

OPINION ENTERED: December 14, 2012

CLAIM NO. 200797455

APEX ENERGY, INC.

PETITIONER

VS.

APPEAL FROM HON. EDWARD D. HAYS,  
ADMINISTRATIVE LAW JUDGE

LESTER L. CANTRELL  
and HON. EDWARD D. HAYS,  
ADMINISTRATIVE LAW JUDGE

RESPONDENTS

OPINION  
AFFIRMING

\* \* \* \* \*

BEFORE: ALVEY, Chairman, STIVERS and SMITH, Members.

**STIVERS, Member.** Apex Energy, Inc. ("Apex") appeals from the June 4, 2012, opinion, award, and order and the July 24, 2012, order denying Alex's petition for reconsideration by Hon. Edward D. Hays, Administrative Law Judge ("ALJ").

The Form 101 alleges on January 29, 2007, Lester Cantrell ("Cantrell") was injured in the following manner:

"I was operating a Triple 7 Rock Truck when the brakes

failed, due to the lack of an appropriate and proper constructed 'beam.' I went over a fill area in the truck which fell face down." Cantrell sustained the following injuries: "face, neck, shoulder, head, laceration above left eye, 3 cervical disc fractures [sic], arms, nerve damage, memory trouble, depression, closed head injury and TMJ."

In the record is a Form 110 settlement agreement approved by ALJ John B. Coleman on December 23, 2009. The agreement indicates as follows:

If medical treatment is continuing, attach a copy of the executed Form 113 indicating a designated physician.

Dr. Mark Reed

On June 27, 2011, Cantrell filed a motion to reopen stating as follows:

Comes now the Plaintiff, Lester Cantrell, by and through counsel, and for his Motion to Reopen does hereby state that the Plaintiff attempted to see a local physician, Dr. Ronald Mann, as it is difficult for him to make several extensive travels to see his regular physician as well as for his wife who has to transport him to each doctor's appointment. Plaintiff was informed that the office visits with Dr. Mann were not approved by workers [sic] compensation as he was not listed in their [sic] Managed Care Network. Plaintiff filed a Grievance Report as

suggested by Bluegrass Health Network but the same was denied.

WHEREFORE, the Plaintiff does hereby request a Hearing before the Administrative Law Judge at the earliest possible convenience.

On August 24, 2011, Cantrell filed a Form 112 medical fee dispute and "Supplement to Motion to Reopen Pursuant to KRS 342.020." The "Supplement to Motion to Reopen Pursuant to KRS 342.020" states, in part, as follows:

Comes now the Plaintiff, Lester Cantrell, by and through counsel, and for his Supplement to his Motion to Reopen, and does hereby state as follows:

1. This Motion is made based upon the Plaintiff's inability to reach an agreement with the Bluegrass Health Network, Inc., in reference to a treating physician only.

2. The Plaintiff has attempted to see a local physician, Dr. Ronald Mann, as it is difficult for him to make several extensive travels to see his regular physician as well as for his wife who has to transport him to each doctor's appointment. The Plaintiff was informed that the office visits with Dr. Mann were not approved by workers [sic] compensation as he was not listed in their [sic] Managed Care Network. The Plaintiff was referred to other local physicians but was not satisfied with their care.

The Plaintiff needs good quality treatment from a local doctor and has

been receiving such treatment from Dr. Mann.

4. The Plaintiff wants to continue and should be allowed to continue to treat with Dr. Mann.

5. The Plaintiff tried to work this out with the Defendant's carrier before initiating any kind of action.

6. The Plaintiff filed a Grievance Report as suggested by Bluegrass Health Network but the same was denied.

7. Bluegrass Health Network, Inc., has other individuals that have Dr. Mann as their primary treating physician.

Attached were the affidavits of Cantrell, Vivian Cantrell ("Vivian"), his wife, and his attorney.

By order dated August 31, 2011, Hon. J. Landon Overfield, Chief Administrative Law Judge ("CALJ") sustained Cantrell's motion to reopen to the extent the matter would be assigned to an Administrative Law Judge. By scheduling order dated September 20, 2011, the claim was assigned to the ALJ.

In the June 4, 2012, opinion, award, and order, the ALJ determined as follows:

This claim involves a medical fee dispute reopening which was initiated by the plaintiff, Lester Cantrell. The underlying injury occurred on January 29, 2007 when Mr. Cantrell incurred multiple injuries, including facial bone fractures and facial lacerations, a closed head injury, neck injury,

cervical fractures and disc injuries, memory loss, and depression. An Agreement as to Compensation was reached on December 28, 2009, for a lump sum settlement of \$200,000.00 and for all reasonable and necessary future medical expenses per KRS 342.020. There was no waiver of future medical benefits.

At the time of the settlement, Dr. Mark Reed was designated by the plaintiff as his gatekeeper physician. Eventually, the claimant wanted to change his designated physician and attempted to designate Dr. Ronald Mann, a family practitioner in Pikeville, Kentucky. However, Dr. Mann is not a member of the defendant carrier's managed care network of physicians which is approved and certified by the Commissioner of the Department of Workers' Claims. The Plaintiff made an effort to treat with a physician within the managed care network, but was dissatisfied with said physician and thus has returned to Dr. Mann. The issue in this case is whether or not Mr. Cantrell can treat with Dr. Ronald Mann, who is not within-in KEMI's managed care system, and hold KEMI financially responsible for the payment of Dr. Mann's bills.

**SUMMARY OF RELEVANT FACTS, FINDINGS OF  
FACTS,  
AND CONCLUSIONS OF LAW**

As indicated above, the claimant first designated Dr. Mark Reed as his gatekeeper physician. Numerous other physicians were consulted for treatment of various injuries to the claimant's face, cervical and lumbar spine. On February 3, 2011, the plaintiff's wife, Vivian Anita Cantrell (Anita), contacted KEMI (the defendant-

employer's workers' compensation carrier) to discuss a change of Mr. Cantrell's designated physician. On the same date, the KEMI claims examiner forwarded the claimant a Form 113. Shortly thereafter, Mr. Cantrell saw Dr. Ronald Mann, a physician outside of KEMI's approved managed care network. By letter dated March 2, 2011, KEMI informed claimant that treatment with Dr. Mann would not be authorized because he was outside the managed care network. Nevertheless, the carrier agreed to pay for the one-time visit to Dr. Mann and for the prescriptions which he had ordered. Claimant was notified of the necessity of selecting a physician within the KEMI network.

Shortly thereafter, the plaintiff returned the Form 113, indicating that he had designated Dr. Mann as his gatekeeper. The insurance examiner again informed claimant that Dr. Mann was not in the network and that further treatment by Dr. Mann would not be authorized.

A letter was then sent to KEMI by plaintiff's attorney concerning the matter. By letter dated March 25, 2011, KEMI again denied the request for designation of Dr. Mann and provided the claimant with a list of the names of network physicians. However, once again, KEMI paid for another visit to Dr. Mann so as not to create a hardship on the claimant.

On April 12, 2011, the plaintiff's wife telephoned a KEMI representative and advised that an appointment had been made with Dr. Ronnie Parker, a KEMI network physician. The appointment with Dr. Parker was approved. The Cantrells did not immediately designate Dr. Parker, but

wanted the opportunity to meet with Dr. Parker to see if they liked and approved of him. Plaintiff was seen at Dr. Parker's office on April 19, 2011.

On May 4, 2011, KEMI was contacted by claimant's wife, who advised that she was not permitted to be present in the room while Dr. Parker examined the claimant. Dr. Parker had indicated, in words or in substance, that Mr. Cantrell was his patient, not Ms. Cantrell. Ms. Cantrell emphasized to the KEMI representative the importance of her being permitted to attend medical examinations of her husband, because the severe head injury which he received at the time of the accident had affected his memory and his ability to understand the physician's findings, instructions, and recommendations. The KEMI representative offered to contact Dr. Parker and attempt to explain the circumstances which required Ms. Cantrell's presence during her husband's medical examinations. The KEMI representative was no more successful than had been the Cantrells! Dr. Parker had responded, in words or in substance, "you run your office and I will run my office." Anita described the Dr. Parker incident as a "disaster".

During the hearing held before the ALJ on April 5, 2012, most of the claimant's evidence was produced by his wife, Anita, who testified in detail as to her husband's cognitive limitations and his ability to comprehend verbal communications, memory, and ability to follow instructions.

The Plaintiff filed as medical proof on October 31, 2007 a report of Dr. Robert Granacher, which record supported Dr. Granacher's diagnosis and

conclusions: (A) Cognitive disorder due to brain trauma January 29, 2007; (B) Mood disorder due to brain trauma January 29, 2007; (C) Probable reading disorder present prior to injury; (D) Multiple upper body trauma and post-trauma cervical surgery, and (E) Current GAF = 60. Dr. Granacher opined that Mr. Cantrell had sustained a 14% neuropsychiatric impairment due to brain trauma and that the claimant should be restricted from operating heavy machinery, not only because of physical difficulties resulting from his cervical injury, but also due to slowness of mental processing and poor attention.

803 KAR 25:110, Section 9 provides that an employee of an employer for whom a managed care plan has been approved must obtain medical services from the said applied managed care plan provider. The Defendant argues that plaintiff has not provided a legitimate reason for continuing to see Dr. Mann. KEMI argues that it is not to be held responsible for treatment rendered by Dr. Mann and that no good reason has been shown to exist as to why Mr. Cantrell cannot receive medical services from an in-network physician.

803 KAR 25:110, Section 10 sets forth the grievance procedure to be followed if the employee does not agree with the decision rendered by the managed healthcare system. 803 KAR 25:110(10)(5)(b) provides:

Upon review by an Administrative Law Judge the movant shall be required to prove that the system's final decision is unreasonable or otherwise fails to conform with KRS Chapter 342.

In addition to the fact that Mr. Cantrell must have someone present with him during his examinations, which fact is not really disputed, he also argues that it is essential that he and his wife be permitted to see the same primary care provider. Ms. Cantrell testified as to her own personal health situation. She testified that Dr. Ronald Mann is her personal physician. She spoke convincingly of the tremendous amount of time and effort which she exerts in order to properly supervise the healthcare needs of both herself and her husband. She argues convincingly that this problem is multiplied if she and her husband are required to go to different physicians, thus thereby increasing the time and expense of travel and the obvious added difficulties in seeing two physicians rather than just one.

The question of whether the system's final decision is unreasonable or otherwise fails to conform with KRS Chapter 342 is a question of fact which must be decided by the ALJ. In the case at hand, the defendant-employer has presented a rather long list of the names of physicians who are in-network. The Defendant argues that surely the plaintiff can find a physician from this long list of possible providers with whom he could receive appropriate medical care and attention and with whom he would be satisfied. The Plaintiff responds that he has already given a good faith effort to obtain medical services from a physician within the network and that he should not be reasonably required to further exhaust the list of possible healthcare providers. KEMI has never declared or given a reason as to why Dr. Mann is unacceptable, except that he is not within the network. Since all

physicians, both within the network and outside of it, are subject to the workers' compensation fee schedule, KEMI would owe no greater expense to Dr. Mann than it would to any of the physicians within its network. Plaintiff maintains that the grievance decision also "otherwise fails to conform to KRS Chapter 342" because (1) the claimant has a right to medical care at the employer's expense [KRS 342.020]; (2) the claimant has the right to change his designated physician at least once with no showing of cause, and as many times as necessary thereafter by showing reasonable cause [KRS 342.020(5)]; (3) this is Mr. Cantrell's first request to change his physician; and (4) KRS 342.020(4)(e)'s provision, as quoted above, to the effect that when the care needed is not available, the worker may treat outside of the managed care plan.

After considering the arguments of counsel for both parties, both of whom have offered valid and compelling arguments for their respective, though differing positions, the ALJ finds that Mr. Cantrell may reasonably continue to seek medical services from Dr. Ronald Mann as his designated physician and that he should be permitted to recover for such medical services from the defendant-employer, and/or its carrier, KEMI, pursuant to KRS 342.020 and the applicable regulations cited hereinabove. In summary, the ALJ finds that plaintiff has made a reasonable effort to conform to the managed care system's decision. The reasons for Mr. Cantrell to continue seeing Dr. Mann are valid and compelling. Dr. Mann allows the claimant's wife, Anita, to attend all examinations and to participate in claimant's examinations and consultations with the doctor. Dr.

Mann is now very familiar with Mr. Cantrell and his medical conditions. It is reasonable for the plaintiff and his wife to be seen by the same physician. This is not intended as a favor or benefit to Ms. Cantrell, but is an accommodation to the claimant which costs no one. No prejudice will occur to the defendant-employer and/or its carrier.

**ORDER**

Based upon the foregoing findings of fact and conclusions of law, IT IS HEREBY ORDERED and ADJUDGED that Lester Cantrell be permitted to treat with Dr. Ronald Mann and that he recover for such treatment from the defendant-employer and/or its insurance carrier. Any motions for approval of attorney's fees shall be filed within thirty (30) days hereof.

Apex filed a petition for reconsideration asserting as follows:

The ALJ failed to support his decision with findings of fact and conclusions of law addressing the proper regulatory standard, in this case 803 KAR 25.110 Section 10(5)(b).

At page 5 of the Opinion, the ALJ states that '[t]he question of whether the system's final decision is unreasonable or otherwise fails to conform with KRS Chapter 342 is a question of fact which must be decided by the ALJ.' This is a close to accurate summary of the regulatory standard, but fails to recognize that before the ALJ it is the movant (in this case the plaintiff) who is required to prove that the system's decision is unreasonable. In the case

at bar, the ALJ appears to simply state what he thinks to be reasonable rather than addressing why the system or carrier acted unreasonably in its decision and how the movant/plaintiff proved same.

In overruling Apex's petition for reconsideration, the ALJ determined as follows:

The ALJ has found that under the particular circumstances of this case, the system's final decision is unreasonable. To require a solution which results in Mr. Cantrell having to treat with a different physician than his wife, considering Mr. Cantrell's cognitive impairments, is unreasonable in the opinion of the ALJ. Further, KRS 342.020 entitles plaintiff to reasonable and necessary future medical treatment. To require the plaintiff to exhaust the list of possible providers is a requirement which would in essence defeat the purpose and benefits of the Act. Mr. Cantrell made a valid and good faith effort by submitting himself to examination by Dr. Ronnie Parker, a KEMI network physician. As Ms. Cantrell described the situation, it was a 'disaster'. The ALJ agrees with Ms. Cantrell's characterization of the appointment with Dr. Parker.

On appeal, Apex asserts the decision of the ALJ that Cantrell can treat with Dr. Mann is not supported by substantial evidence. This Board disagrees and finds substantial evidence in the record in support of the ALJ's determination.

This case presents a unique set of circumstances. It is undisputed Cantrell has severe cognitive limitations. This was established by Vivian's hearing testimony and Dr. Robert Granacher's October 31, 2007, report. The ALJ accurately summarized Dr. Granacher's report in the June 4, 2012, opinion, award, and order. That said, we acknowledge Apex's assertion on appeal regarding why Cantrell left his original gatekeeper physician, Dr. Mark Reed: "It is also of import that Mrs. Cantrell admits that she and her husband left the care of the original gatekeeper physician, Dr. Reed, because there were issues with her care." (emphasis in original). In that regard, Vivian testified as follows at the hearing:

Q: Who is Dr. Reed?

A: Dr. Reed is a family practice.

Q: And where is he located?

A: In Pikeville.

Q: Okay. Now, he was Lester's original gatekeeper or family physician?

A: That's right.

Q: What caused you to stop seeing Dr. Reed?

A: Dr. Reed- we had a misunderstanding over some of my medical treatments that we decided we would seek another doctor.

Q: So there was no problem with Dr. Reed's care of Lester. It was an issue with your care?

A: Pretty much.

Q: Did you have any problems with Dr. Reed's care as it came to Lester? I mean, did he let you sit in and help out and provide history?

A: Yes.

Q: But you either felt like you could no longer treat with Dr. Reed or you were discharged from Dr. Reed's care?

A: We decided that we wanted to see someone.

However, pursuant to KRS 342.020(5), Cantrell is entitled to change his designated physician one time without having to show "reasonable cause." KRS 342.020(5). This was his first time. In Apex's appeal brief, it concedes as much by stating as follows:

No problems ever arose with the plaintiff's care, but for unstated reasons, Mrs. Cantrell herself could not or would not treat with Dr. Reed anymore for her medical needs. There was no need for plaintiff to transfer his medical care, but he has the right to change physicians, **within network**.

The record reveals Cantrell attempted to change his physician to Dr. Ronald Mann but was informed Dr. Mann was not in KEMI's network of physicians and he needed to choose a different physician. Therefore, Cantrell chose Dr.

Ronnie Parker, a physician within KEMI's network. Vivian testified to the care rendered by Dr. Parker stating:

A: Dr. Parker. This doctor was very short with - with Lester. He did not speak to me at all. Lester told me that he tried repeatedly to get this doctor to understand that he needed me in there and he told me that the doctor said, 'I'm treating you, not her. You're my patient. She's not.' When we left that office, Lester didn't have prescriptions for the medication that he needed. And I spoke with- with his claims adjustor at KEMI and she could not get him to agree to even allow me to speak to him.

Vivian testified to what occurred after she spoke with a KEMI representative about Dr. Parker's treatment:

Q: Okay. And you've already testified that you-all went to Dr. Parker and- and I don't know if it's just that you didn't like him, but I know that, also, he wouldn't let you come in and sit through Lester's appointments, correct?

A: Right.

Q: And I think you said you actually talked to KEMI after that?

A: Right.

Q: Now, was KEMI helpful?

A: Judy actually attempted to call Dr. Parker. She told me- I'm just saying what she told me.

[text omitted]

A: Okay. She told me that she attempted to call Dr. Parker and that she could

never get through to him on the phone. He would not speak with her. So at that point, she sent him a letter explaining to him about Lester's cognitive issues and how important it was that I be allowed to sit in with his visits. He wrote a note on the same letter that she sent to him and sent it back to her. And Judy sent me a copy of that note. On that note, he wrote, 'You take care of your office and I will take care of mine.'

Q: Okay. So Ms. Golden at KEMI attempted to actually help facilitate your ability to sit in with Lester for his medical appointments with Dr. Parker?

A: She did attempt.

Q: Dr. Parker would not allow that?

A: No.

This intervention on behalf of KEMI was referenced in Apex's appeal brief: "In fact, Mrs. Cantrell admitted that KEMI attempted to intervene on her behalf to allow her attend *her husband's* appointment with him."

The ALJ determined because of Cantrell's severe cognitive limitations, it is reasonable for Cantrell to continue to treat with Dr. Mann who permits Vivian to attend the examinations with her husband. The ALJ substantiated his ruling with sufficient findings of fact and conclusions of law. We agree with the ALJ that Cantrell's reasons for seeking to continue to see Dr. Mann

are both "valid and compelling" and it is "reasonable" for both Cantrell and Vivian to be seen by the same physician. Additionally, we believe that to allow Cantrell to continue seeing Dr. Mann is "not intended as a favor or benefit to Ms. Cantrell, but is an accommodation to the claimant which costs no one." Due to his severe cognitive limitations, Cantrell requires the assistance and *presence* of his wife during examination so the physician can obtain an accurate history. While this Board is not a fact-finding tribunal, it is apparent on even the most basic level that the medical history is one of the most critical components of any medical examination. Vivian's presence at her husband's examination ensures an accurate history is conveyed to the medical care provider.

We acknowledge the statutes and regulations cited in Apex's appeal brief. Specifically, Apex cites to KRS 342.020(4) and 803 KAR 25:110, both which pertain to managed care plans. We recognize the conflict between these provisions and KRS 342.020(5) which allows Cantrell to change his/her designated physician once without having to show cause, KRS 342.010(1) which entitles Cantrell to reasonable and necessary medical treatment, and KRS 342.020(4)(e) which entitles Cantrell to obtain medical services from providers outside the managed health care

system, at the employer's expense, when treatment is unavailable within the managed health care system. The Board believes the highly unusual circumstances seen in this case justify a reasonable interpretation of the statutes permitting Cantrell to choose his own physician. Dr. Parker's unreasonable stance regarding Vivian attending her husband's appointments substantially impairs Cantrell's ability to receive reasonably and necessary medical treatment, pursuant to KRS 342.020(1). Additionally, Dr. Parker's unreasonable stance essentially makes treatment through the managed health care system unavailable to Cantrell, thus implicating KRS 342.020(4)(e). As the ALJ has determined, Cantrell does not need to exhaust KEMI's list of providers within the managed health care system. At some point, enough is enough, and the ALJ has determined Cantrell's efforts are enough. This determination will remain undisturbed.

In addition, Apex asserts the ALJ "has failed to support his decision with findings of fact and conclusions of law addressing the proper regulatory standard, 803 KAR 25:110, Section 10(5)(b)." We disagree. The ALJ determined KEMI's stance in this dispute is indeed "unreasonable." 803 KAR 25:110, Section 10(5)(b). This is a factual determination supported by substantial evidence

in the form of the above-cited testimony provided by Cantrell and Vivian at the final hearing and the unusual facts this case presents. The ALJ adequately set forth his rationale in both the June 4, 2012, opinion, award, and order and the July 24, 2012, order denying Apex's petition for reconsideration. The language of both orders has been set forth herein. The ALJ summarized his position in the July 24, 2012, order ruling on the petition for reconsideration by stating as follows: "To require a solution which results in Mr. Cantrell having to treat with a different physician than his wife, considering Mr. Cantrell's cognitive impairments, is unreasonable in the opinion of the ALJ." (emphasis added). We believe this conclusion is amply supported by the record. To require the ALJ to make factual or legal findings beyond what has been stated would not only be an exercise in redundancy but is not required by the law. See Big Sandy Community Action Program v. Chaffins, 502 S.W.2d 526 (Ky. 1973); Shields v. Pittsburgh & Midway Coal Mining Co., 634 S.W.2d 440 (Ky. App. 1982).

Accordingly, the June 4, 2012, opinion, award, and order and the July 24, 2012, order denying Apex's petition for reconsideration are **AFFIRMED**.

ALL CONCUR.

**COUNSEL FOR PETITIONER:**

HON WHITNEY L LUCAS  
151 N EAGLE CREEK DR STE 310  
LEXINGTON KY 40509

**RESPONDENT:**

DR RONALD MANN  
P O BOX 2667  
PIKEVILLE KY 41502

**COUNSEL FOR RESPONDENT:**

HON MICHAEL LUCAS  
P O BOX 852  
PIKEVILLE KY 41502

**ADMINISTRATIVE LAW JUDGE:**

HON EDWARD D HAYS  
657 CHAMBERLIN AVE  
FRANKFORT KY 40601