) that no other diagnosis better explained her signs and symptoms. I find that Dr. Lake's CRPS diagnosis thus comported with the Harden criteria.
11. As treatment for Claimant's CRPS, initially Dr. Lake recommended a course of stellate ganglion nerve blocks. Unfortunately, these failed to provide any effective long-term pain relief. Given her prior history of cocaine and alcohol abuse during her teenage years, Claimant was reluctant to accept narcotic pain medications as a treatment course, a decision that I find both credible and healthy. Thus faced with continuing pain and no effective relief, Dr. Lake suggested a spinal cord stimulator as a possible treatment course.
12. A spinal cord stimulator is a surgically implanted electronic device that blocks a peripheral nerve from transmitting painful sensations to the brain, and sends a tingling sensation up the spinal cord instead. To permanently implant a spinal cord stimulator is both invasive and costly; therefore, patients typically undergo a one-week trial with an external device to see if it is effective in reducing pain. Spinal cord stimulator candidates also must undergo psychological evaluation, to establish whether they understand not only the device's purpose but also its limitations. In addition, they must show that they have a support network sufficient to assist them as needed.

Expert Medical Opinions

13. The parties each offered several expert medical opinions on the two disputed issues: first, whether Claimant was appropriately diagnosed with CRPS; and second, whether she is an appropriate candidate for a spinal cord stimulator trial. All of the experts agree that Claimant suffers from chronic pain, and that her pain is real.

(a) Alexandria Noble, ARNP

14. Ms. Noble has been Claimant's primary care provider since January 2008. She holds a master's degree in nursing and a bachelor's degree in social work. Many of Ms. Noble's patients suffer from chronic pain. She is familiar with both CRPS generally and with the Harden diagnostic criteria.
15. Ms. Noble was confident that Claimant routinely met at least some of the Harden criteria at most of her office visits, and that she met all of them on more than one occasion. For example, Ms. Noble noted that during her March 28, 2011 examination Claimant complained of allodynia, excessive sweating, stiffness, decreased range of motion and decreased strength in her right hand. At that same visit Ms. Noble observed signs of increased sensitivity to light touch, sweating between her fingers, decreased range of motion and weakness in her right hand. In Ms. Noble's opinion, Claimant was experiencing continuing pain that was disproportionate to what would have been expected following her three surgeries and that CRPS was the most reasonable explanation for her signs and symptoms on that day. I find Ms. Noble's diagnostic observations and reasoning to be credible.

(b) Dr. Lake

16. As noted above, Dr. Lake first diagnosed Claimant with CRPS in January 2010, in accordance with the Harden criteria. Also as noted above, Dr. Lake is convinced that a spinal cord stimulator trial is a reasonable and necessary treatment option for Claimant to pursue at this time. This is so regardless of whether Claimant meets the diagnostic criteria for CRPS or whether her condition is more generally categorized as chronic neuropathic pain. Claimant already has undergone extensive conservative treatment, including cortisone injections, physical and occupational therapy, medication management and nerve blocks, but with little if any sustained pain relief. A spinal cord stimulator offers the benefit of a fairly simple procedure that could significantly enhance Claimant's ability to function and thus improve her quality of life. I find this reasoning persuasive.

(c) Dr. Zweber

17. Dr. Zweber is board certified in both psychiatry and electrodiagnostic testing. He has conducted tens of thousands of electrodiagnostic studies, and has treated more than a thousand CRPS patients.

18. Dr. Zweber's electrodiagnostic testing, conducted in December 2008, provided objective evidence of ulnar nerve damage in Claimant's right upper extremity.
19. Dr. Zweber concluded, to a reasonable degree of medical certainty, that in Claimant's case a spinal cord stimulator trial is both reasonable and necessary. In his opinion, spinal cord stimulators are a recognized and appropriate treatment for CRPS, Type II. Claimant is an appropriate candidate, furthermore, because she has tried alternative treatment options to no avail and risks even more significant worsening over time if further intervention is not offered. I find this reasoning to be persuasive.

(d) Dr. Bucksbaum

20. Dr. Bucksbaum is board certified in physical and rehabilitative medicine, pain management and as an independent medical examiner. During his 23 years in practice, he has dealt mainly with chronic injuries and chronic pain. Patients who are suffering from CRPS represent a large part of his current practice. Dr. Bucksbaum receives referrals for patients with CRPS from all around the country.
21. Dr. Bucksbaum also has impressive experience with spinal cord stimulators. He was involved in the original treatment studies for the device in the 1980's. In his clinical practice, he has had at least a hundred patients who have used spinal cord stimulators as treatment, including some for upper extremity pain.
22. Claimant underwent an independent medical examination with Dr. Bucksbaum in November 2010. Based on that evaluation, which included a comprehensive review of Claimant's medical records and diagnostic studies as well as a physical exam, Dr. Bucksbaum concluded, to a reasonable degree of medical certainty, that Claimant meets the Harden diagnostic criteria for CRPS. Specifically:
  - Dr. Zweber's electrodiagnostic studies provide objective evidence of an injury to Claimant's right ulnar nerve;
  - During Dr. Bucksbaum's exam Claimant reported symptoms including allodynia, muscle weakness and nail changes, and exhibited signs including allodynia, asymmetry of skin temperature, dry skin and joint stiffness;
  - Claimant's pain was disproportionate to the inciting event; and
  - No better explanation existed for the symptoms she reported and the signs he observed.
23. In compliance with the *AMA Guides to the Evaluation of Permanent Impairment*, Dr. Bucksbaum used calibrated instruments to measure grip strength, passive range of motion and skin temperature. Doing so is critical to ensuring that the results are accurate, replicable and comparable to those obtained by other examiners who use the same *AMA Guides*-directed methods.

24. In reviewing Claimant's medical records, Dr. Bucksbaum acknowledged that Claimant did not present with every sign or symptom of CRPS at every medical appointment with every medical professional. CRPS is not a static condition; its presentation can change over the course even of a few hours. I find this testimony very persuasive. Indeed, by their focus on *categories* of signs and symptoms the Harden diagnostic criteria seem to reflect just such variation.
25. As for the efficacy of a spinal cord stimulator, Dr. Bucksbaum stated, to a reasonable degree of medical certainty, that a stimulator trial constitutes reasonable and necessary treatment for Claimant's current condition. Claimant is managing her pain without narcotic pain medications, but her response to conservative measures continues to wane. Spinal cord stimulators are safe products, and have been approved and regulated by the Federal Drug Administration for more than twenty years. They are widely recognized as an appropriate treatment for CRPS, Type II.
- (e) Dr. Ensalada
26. Dr. Ensalada is board certified in both anesthesiology and pain management. He does not currently maintain a private clinical practice, having been engaged in military service off and on since 2003. In that context, he routinely treats military personnel. Dr. Ensalada has implanted spinal cord stimulators, and also has treated patients who suffer from CRPS.
27. At Defendant's request, Claimant underwent an independent medical examination with Dr. Ensalada in October 2010. Dr. Ensalada personally examined Claimant (a procedure that was videotaped) and also reviewed her pertinent medical records.
28. Dr. Ensalada concluded, to a reasonable degree of medical certainty, that Claimant did not meet the Harden criteria for diagnosing CRPS. Among his examination findings:
- Claimant exhibited inconsistent range of motion during her physical examination as compared with her interview; and
  - She exhibited no signs of edema, sweating changes, mottled skin or skin color asymmetry, or temperature asymmetry.
29. Dr. Ensalada disputed the basis for Dr. Lake's CRPS diagnosis, as in his opinion her findings were inconsistent. Contrary to Dr. Bucksbaum's testimony, according to Dr. Ensalada, the signs and symptoms of CRPS do not change from day to day unless the patient is improving. Given that the Harden diagnostic criteria seem to account for just such changes, I find this testimony difficult to reconcile.

30. I find other aspects of Dr. Ensalada's opinion, and the physical examination upon which it was based, troublesome as well. For example:
- Because he was wearing non-latex gloves during his physical exam, Dr. Ensalada was unable to feel whether Claimant's skin was wet or sweaty. The exam video documents that he noted having "eyeballed" Claimant's skin and finding no perspiration. Claimant immediately corrected him, however, noting that the skin between the fingers on her right hand was "like . . . the sweaty kid nobody wants to touch." I find Claimant's observation in this regard entirely believable.
  - Dr. Ensalada did not use a thermometer to measure and compare Claimant's right and left hand temperatures. Instead, he used his right (gloved) hand to measure Claimant's left hand temperature, and his left (gloved) hand to measure her right hand temperature. Using this technique, I question whether he would have been able accurately to discern a small but significant temperature asymmetry between Claimant's two hands.
31. Dr. Bucksbaum commented on these deficiencies in Dr. Ensalada's methodology in his testimony. Given that temperature asymmetry is an important indicator of CRPS, ensuring accurate measurements is critical. This should be done not with gloved hands, but with calibrated tools, such as a self-calibrating infrared thermometer and spring-loaded medical tape. "Eyeballing" is not a technique condoned by the *AMA Guides*. I find this critique very persuasive.
32. As for whether a spinal cord stimulator is a reasonable and necessary treatment for Claimant's current condition, in Dr. Ensalada's opinion it is not. He testified that there are not yet any studies using randomized, controlled, double-blinded trials with adequate follow-up to establish that the device is a safe and effective treatment for either CRPS or neuropathic pain. On those grounds, he asserted that the treatment is neither reasonable nor necessary. I find this testimony to be less convincing than that provided by Dr. Bucksbaum.

Expert Psychological Opinions

33. As noted above, Finding of Fact No. 12 *supra*, any candidate for a spinal cord stimulator trial first must undergo a psychological evaluation. The parties each presented expert opinions on the question whether Claimant is an appropriate candidate for a spinal cord stimulator from a psychological perspective.
- (a) Cheryl Laskowski, APRN
34. Claimant underwent a psychological evaluation with Ms. Laskowski, an advanced practice registered nurse, in June 2010. In her assessment Claimant now suffers from a pain disorder associated with both psychological factors and a general medical condition. To a reasonable degree of medical certainty, in Ms. Laskowski's opinion Claimant is an appropriate candidate for a spinal cord stimulator trial.

35. In the course of her evaluation, Ms. Laskowski documented various difficulties during Claimant's teen years, including having been the victim of a violent sexual assault and also having abused cocaine and alcohol for a time. According to Ms. Laskowski, however, these prior stressors do not in any way impair Claimant's suitability as a spinal cord stimulator candidate. She understands that the device will not provide guaranteed relief from her pain and has an adequate support network in place to assist her should problems develop. Based on Claimant's own testimony at formal hearing, I find this to be a credible assessment.

(b) Dr. Erickson

36. Dr. Erickson is board certified in psychiatry and psychosomatic medicine. He is affiliated with the same pain management center at which Dr. Lake practices. Dr. Erickson interviewed Claimant and also reviewed various medical records.

37. To a reasonable degree of medical certainty, Dr. Erickson concluded that Claimant is an appropriate candidate for a spinal cord stimulator. I find his reasons for so concluding persuasive. Specifically:

- Claimant has undergone numerous conservative therapies, but continues to suffer symptoms that significantly impact her life;
- She understands what a spinal cord stimulator can and cannot do in terms of managing her symptoms;
- She has realistic expectations, in that she is not seeking a miracle but rather simply sufficient improvement to allow her a greater degree of function; and
- She does not suffer from any gross psychological impairment that would negatively affect her response to a spinal cord stimulator trial.

(c) Dr. Drukteinis

38. Dr. Drukteinis is board certified in both psychiatry and neurology, and is a diplomat of the American Academy of Pain Management. He performed an independent psychological evaluation of Claimant at Defendant's request. This included both an interview and psychological testing. Dr. Drukteinis also reviewed Claimant's pertinent medical records.

39. As Ms. Laskowski had, Dr. Drukteinis diagnosed Claimant with a pain disorder associated with both psychological factors and a general medical condition. Also as Ms. Laskowski had, he noted that Claimant “came from a very difficult background,” one that included sexual abuse, a messy divorce from a failed marriage and long-standing psychological stress. Unlike Ms. Laskowski, however, Dr. Drukteinis concluded that this history negatively impacted Claimant’s suitability as a spinal cord stimulator candidate. In his analysis, in order to avoid focusing on her longstanding psychological issues, Claimant instead has become overly focused on finding an external medical solution for her current condition. Viewed in this context, for her to pursue yet another medical treatment course is neither reasonable nor necessary, and could in fact be counterproductive. I do not find this reasoning to be persuasive.

Claimant’s Current Symptoms

40. Claimant credibly testified at the formal hearing as to her current right upper extremity symptoms. These include:
- Pain flairs, or “zingers”;
  - Swelling, discoloration and skin mottling that comes and goes;
  - Excessive sweating;
  - Reduced range of motion and weakness; and
  - Constant pain.
41. When asked about her understanding of a spinal cord stimulator as a proposed treatment for these symptoms, Claimant demonstrated that her expectations are both reasonable and realistic. She understands that if the trial stimulator fails to provide effective pain relief, there will be no permanent implantation. She does not expect that the device will eliminate her pain entirely, but hopes that it will offer enough relief so that she can get more restorative sleep and reduce her reliance on medications. If the stimulator allows her to regain some of the quality of life she has lost, then she believes the treatment will have been a success.

**CONCLUSIONS OF LAW:**

1. The key issue in this case is whether or not a spinal cord stimulator trial constitutes reasonable and necessary treatment for Claimant’s chronic pain. Claimant argues that it is an appropriate treatment option either for CRPS, the condition that her treating physicians and medical experts have diagnosed, or for the alternative, more generalized diagnosis of chronic neuropathic pain. In contrast, Defendant argues that Claimant does not meet the diagnostic criteria for CRPS, that a spinal cord stimulator is neither safe nor effective, and that she is not an appropriate psychological candidate for the device.

2. Vermont's workers' compensation statute obligates an employer to pay only for those medical treatments that are determined to be both "reasonable" and causally related to the compensable injury. 21 V.S.A. §640(a). The Commissioner has discretion to determine what constitutes "reasonable" medical treatment given the particular circumstances of each case. The claimant bears the burden of proof on this issue. *P.M. v Bennington Convalescent Center*, Opinion No. 55-07WC (January 2, 2007).
3. Where expert medical opinions are conflicting, the Commissioner traditionally uses a five-part test to determine which expert's opinion is the most persuasive: (1) the nature of treatment and the length of time there has been a patient-provider relationship; (2) whether the expert examined all pertinent records; (3) the clarity, thoroughness and objective support underlying the opinion; (4) the comprehensiveness of the evaluation; and (5) the qualifications of the experts, including training and experience. *Geiger v. Hawk Mountain Inn*, Opinion No. 37-03WC (September 17, 2003).
4. As to the question whether Claimant in fact suffers from CRPS, I conclude here that Dr. Bucksbaum's opinion is the most credible. His observations were consistent with those previously noted by Dr. Lake and Ms. Noble, who as treating providers were best positioned to evaluate Claimant's condition over the course of numerous visits. Notably, furthermore, Dr. Bucksbaum used calibrated instruments and *AMA Guides*-mandated measurement techniques as a basis for his clinical findings, thus enhancing their accuracy. His evaluation was thorough, and his CRPS diagnosis objectively supported.
5. In contrast, because of the noted deficiencies in Dr. Ensalada's technique I have far less confidence in his clinical findings, and consequently in his conclusion as well. Having acknowledged how important it is to use accurate measurements when applying the diagnostic algorithm for CRPS, Dr. Ensalada's failure to do so in the course of his own evaluation is too troublesome for me to overlook.
6. As for whether a spinal cord stimulator trial is a reasonable and necessary treatment for Claimant's condition, I conclude from the more credible medical evidence that it is. I accept as true, first of all, Dr. Bucksbaum's assertion that the device is safe, and also that the FDA has long approved its use for treating conditions such as Claimant's. And while it may be true, as Dr. Ensalada testified, that additional scientific study may further hone our understanding of the device's efficacy, I do not conclude that this automatically disqualifies Claimant from undergoing a trial implantation now.
7. I further conclude that Claimant is an appropriate psychological candidate for a spinal cord stimulator trial. With due regard for Claimant's own testimony, I find Dr. Erickson's opinion more credible than Dr. Drukteinis'. From this evidence I conclude that Claimant is appropriately, not overly, focused on availing herself of a treatment that reasonably might reduce her pain and increase her function.
8. In sum, I conclude that as a consequence of her December 17, 2007 compensable work injury Claimant now suffers from CRPS, Type II. I further conclude that a spinal cord

stimulator trial represents a reasonable and necessary treatment for her current condition.<sup>4</sup>

9. As Claimant has prevailed on her claim for benefits, she is entitled to an award of costs and attorney fees. In accordance with 21 V.S.A. §678(e), Claimant shall have 30 days from the date of this opinion within which to submit her itemized claim.

**ORDER:**

Based on the foregoing findings of fact and conclusions of law, Defendant is hereby **ORDERED** to pay:

1. Medical benefits covering all medical services and supplies causally related to a spinal cord stimulator trial and, if successful, permanent implantation of the device, in accordance with 21 V.S.A. §640; and
2. Costs and attorney fees in accordance with 21 V.S.A. §678.

**DATED** at Montpelier, Vermont this 11<sup>th</sup> day of January 2012.

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Anne M. Noonan  
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.

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<sup>4</sup> Having concluded that Claimant is properly diagnosed with CRPS, it is not necessary for me to reach her alternative argument, which is that a spinal cord stimulator trial is an equally appropriate treatment for the more generalized diagnosis of chronic neuropathic pain. From the evidence presented, I conclude that it is.