Commonwealth of Kentucky
Workers' Compensation Board

OPINION ENTERED: March 27, 2015

CLAIM NO. 200167756

CYNTHIA CAROL TAYLOR PETITIONER

VS. **APPEAL FROM HON. CHRIS DAVIS, ADMINISTRATIVE LAW JUDGE**

THE TIMBERLAND COMPANY
and HON. CHRIS DAVIS,
ADMINISTRATIVE LAW JUDGE RESPONDENTS

OPINION
VACATING AND REMANDING
* * * * * *

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

STIVERS, Member. Cynthia Carol Taylor ("Taylor") appeals from the September 4, 2014, Opinion and Order of Hon. Chris Davis, Administrative Law Judge ("ALJ") resolving a medical fee dispute in favor of The Timberland Company ("Timberland"). Based on the medical fee dispute and supplemental medical fee dispute filed by Timberland, the ALJ determined Taylor was not entitled to a housekeeper to

clean her house or the narcotic medications prescribed for her.

The Form 110 approved on April 1, 2003, reveals Taylor asserted a claim for a low back injury occurring on October 30, 2001. The Form 110 reflects Dr. Timothy Scott Prince assessed a 5% impairment rating and Taylor settled for a lump sum of $8,354.00 based on a 5% occupational disability.[1] There was no waiver or buy-out of Taylor's past and future medical expenses.

On April 10, 2014, Timberland filed a motion to reopen, Form 112, and motion to join Dr. Robert Hendrickson as a party to the proceedings. In the Form 112 motion to reopen, Timberland asserted the medical fee dispute related to home assistance recommended by Dr. Hendrickson. Attached to the motion to reopen is a March 21, 2014, letter from Dr. Hendrickson in which he stated he had treated Taylor for chronic back pain for many years due to a workers' compensation injury. Dr. Hendrickson stated Taylor "would greatly benefit from someone coming to clean her house weekly."

The Form 112 states the request for a housekeeper once a week was contested, and there was no evidence

[1] Attached to the Form 110 is the Form 107 prepared and signed by Dr. Prince on December 2, 2002.

establishing Taylor's condition was sufficient to warrant assistance with household chores. It indicated an independent medical evaluation ("IME") was scheduled with Dr. Gregory Snider on April 16, 2014, and upon receipt, the evaluation would be filed in evidence in support of the Form 112.

On April 14, 2014, Taylor filed a response to the motion to reopen stating she would like to fight for the proposed housekeeping assistance recommended by her physician. She requested the dispute be referred to the ALJ for further adjudication.

On May 2, 2014, Timberland filed the April 16, 2014, IME report of Dr. Snider.

On May 19, 2014, Timberland filed another Form 112 and a motion to join Kentucky Pain Care Services as a party.[2] The motion to join Kentucky Pain Care and the Form 112 state this medical fee dispute pertained to the medical charges, treatment, and/or recommendations of Kentucky Pain Care. The Form 112 asserts Taylor was under the care of Kentucky Pain Care and is being prescribed narcotic pain medication including Percocet, Oxycodone, Flexeril,

[2] Documents introduced reflect the correct name is Physician's Services, P.S.C. d/b/a Kentucky Pain Care. Thus, we will refer to it as Kentucky Pain Care.

Neurontin, and Lidoderm patches. Timberland noted Dr. Snider performed an IME and recommended Taylor be weaned from narcotics and opined muscle relaxers were not indicated. He also recommended Taylor take anti-inflammatories, perform home exercises, cease smoking, and lose weight in order to improve her overall health.

Timberland also relied upon and attached the report of Dr. Luis Vascello, generated as a result of his evaluation on November 7, 2013. Dr. Vascello felt Taylor had developed opioid induced hyperalgesia due to a long history of high dosage narcotic pain medication. Timberland stated it was contesting the proposed medical treatment as well as future requests for the same treatment by Kentucky Pain Care and any other medical provider.

Attached to Timberland's motion to join Kentucky Pain Care are the Form 110, Form 107 completed by Dr. Prince, and various medical records from Kentucky Pain Care and the reports of Drs. Snider and Vascello.

On May 27, 2014, Taylor filed a response to the motion to join Kentucky Pain Care and the medical fee dispute concerning the narcotic medication stating she wanted to fight for the treatment recommended by her treating doctors. Accordingly, she requested the medical

fee disputes be consolidated. She had no objection to joining Kentucky Pain Care as a party.

On May 28, 2014, the ALJ entered an order sustaining the motion to reopen to assert a medical fee dispute regarding the compensability of the housekeeper recommended by Dr. Hendrickson. Noting Timberland had supported its motion with the report of Dr. Snider, the ALJ found it had made a *prima facie* showing for reopening. Accordingly, the ALJ joined Dr. Hendrickson as a party. The ALJ set a telephonic conference and indicated a scheduling order would be subsequently entered.

Timberland introduced Taylor's July 16, 2014, deposition. Taylor testified the work accident resulted in a chronic low back sprain/strain. As a result, she has burning in the middle of her lower back which radiates down the right leg. The medication she currently takes provides temporary relief. Without the medication, she estimated her pain on a scale of one to ten is six. Taking the medication reduced the pain to three or four. The pain in her leg without the medication was four; with the medication it would be reduced to two. Taylor has no other symptoms related to the work injury.[3]

[3] Taylor testified regarding other physical problems unrelated to the work injury for which she takes medication.

Taylor estimated she had been treated monthly by Kentucky Pain Care for approximately five months, treating primarily with Dr. David Ratliff. Dr. Hendrickson is her primary care physician whom she sees every three months. Taylor acknowledged she had seen Dr. Steven Kiefer upon referral from Dr. Hendrickson. She explained her regular family physician had been Dr. Rutledge until he closed his practice in 2013. As a result, she went to see Dr. Vascello on a referral from Dr. Keifer. Taylor indicated she saw Dr. Vascello on one occasion.

As treatment for her low back symptoms, Dr. Ratliff prescribes the following: Oxycodone 11 mg, to be taken four times daily; Flexeril 10 mg, a muscle relaxer, to be taken three times daily; and Neurontin 300 mg, to be taken three times daily, for back and leg pain. Taylor also uses a Lidoderm patch which helps cut down on her back pain. She uses a TENS unit all day for back symptoms approximately three to four times a week. Taylor does not use a back brace.

Taylor is able to bath and dress herself. She spends extended time vacuuming, cooking, and dusting. Someone else mops for her. Bending, stooping, and squatting while cleaning poses the most problems. She is unable to clean windows and has problems cleaning her

screen door. She pays someone to mow the lawn. Driving for a short period does not bother her. Taylor estimates she can stand approximately ten to twelve minutes without her back tightening and she is able to sit for approximately an hour. She lifts as little as possible.

Taylor has no hobbies or recreational activities. She performs daily stretches and leg lifts to help her back. Although Dr. Hendrickson recommended someone help her clean once a week, Taylor was willing to have someone help clean the house every two weeks. She is financially unable to hire anyone to assist her. The primary tasks to be performed are sweeping the floors in the kitchen, foyer, and bathroom, vacuuming the entire house, dusting, and cleaning the windows approximately one to two times a year.

Taylor is five foot three and estimated she currently weighs 188 pounds. She believes she has lost seven or eight pounds in the last six months. The primary medications she takes for her low back symptoms are Oxycodone, Flexeril, and Neurontin which she takes on a daily basis. The dosage of her medications has been decreased since she started treatment with Kentucky Pain Care. Injections and rhizotomies have been administered by Kentucky Pain Care, neither of which provided lasting relief.

The Benefit Review Conference ("BRC") Order of July 25, 2014, identified the only contested issue as "the reasonableness and necessity, and work-relatedness of a housekeeper." On August 5, 2014, Timberland filed a motion to amend the BRC Order to include the medical reasonableness and necessity and/or work-relatedness of Taylor's current prescription medication as an issue. Without objection, by order dated August 19, 2014, the ALJ sustained Timberland's motion and ordered the "medical reasonableness and necessity, and/or work-relatedness of [Taylor's] current prescription medication regimen" was added as a contested issue. The BRC Order reflects the parties waived a hearing and briefs would be filed on or before August 21, 2014. Significantly, no order was entered joining Kentucky Pain Care as a party to the medical fee dispute.

In the September 4, 2014, Opinion and Order, after summarizing Taylor's testimony, Dr. Snider's report, and various other medical records, the ALJ entered the following findings of facts and conclusions of law:

> 5. The issue preserved for adjudication is the reasonableness and necessity and work-relatedness of a housekeeper and a prescription medication regimen.

As fact finder, the ALJ has the authority to determine the quality, character and substance of the evidence. *Square D Company v. Tipton*, 862 S.W.2d 308 (Ky. 1993). Similarly, the ALJ has the sole authority to judge the weight and inferences to be drawn from the evidence. *Luttrell v. Cardinal Aluminum Co.*, 909 S.W.2d 334 (Ky. App. 1995). In weighing the evidence the ALJ must consider the totality of the evidence. *Paramount Foods Inc., v. Burkhardt*, 695 S.W. 2d 418 (Ky., 1985).

I believe and find that Taylor has residual work-related low back pain. I also find, based on the opinions of Dr. Vascello and Dr. Snider that the Respondent has opioid induced hyperalgesia and needs to be weaned from any and all narcotics.

The Respondents have thirty days in which to submit a reasonable weaning plan. If no plan is submitted or Taylor refuses to follow it then any and all narcotics are non-compensable.

The physicians addressed the narcotics but did not address any other medicines and thus there is no jurisdiction to decide any other medications.

I can find no basis or justification to find any housekeeper compensable. Taylor's testimony on this subject is not persuasive.

The ALJ ordered as follows:

1. This medical fee dispute is resolved in favor of Movant as to the housekeeper and the narcotics within the above set for weaning plan requirements and in favor of the Respondents as to all other medications.

Taylor filed a petition for reconsideration asserting Timberland had the burden to prove the challenged service is unreasonable or unnecessary. She contended unreasonable treatment has been defined as unproductive or outside the type of treatment generally accepted by the medical profession. Taylor asserted there was no testimony from any doctor that met the criteria set forth in Square D Company v. Tipton, 862 S.W.2d 308 (Ky. 1993). She contended the evidence consisted of nothing more than differences in opinion regarding her treatment. Taylor asserted as follows:

> The ALJ appears to have weighed the different opinions vs determining the Defendant has met its threshold for proving the recommended treatment was unproductive or outside the type of treatment generally accepted by the medical profession. No such evidence exists in this case and as such, under the proper legal standard a decision in favor of the Plaintiff is compelled.

Taylor requested the ALJ to reconsider the opinion and order regarding the housekeeping recommended by Dr. Hendrickson and reverse the decision requiring her to be weaned from any and all narcotics.

In an order dated October 7, 2014, the ALJ stated Taylor's petition for reconsideration was an impermissible

attempt to reargue the substantive merits of the claim, and summarily overruled her petition for reconsideration.

On appeal, Taylor asserts the ALJ failed to properly conduct an analysis as required by Square D, supra, as there was no determination whether the treating doctor's medication plan was unreasonable or unnecessary. Rather, the ALJ determined the recommendations from Drs. Snider and Vascello were more persuasive. Taylor contends that while those medical opinions may be persuasive, a determination whether the challenged services are unreasonable and unnecessary is required. She argues a post-award medical fee dispute requires an analysis of whether the challenged treatment has been shown to be unproductive or outside the type of treatment generally accepted by the medical profession. Taylor submits under the proper analysis the evidence compels a finding in her favor.

Taylor argues regardless of Dr. Snider's statement he saw no objective abnormalities, the issue is not whether she is incapable of performing her own housekeeping but whether having housekeeping assistance will ease her symptoms. Taylor asserts this was not addressed by Dr. Snider. Taylor notes Dr. Hendrickson believes she will "greatly benefit" from someone cleaning

her house weekly. She argues there is no evidence to support a finding the proposed housekeeping is unreasonable or unnecessary. Therefore, the recommendation of once a week housekeeping assistance should be awarded.

Taylor contends the same argument applies to the challenged prescription medications. She notes although Dr. Snider would prescribe different medications, his opinion is "nothing more than a difference in approach." She asserts Dr. Snider did not criticize the current medications using any of the requisite Square D, supra, arguments. Further, Dr. Snider did not accuse the treating physician of providing treatment that is unproductive, outside the type of treatment generally accepted by the medical profession, dangerous, or controversial. Taylor asserts the opinions of Dr. Vascello also fall short of the Square D, supra, criteria as he believes Taylor should undergo a number of procedures instead of continuing pain medication. Thus, there is a difference in opinion as to the best treatment. She asserts the doctors have laid out their recommendations and while these recommendations are different from the treating physician, there is no basis for a finding the treating recommendations are unreasonable and unnecessary. Taylor requests the ALJ's decision be

reversed and remanded with instructions to enter an order finding in her favor on all issues.

Because Kentucky Pain Care was never joined as a party to the medical fee dispute, we vacate the ALJ's decision and remand for entry of an order joining the Kentucky Pain Care. Clearly, the regulations require Kentucky Pain Care be joined as a party in the medical fee dispute. 803 KAR 25:012 Section 1(6)(b) pertaining to post-award medical disputes requires as follows:

> (6) Following resolution of a workers' compensation claim by final order, a motion to reopen pursuant to 803 KAR 25:010, Section 4(6), shall be filed in addition to the Form 112.
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> . . .
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> (b) The motion to reopen and Form 112 shall be served on the parties, upon the employee, even if represented by counsel, and upon the medical providers whose services or charges are at issue. If appropriate, the pleadings shall also be accompanied by a motion to join the medical provider as a party.

Therefore, it was incumbent upon Timberland and the ALJ to ensure Kentucky Pain Care was joined as a party prior to ruling on the medical fee dispute regarding the treatment Taylor was receiving from Kentucky Pain Care. Thus, the ALJ had no jurisdiction to rule upon the medical fee dispute regarding the narcotic medications prescribed

by Kentucky Pain Care. We note the July 25, 2014, BRC Order lists Kentucky Pain Care as a party. However, there was no order entered joining Kentucky Pain Care as a party. In a separate order dated June 23, 2014, sustaining Timberland's motion to remove certain documents from the original file, the ALJ hand wrote the motion to join needs a proposed order. A subsequent order was not entered. Timberland successfully amended the BRC Order to include the reasonableness, necessity, and work-relatedness of Taylor's current prescription medication regimen as an issue. However, the October 19, 2014, Order, sustaining Timberland's motion did not join Kentucky Pain Care as a party to the proceedings as required by regulation. We also vacate for reasons hereinafter set forth.

In a post-award medical fee dispute, the burden of proof and risk of non-persuasion with respect to the reasonableness and necessity of medical treatment falls on the employer. National Pizza Company v. Curry, 802 S.W.2d 949 (Ky. App. 1991). However, the burden remains with the claimant concerning questions of work-relatedness or causation of the condition. Id.; *see also* Addington Resources, Inc. v. Perkins, 947 S.W.2d 421 (Ky. App. 1997).

We are not unmindful of the Supreme Court's holding in C & T of Hazard v. Stollings, 2012-SC-000834-WC,

rendered October 24, 2013, Designated Not To Be Published, in which it stated:

> The burden is placed on the party moving to reopen because it is that party who is attempting to overturn a final award of workers' compensation and thus must present facts and reasons to support that party's position. It is not the responsibility of the party who is defending the original award to make the case for the party attacking it. Instead, the party who is defending the original award must only present evidence to rebut the other party's arguments.
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> . . .
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> Thus, C & T had the burden of proof to show that Stolling's treatment was unreasonable and not work-related.

Slip Op. at 2.

Here, in resolving the medical fee dispute regarding the narcotics in question, the ALJ found Taylor had residual work-related low back pain. Based upon the opinions of Drs. Vascello and Snider, the ALJ stated he found Taylor had opioid induced hyperalgesia and needed to be weaned from any and all narcotics. However, the ALJ did not state his decision on this issue was based on a determination the narcotic medications were not reasonable and necessary treatment of the work injury. Likewise, he failed to state his determination was based on the fact the narcotic medications were not treatment of the work injury.

These findings are necessary in order to apprise the parties and the Board of the basis for the ALJ's decision relieving Timberland of the responsibility to pay for narcotic medications after a weaning period. Concerning the narcotic medications, the October 19, 2014, Order identified the question as being the medical reasonableness and necessity and/or work-relatedness of Taylor's current prescription medication regimen. The ALJ made no finding regarding the reasonableness and necessity of the narcotic medications and/or whether the need for the narcotic medication is related to the work injury. Thus, the ALJ has not resolved the issue to be decided regarding the narcotic medications. The fact Taylor has opioid induced hyperalgesia does not advise this Board or the parties whether the ALJ concluded the medication was not reasonable and necessary treatment or the narcotic medications were not treatment of the work injury.

The ALJ must provide a sufficient basis to support his determination. Cornett v. Corbin Materials, Inc., 807 S.w.2d 56 (Ky. 1991). Parties are entitled to findings sufficient to inform them of the basis for the ALJ's decision to allow for meaningful review. Kentland Elkhorn Coal Corp. v. Yates, 743 S.W.2d 47 (Ky. App. 1988); Shields v. Pittsburgh and Midway Coal Mining Co., 634

S.W.2d 440 (Ky. App. 1982). This Board is cognizant of the fact an ALJ is not required to engage in a detailed discussion of the facts or set forth the minute details of his reasoning in reaching a particular result. The only requirement is the decision must adequately set forth the basic facts upon which the ultimate conclusion was drawn so the parties are reasonably apprised of the basis of the decision. Big Sandy Community Action Program v. Chafins, 502 S.W.2d 526 (Ky. 1973).

Here, the ALJ did not resolve the question of whether the narcotic medications were reasonable and necessary treatment and/or whether they constituted treatment of a work-related injury. Thus, the matter must be remanded to the ALJ for additional findings on this issue.

Concerning the issue of entitlement to weekly housekeeping services, the ALJ failed to recite the evidence upon which he relied in denying the housekeeping services. As Timberland had the burden of proof, the mere statement Taylor's testimony on this subject is not persuasive does not provide an adequate basis for the ALJ's ruling. The ALJ must determine whether the need for housekeeping services is reasonable and necessary treatment and/or whether the need for housekeeping services is work-

related. The ALJ must set out the evidence he relied upon in support of a decision on this issue.

Thus, we remand to the ALJ for additional findings on both issues. We decline to remand for entry of a ruling in favor of Taylor. On remand, the ALJ must identify the specific evidence upon which he relied in determining whether the need for a housekeeper and the narcotics in question are reasonable and necessary treatment and/or treatment of the work injury.

Accordingly, the September 4, 2014, Opinion and Order and the October 7, 2014, Order ruling on the petition for reconsideration are **VACATED**. This claim is **REMANDED** to the ALJ for entry of an order joining Kentucky Pain Center as a party to the action. The ALJ shall then allow Kentucky Pain Center time as permitted by the regulations in which to present proof regarding the contested issue pertaining to its treatment of Taylor. Thereafter, the ALJ shall enter an opinion and order containing sufficient findings of fact on each issue so as to advise the Board and the parties of the basis for his decision regarding both contested issues.

ALL CONCUR.

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