

IN THE WORKERS' COMPENSATION COURT OF THE STATE OF MONTANA

1994 MTWCC 103

WCC No. 9407-7092

CAROL MATHISON

Petitioner

vs.

WILLIS CORROON

Respondent/Insurer for

YELLOWSTONE COUNTY

Employer.

FINDINGS OF FACT, CONCLUSIONS OF LAW AND JUDGMENT

The trial in this matter was held in Billings, Montana, on November 14, 1994. The petitioner, Ms. Carol Mathison (claimant), was present and represented herself. Respondent, Willis Corroon (insurer), was represented by Mr. Norman H. Grosfield. The claimant and her husband, Mr. Marvin Mathison, were sworn and testified. Exhibits 1 through 3 were admitted by agreement of the parties. No depositions were taken and the matter was deemed submitted at the end of trial.

Having considered the testimony of claimant and her husband, the exhibits, and the arguments of the parties, the Court makes the following:

FINDINGS OF FACT

1. The claimant suffered an industrial injury on October 31, 1986. The primary injury was to her right wrist but in 1988 she also began experiencing headaches and pain in her right shoulder. Over the years she has continued to experience headaches and pain in her shoulder and cervical area. She has been variously diagnosed as suffering from myofascial pain syndrome, fibromyalgia, chronic pain syndrome, and tension myalgia.
2. The insurer accepted liability for the injury and has paid various medical and compensation benefits.

3. Claimant and the insurer entered into a full and final compromise settlement which was approved on March 18, 1993. The agreement reserved medical and hospital benefits for the claimant.

4. At the time of the agreement claimant was receiving physical therapy treatment for her shoulder. She had periodically been receiving treatments since at least 1990.

5. Claimant last received physical therapy on January 7, 1994. At that time her physical therapist provided her with written instructions for exercises to do on her own. She was discharged from therapy at that time.

6. Claimant thereafter sought the insurer's approval for additional physical therapy treatment. She testified that she did her exercises after January 7, 1994, and she was doing well until she slipped, caught herself, and experienced renewed pain in her shoulder.

7. On July 6, 1994, the insurer notified claimant that it was denying further payment for physical therapy.

8. Over the years claimant has been treated by a number of different physicians. In 1992 Dr. Enrico Arguelles, who is board certified in internal medicine and rheumatology, assumed claimant's regular care. Since then he has seen claimant periodically. His most recent examination of claimant was on October 6, 1994.

9. Claimant's medical records for the past two and one half years (1992 to 1994) were introduced into evidence at the hearing. Those records show that claimant developed a "dependency" on physical therapy and that the therapy was not providing her medical benefit.

a) On November 2, 1993, Dr. Arguelles recommended that claimant be examined by Dr. William Rosen, a physiatrist, to address claimant's "continuing need for physical therapy." (Ex. 1.)

b) Claimant was seen by Dr. Rosen on November 30, 1993. With regard to continued physical therapy, Dr. Rosen reported inter alia:

I feel further physical therapy is warranted however this should be restricted in terms of its duration. Ms. Mathison appears to be "addicted" to physical therapy and she needs to realize that this can not be a process which will continue for the rest of her life. I would recommend a very intense short lived program of 3 to 5 visits per week for 2 to 4 weeks. This program should include hot packs, high intensity galvanic stimulation, progressive relaxation techniques and massage. This program should also emphasize posture techniques, proper body mechanics, prolonged stretch and eventually conditioning techniques. I will discuss this at great length with her physical therapist if this meets with the approval of her insurance carrier, Ms. Wendy Seselman. [sic][/d.]

c) On December 2, 1993, Dr. Rosen wrote claimant a prescription for the physical therapy program outlined above. He prescribed therapy three to five times a week for two to four weeks. Therapy took place at Bozeman Deaconess Hospital in December 1993 and early 1994.

d) Both Dr. Arguelles and Dr. Rosen practice in Billings, where claimant lived until approximately a year or a year and a half ago, when she moved to Bozeman.

e) Claimant was examined by Dr. Eric Schwartzkopf, a Bozeman internist, on January 3, 1994. (She was referred to Dr. Schwartzkopf, or given his name, by Dr. Rosen.) Dr. Schwartzkopf noted that claimant's physical therapy was to end "this Friday" and that the physical therapist "will be contacting Dr. Rosen regarding any further intervention." (*Id.*)

f) Dr. Rosen saw claimant in a follow-up visit on January 24, 1994. At that time he recommended "increased range of motion exercises to both shoulders, scapula and also the neck." With regard to physical therapy, he commented:

Although she would enjoy a new prescription for physical therapy, she did seem moderately pleased with the discussion regarding her diagnosis and the need for her to become independent in the management of her soft tissue pain.

g) On January 31, 1994, claimant saw Dr. Diggs "on self-referral with approval from Wendy Sesselman for her chronic complaints of upper back, neck, recurrent headaches, and pain in the right shoulder and arm." (*Id.*) Dr. Digg's commented at that time that "[h]er subjective musculoskeletal complaints today do not require prescription drugs or P.T. type modalities." (*Id.*) He referred claimant for an MMPI and recommended that she be seen by Dr. Jim Deming, a clinical psychologist, for further evaluation "[s]hould the MMPI measure significant elevations." (*Id.*)

h) Dr. Schwartzkopf saw claimant a second time on February 3, 1994. At that time he reported that "[h]er husband is with her and is pleading for further P.T." (*Id.*) Despite the plea, Dr. Schwartzkopf did not prescribe physical therapy.

i) Dr. Digg's saw claimant again on April 22, 1994. He continued to recommend against renewed physical therapy and suggested that claimant and her husband return to Dr. Deming.

j) Dr. Deming met with claimant and her husband on April 26, May 9 and May 23, 1994. In his May 9, 1994 note, he commented: "THIS COUPLE IS UNWILLING TO ACCEPT THE REALITY THAT THEIR MUTUAL DEPENDENCY UPON CLINICAL RESOURCE SUCH AS PHYSICAL TX NEEDS CORRECTION. I EXPLAINED SAME." (*Id.*) (Capitalization in original.) His note of May 23, 1994, states that claimant did not keep her appointment and commented: "IT IS APPARENT THAT SHE DOES NOT WISH TO PURSUE ADDRESSING HER

ADDICTION TO P.T. AND THE EMOTIONAL SUPPORT WHICH IS CENTRAL TO THAT ADDICTION W/ ME AT PRESENT. WILL NOT RESCHEDULE." (*Id.*) (Capitalization in original.)

k) Finally, claimant saw Dr. Arguelles on October 6, 1994. In his note of that date, the doctor states inter alia:

. . . She certainly appears to have continuing myofascial pain syndrome, mild to moderate in severity. She would probably benefit from massage given to her by masseuse or husband but I told her the physical therapy could be an "overkill."

Dr. Arguelles "also gave her the name of Dr. George Saari as a rheumatologist in Bozeman *since she asked for a name in Bozeman.*" (Italics added.)

l) Claimant saw Dr. Saari the Friday before trial. However, the Court does not have any report or recommendation from the Doctor.

10. Claimant testified that she has been unable to fully resume her prescribed exercises. She has attempted to do so on several occasions but has experienced increased pain during those attempts. She is familiar with the medical reports and acknowledges that she needs to end her dependency on physical therapy. However, she believes that a few further physical therapy treatments would enable her to get back on an exercise program and end her dependency.

11. While I find that claimant was sincere in her testimony and her belief, there is no current recommendation by any physician for a resumption of physical therapy. Claimant's medical history, and her resistance to termination of physical therapy, suggests that, despite her present sincerity, additional therapy may reinforce her dependency rather than end it. She has been shown and knows how to perform her exercises. Ultimately, she will be better served by accepting and following her physicians' advice.

CONCLUSIONS OF LAW

1. Claimant was injured in 1986. The 1985 version of the Workers' Compensation Act therefore applies. ***Buckman v. Montana Deaconess Hospital***, 224 Mont. 318, 730 P.2d 380 (1986).

2. Section 39-71-704, MCA (1985), governs claimant's entitlement to medical and hospital benefits. It provides in relevant part:

39-71-704. Payment of medical, hospital, and related services. (1) In addition to the compensation provided by this chapter and as an additional benefit separate and apart from compensation, the following shall be furnished:

(a) After the happening of the injury, the insurer shall furnish, without limitation as to length of time or dollar amount, reasonable services by a physician or surgeon, reasonable

hospital services and medicines when needed, and such other treatment as may be approved by the division for the injuries sustained.

Under this provision, the services must be "reasonable."

4. In the context of the present case, the services must be ones prescribed by a physician. The Court cannot prescribe medical services or treatment, and it cannot order physicians to do so.

5. Following the hearing in this matter, the Court conducted an informal discussion of the case with claimant, her husband and Mr. Grosfield. In view of claimant's belief that a few more treatments would allow her to finally break free of the physical therapy cycle, and her acknowledgment that she needs to do so, I invited comment on whether my ordering a half a dozen more physical therapy sessions might be appropriate. However, I also wondered whether the evidence was adequate to support such an order. After a full review of the medical records I have concluded that I cannot order any further physical therapy.

The Workers' Compensation Court cannot overrule unanimous medical opinion and prescribe its own course of treatment for claimant. It can only determine whether prescribed treatment is reasonably necessary. In this case no physician has prescribed further physical therapy, and the Court cannot do so.

Moreover, there is substantial medical evidence supporting the doctors' refusals to prescribe further physical therapy. There is substantial, persuasive evidence that further physical therapy will not benefit claimant. Ordering physical therapy under these circumstances would interfere with the medical management of this case and may well postpone claimant's ending her dependence on physical therapy. Despite her sincerity when indicating that additional physical therapy would help her end her dependence, her history suggests otherwise. Claimant should heed her doctors' advice.

JUDGMENT

1. Claimant is not entitled to payment for further physical therapy.
2. The JUDGMENT herein is certified as final for purposes of appeal pursuant to ARM 24.5.348.
3. Any party to this dispute may have twenty (20) days in which to request a rehearing from these Findings of Fact, Conclusions of Law and Judgment.

Dated in Helena, Montana, this 22nd day of November, 1994.

(SEAL)

/s/ Mike McCarter
JUDGE

c: Ms. Carol Mathison - Certified Mail
Mr. Norman H. Grosfield