Commonwealth of Kentucky
Workers' Compensation Board

OPINION ENTERED: July 31, 2015

CLAIM NO. 200081784

TRIPLE M BUSINESS PRODUCTS PETITIONER

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

JEANINE POOLE
and HON. CHRIS DAVIS,
ADMINISTRATIVE LAW JUDGE RESPONDENTS

OPINION
AFFIRMING
* * * * * *

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

STIVERS, Member. Triple M Business Products ("Triple M") appeals from the February 5, 2015, Opinion and Award and the March 23, 2015, Order on Reconsideration denying Triple M's petition for reconsideration of Hon. Chris Davis, Administrative Law Judge ("ALJ"). In the February 5, 2015, Opinion and Award, the ALJ resolved the post-award medical fee dispute determining the referral of Jeanine Poole

(“Poole”) to pain management by Dr. Michael Grefer is compensable.

The Form 101 alleges Poole sustained injuries in a work-related motor vehicle accident to her right leg, right hip, right knee, right foot and toes, left hip, low back, shoulders and neck on February 16, 1999.

In an Opinion and Order dated September 19, 2006, Hon. James L. Kerr, Administrative Law Judge ("ALJ Kerr") awarded Poole temporary total disability ("TTD") benefits, permanent partial disability ("PPD") benefits, and medical benefits for Poole's "right femur fracture and low back including piriformis syndrome."

On May 29, 2014, Poole, *pro se*, filed a Motion to Reopen and a Form 112 Medical Fee Dispute. The Form 112, describes the nature of the dispute as follows:

> Per Administrative Law Judge James Kerr (09-19-2006 Opinion and Order page 7, #2) movant was awarded permanent partial disability as related to right femur and low back, including piriformis syndrome.
>
> IME on 12-18-2013 requested by the obligor and performed by Dr. Grefer, recommended additional testing and pain management evaluation along with relating current chronic pain of mild degenerative disease and degenerative disc disease in the lumbar spine with mild discogenic disease to the work injury.

Obligor obtained additional report from Dr. Olash dated 02-21-2014 who never saw the patient and has taken liberty with incorrect and incomplete medical information. It is this report that obligor based the decision to deny payment and authorization of treatment. Dr. Olash, an internal medicine doctor, states that Dr. Carothers advised movant she 'does not need to be scheduled for follow up.' in April 2006 though return is listed as prn, or 'as needed'. Again Dr. Olash tried to assert Dr. Carothers 'had nothing to offer the patient.' in September 2007 however, Dr. Carothers proceeded to write prescriptions, refer a chiropractor and list return in six months, which is the common return interval.

Dr. Olash fails to appreciate the sciatic decompression surgery in July 2005, physical therapy and chiropractic treatment in 2005, 2008 and 2010 in addition to the epidurals, cortizone shots and prescription medications also under Dr. Carothers treatment in 2003 and 2004. Dr. Olash goes on to say he has insufficient documentation to agree with or tie the piriformis diagnosis, pain management eval. testing and low back symptoms to the work injury yet appears remiss in having a medical history of the movant's.

Motorists Mutual generated the recommendations of Dr. Grefer by requiring the IME appointment and now are [sic] objecting [sic] them and more through a second report unrecognizable as having derived from movant's medical history or work related injuries. Among the bills refused payment is one from 02-20-2014, a regular six month interval follow up, a day before Dr. Olash's report and supposed utilization

> review is dated. Prescriptions, the request for a for [sic] an [sic] MRI, the appointments of 02-20-2014 and 04-24-2014 were denied approval and payment. Movant requests these be paid and approved by obligor and payment for future treatment for injuries of fractured femur, piriformis syndrome and chronic low lack symptoms be restored and relatedness of Dr. Grefer's diagnosis be asserted.

Attached to Poole's Motion to Reopen is the January 6, 2014, Physician Review Report by Dr. Grefer in which he opines, in part, as follows:

> Ms. Poole's diagnosis is healed femur fracture, lumbosacral strain and sprain, and piriformis syndrome with resultant chronic pain syndrome reflected by probably some neural involvement of the right lower extremity associated with the fracture and subsequent treatment.
>
> It looks like the patient has a healed femoral fracture that is in anatomic alignment. There does appear to be evidence of chronic nerve dysfunction of the right lower extremity. This condition has turned into a chronic pain situation. Current medications are NSAIDs, Gabapentin, muscle relaxers, Vicodin, Amitriptyline, Voltaren gel, and chronic pain medications. While narcotics on a long term basis are certainly not desirable, they are sometimes necessary to treat these conditions. I would recommend evaluation and treatment by a certified pain management specialist. I would suggest a repeat EMG and NCV to determine the possibility of recurrent and persistent neurologic involvement.

I would also recommend pain management evaluation and treatment by a certified pain management specialist would be my recommendation. I do not see any evidence of symptom exaggeration. I do think her problems have turned into a chronic pain issue from a very satisfactory result from her femur fracture.

From an orthopaedic standpoint, I think that Sulindac and Skelaxin are reasonable medications to treat the lumbar strain and sprain and the other medications, may or may not be appropriate from a chronic pain standpoint. I think the muscle relaxer and the nonsteroidal anti-inflammatory medications are reasonable, but one would have to contact a chronic pain management specialist to determine if the Gabapentin, Amitriptyline, and the Vicodin are appropriate. A narcotic medication is not necessary from an orthopaedic standpoint to treat the orthopaedic condition, but certainly may be appropriate from a chronic pain standpoint. Again, I think that evaluation by a pain management specialist would help to determine appropriateness of that treatment. I do believe that the muscle relaxer on an intermittent basis is reasonable. I do believe that the muscle relaxer on an intermittent basis is reasonable. Amitriptyline is a medication that sometimes pain management physicians use in appropriate conditions, and I would again defer to the evaluation of a pain management specialist for the appropriateness of this medication.

At this point in time, from an orthopaedic standpoint, she has had quite good care and appropriate treatment. I do believe this has turned in to a chronic pain issue. Future

> treatment would be reflected from a chronic pain standpoint issue rather than solely from an orthopaedic condition.

Also attached to the Poole's Motion to Reopen is the April 24, 2014, letter of Dr. Thomas Carothers, with Tristate Orthopaedic Treatment Center, which states as follows:

> As a result of surgery necessary to treat a right femur fracture sustained in a work accident in 1999, the patient developed unremitting right lower extremity pain with the persistence of symptoms up to the present. Despite extensive workup for lumbar spine pathology, which was negative, and surgical releases for a possible piriformis syndrome, this patient has continued to have disabling and unremitting pain. Due to the persistent symptoms, medical management with medication is appropriate and medically necessary. At the present time this patient is being managed with Ultram ER, Cyclobenzaprine, Hydrocodone, and Gabapentin.

The December 24, 2014, "Benefit Review Conference Order in Medical Dispute" lists the following contested issue: "The issue(s) to be determined are the reasonableness and necessity and work-relatedness of a pain management referral."

In the February 5, 2015, Opinion and Award, the ALJ provided the following Findings of Fact and Conclusions of Law:

> Having reviewed the evidence as a whole, with particular attention to Dr. Olash's opinion I am nonetheless convinced by the evidence as a whole that Poole continues to have significant work-related pain. This conclusion is supported by the general pattern of medical records and the opinions of Dr. Grefer.
>
> I can see no harm, in this circumstance, in a referral to pain management. I know that sometimes an introduction to "pain management" is a slippery slope. But we should not paint all situations with the same brush and Ms. Poole must be given the benefit of the doubt and the opportunity to explore appropriate treatment.
>
> The referral to pain management is compensable and approved. This finding is made with specific reliance on Dr. Grefer.

The ALJ included additional rationale in the March 23, 2015, Order stating as follows:

> This matter is before the Administrative Law Judge on the Movant's Petition for Reconsideration. Dr. Bender on or about September 23, 2014 examined the Respondent-Poole. He conducted an excellent summary of her injury and medical history. He examined her and found subjective pain and limited range of motion by no objective signs. Dr. Bender concluded that while the Respondent may require some medications, i.e. anti-inflammatories

> and/or ibuprofen, she did not require any other medical treatment. He concludes the referral to pain management is not reasonable and necessary. He does not say who will prescribe the pain medications. At this time the record is clear that the physicians at Tri-State Orthopedics and Dr. Grefer feel that further treatment is warranted and the referral to pain management is necessary.

On appeal, Triple M argues the ALJ's finding of reasonableness and work-relatedness is not supported by credible evidence. We disagree and affirm the ALJ's determination of compensability.

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). 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).

Here, the ALJ relied upon the opinions of both Dr. Carothers and Dr. Grefer in determining, as stated in the March 23, 2015, Order on Reconsideration, "further treatment is warranted." Additionally, the ALJ clearly stated in the February 5, 2015, Opinion and Award, he relied upon the opinions of Dr. Grefer in concluding a

referral to pain management is reasonable and necessary. Dr. Grefer's opinions constitute substantial evidence in support of the ALJ’s finding regarding the reasonableness and necessity of a referral to pain management. His opinions also constitute substantial evidence supporting the conclusion a referral to pain management is causally related to the work injury. Even though Dr. Grefer did not utilize the precise "reasonable and necessary" language in expressing his opinions, within his discretion the ALJ could reasonably infer that Dr. Grefer in recommending an evaluation and treatment by a pain management specialist, believed pain management is reasonable and necessary at this point in time to manage Poole’s chronic pain. Dr. Grefer opined in his January 6, 2014, report, "this has turned in to [sic] a chronic pain issue. Future treatment would be reflected from a chronic pain standpoint issue rather than solely from an orthopaedic condition." Consequently, Dr. Grefer recommended a pain management specialist to determine the appropriateness of Poole's current pain medication regimen. Thus, he obviously believed the need for a referral to pain management was due to the effects of the work injury.

Finally, we note Triple M is contesting Dr. Grefer’s opinions, the physician to whom it referred Poole. Consequently, Triple M’s appeal borders on being frivolous.

Accordingly, the February 5, 2015, Opinion and Award and the March 23, 2015, Order on Reconsideration denying Triple M's petition for reconsideration are **AFFIRMED**.

ALL CONCUR.

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