Commonwealth of Kentucky
Workers' Compensation Board

OPINION ENTERED: February 19, 2021

CLAIM NO. 201467500

FAMILY DOLLAR — PETITIONER

VS. **APPEAL FROM HON. ROLAND CASE, ADMINISTRATIVE LAW JUDGE**

LISA GOOSLIN;
DR MANSOOR MAHMOOD; AND
HON ROLAND CASE,
ADMINISTRATIVE LAW JUDGE — RESPONDENTS

OPINION
AFFIRMING

* * * * * *

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

BORDERS, Member. Family Dollar appeals from the November 6, 2020 Medical Dispute Opinion & Order and the November 30, 2020 Order on Petition for Reconsideration, rendered by Hon. R. Roland Case, Administrative Law Judge ("ALJ"). The ALJ determined Diclofenac Gel is not reasonable and necessary treatment. The ALJ also determined only an annual drug screen and quarterly office

visits are reasonable. Finally, the ALJ determined the medications Hydrocodone and Tizanidine are compensable.

On appeal, Family Dollar argues the ALJ's ruling regarding Hydrocodone and Tizanidine is not in conformity with the provisions of the Workers' Compensation Act and is erroneous based upon the probative and material evidence contained in the record. For reasons set forth herein, we affirm.

Lisa Gooslin ("Gooslin") filed a Form 101 on September 12, 2016 alleging August 3, 2014, injuries to her neck, back, and right shoulder, complicated by depression and anxiety, during the course and scope of her employment with Family Dollar. Hon. Jeanie Owen Miller, Administrative Law Judge rendered an Opinion on August 21, 2017, finding the shoulder condition non-compensable but awarding permanent total disability benefits and medical benefits for treatment of her work-related back and psychological injuries.

Family Dollar filed a motion to reopen to assert a medical dispute on June 1, 2020 contesting the reasonableness, necessity, and work-relatedness of monthly office visits with Dr. Mansoor Mahmood, monthly drug screens, and prescriptions for Hydrocodone, Tizanidine, and Diclofenac Gel.

Gooslin testified at the hearing held September 14, 2020. Since the injury, she has continued to have back spasms and leg numbness. She experienced more problems the more she is on her feet. Gooslin indicated the muscle relaxers helped her "sleep for a while" but "no matter what I take, it just – it eases for a little bit, but then it comes right back." Gooslin testified that Norco eases her pain for an hour or two, and then the pain comes back. Zanaflex keeps her "legs from shaking a

whole lot" and eases the tightness in her back for approximately two hours in addition to helping her sleep. Voltaren gel helps with her pain but not as much as Norco does. She testified that she treats with Dr. Mahmood once a month at which time he checks her knees and writes her prescriptions. Gooslin testified physical therapy and injections do not relieve her symptoms. Gooslin rated her pain at the hearing as an eight on a scale of one to ten. She stated medication lowers her pain to a four for about two hours.

Dr. Gregory T. Snider evaluated Gooslin on July 21, 2020. Dr. Snider diagnosed a thoracolumbar sprain/strain superimposed on relatively modest multilevel degenerative changes and scoliosis. Gooslin reported medication provides only minimal relief. Norco only provided 60-90 minutes of minimal relief and Zanaflex provided slight easing of muscle spasms. Therefore, Dr. Snider concluded Norco and Zanaflex are neither reasonable nor necessary. Dr. Snider opined that monthly office visits and drug screening are not reasonable or necessary given the stability of Gooslin's condition. He indicated she could be seen every six months. After discontinuing Norco, drug screening would not be necessary. Dr. Snider found Celebrex, taken on a scheduled basis, is reasonable. Dr. Snider stated there is no indication for topical anti-inflammatories, noting Gooslin did not endorse this as effective. Thus, it is neither reasonable nor necessary. He stated the primary recommendation for Gooslin's work injury is a twice-daily home exercise and stretching program. Dr. Snider noted Gooslin was in desperate need of significant weight loss.

Dr. Jason M. Valadao performed a utilization review on May 1, 2020. Dr. Valadao found Hydrocodone is not medically necessary and recommended weaning from the medication. Dr. Valadao noted long-term use of opioid medication is not recommended and no drug screens were on file. Dr. Valadao opined the long-term use of opioid medication does not appear to be associated with sustained and significant improvements in function including activities of daily living or reduced pain levels using validated measures.

Dr. Michael Day performed a utilization review on May 7, 2020. Dr. Day found Tizandine and Diclofenac Gel are not medically reasonable or necessary, but Celecoxib is medically reasonable. Dr. Day recommended weaning from Tizandine. He noted complaints of chronic low back pain with radicular symptoms, no spasms and no spasticity. Dr. Day noted the ODG guidelines recommend muscle relaxers for a second line option for acute back pain or exacerbations of chronic pain. He noted the ODG guidelines do not recommend the use of topical non-steroidal anti-inflammatory drugs for treatment of low back pain from osteoarthritis, neuropathic pain, or musculoskeletal pain. Dr. Day noted the guidelines recommend oral NSAIDs for short-term treatment of low back pain and neuropathic pain. Therefore, he found Celecoxib was medically necessary and appropriate.

Dr. Rianot Amzat conducted a peer review and found there is no indication in the medical records for the use of Cyclobenzaprine, a muscle relaxer prescribed by Dr. Mahmood, or other muscle relaxers. Dr. Amzat noted muscle relaxants are appropriate for short-term treatment of acute low back pain, or acute exacerbations in patients with chronic low back pain. There is no evidence that

either of those situations is present in Gooslin's case. Dr. Amzat opined that use of muscle relaxers in Gooslin's situation is not medically necessary.

In an undated letter, Dr. Mahmood stated he has treated Gooslin since August 6, 2014. He opined Norco, Zanaflex and Voltaren Gel were "necessary for her monthly medication management."

The ALJ's findings relevant to this appeal are set forth, *verbatim,* as follows:

> KRS 342.020 provides that it is the responsibility of the Defendant-employer to pay for the cure and relief from the effects of an injury or occupational disease, all medical, surgical, hospital treatment, including nursing, medical and surgical supplies and appliances as may be reasonably be required at the time of the injury and thereafter during disability. However, treatment which is shown to be unproductive or outside the type of treatment generally accepted by the medical profession is deemed unreasonable and non-compensable. This finding shall be made by the ALJ based upon the facts and circumstances surrounding each case. Square D Company v. Tipton, 862 S.W.2d 308 (Ky. 1993).
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> In a post-award medical fee dispute, the employer has the burden of proving that contested medical treatment is not reasonable or necessary for the cure and relief of a work injury. National Pizza Company v. Curry, 802 S.W.2d 949 (Ky. App., 1991). Plaintiff retains the burden of proof on the issue of work-relatedness. Addington Resources, Inc. v. Perkins, 947 S.W.2d 421 (Ky. App. 1997). In a medical dispute reopening, the claimant is obligated to present medical evidence to overcome expert medical testimony on issues of causation which are not apparent to a layperson. Kingery v. Sumitomo Electrical Wiring, 481 S.W.3d 492 (Ky. 2015).
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> Dr. Mahmood has treated the Plaintiff since August 6, 2014 and opined Norco, Zanaflex and Voltaren gel were reasonable and necessary. Dr. Snider noted minimal relief with use of medication. He noted

the Plaintiff received only 60-90 minutes of minimal relief with Norco and slight easing of muscle spasms with the use of Zanaflex. Dr. Snider opined monthly office visits and drug screens are not reasonable or necessary given the stability of the Plaintiff's condition. Dr. Snider opined the Plaintiff could be seen every six months and noted once Norco was discontinued, drug screening would not be necessary. Dr. Snider found Celebrex reasonable on a scheduled basis with the primary recommendation for injury related treatment being a consistently performed twice a day home exercise and stretching program. Dr. Day found Tizandine and Diclofenac gel not medically reasonable or necessary while finding Celecoxib to be medically reasonable. He opined the guidelines do not recommend the use of topical non-steroidal anti-inflammatory drugs for treatment of low back pain from osteoarthritis, neuropathic pain or musculoskeletal pain. Dr. Valadao opined the long-term use of opioid medication does not appear to be associated with sustained and significant improvements in function including activities of daily living or reduced pain levels using validated measures. Therefore, he opined Hydrocodone was not reasonable or necessary.

The Plaintiff, in her testimony, indicated the Diclofenac gel does not relieve her symptoms as well as the Hydrocodone. She further testified that Hydrocodone only eased her symptoms for approximately and hour or two and that the muscle relaxer helped her sleep.

The Defendant-employer contests monthly drug screens. Pursuant to KRS 342.020(13)(c), the employer is only liable for one urine drug screen per year if the patient is considered to be low risk, two if the patient is considered to moderate risk, and four if the patient is considered to be high risk. There is nothing in the record to indicate the Plaintiff is high risk or moderate risk and, hence, the employer is only liable for one urine drug screen per year.

The employer also contests monthly office visits. The ALJ finds there is no justification for monthly office visits. The ALJ relies on the opinion of Dr. Snider and finds only quarterly office visits to be to be reasonable.

> The ALJ believes quarterly office visits are needed in order to prescribe the medications on a 90-day basis.
>
> After a careful review of the evidence, the ALJ is persuaded the prescriptions for Hydrocodone and Tizanidine are reasonable, necessary and related to the injury of August 3, 2014. The ALJ found Ms. Gooslin to be a credible witness and notes that Dr. Mahmood is the Plaintiff's treating physician and is in the best position to decide her appropriate treatment. The Plaintiff indicates she receives relief from the medication. The ALJ finds Hydrocodone and Tizanidine to be compensable.
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> The ALJ finds the Diclofenac gel to be not reasonable or necessary based on the opinion of Dr. Michael Day. Dr. Day indicated the prescription for Diclofenac gel was outside the guidelines. Additionally, Plaintiff indicated the Diclofenac gel gave her little relief. The ALJ is persuaded the Diclofenac gel is not reasonable, necessary or related to the injury of August 3, 2014 and not compensable.

Family Dollar filed a Petition for Reconsideration arguing the ALJ incorrectly summarized the evidence from Dr. Mahmood and erred in relying on that evidence.

The ALJ provided the following additional findings on reconsideration:

> The ALJ has again reviewed the report of the Plaintiff's treating physician, Dr. Mahmood. Certainly, the report could have been more detailed. The bare bones report however does indicate, "the following prescriptions are necessary for her monthly medication management". Hence, Dr. Mahmood does indicate that the Norco and Zanaflex (Tizanidine) are necessary. While he does not use the magical word of reasonable, the ALJ believes that it is reasonable to infer that a physician would not prescribe a medication that was not reasonable. The ALJ recognizes Dr. Mahmood does not specifically reference the work-related injury. However, the date of injury is August 3, 2014 and he indicates the Plaintiff

has been under his care since August 6, 2014. Certainly, there would be a strong inference that he began treating the Plaintiff for the work-related injury and continues to do so. This is bolstered by the testimony of the Plaintiff at the hearing to-wit:

Q. And have you treated with Dr. Mahmood since 2014?

A. Yes.

Q. And he has always pretty much prescribed you medications, correct, including Norco?

A. Right.

When Dr. Mahmood's report is considered in conjunction with the Plaintiff's testimony, the ALJ is persuaded the treatment is reasonable and necessary and related to the injury.

The employer next argues the Plaintiff is also treating for her knees. Although the Plaintiff does indicate that on Page 12 of the hearing transcript, on cross-examination the Plaintiff testified to-wit:

Q. All right. Do you see Dr. Mahmood for any other medical issues - -

A. No.

Q. -- other than your back?

A. No.

Q. Do you have another - - do you have a different primary care doctor?

A. Yes.

Q. Do you have any other painful conditions other than your low back?

A. My low back and legs.

> The ALJ notes that this testimony is on cross-examination and the employer did not question this testimony during the hearing or ask her about treating for her knees. The ALJ is persuaded that the Plaintiff is only treating for low back and legs as clearly testified on cross-examination. The ALJ notes in passing that Norco and Zanaflex (Tizanidine) are both Y drugs under the drug formulary and do not require pre-authorization. The employer can contest Y drugs, but Y drugs do not require "articulated sound medical reasoning" required in 803 KAR 25:270 Section 3(3). After careful consideration of the Petition and record herein, the Petition for Reconsideration is overruled.

On appeal, Family Dollar argues the evidence compels a finding in its favor regarding prescriptions for Hydrocodone and muscle relaxers. It contends there is no medical opinion establishing the disputed prescriptions are reasonable for treatment of the work injury. Family Dollar asserts Gooslin's testimony and her statement to Dr. Snider establish the medication only affords her 60 to 90 minutes of "minimal relief." Further, Gooslin admitted her pain medication does not really increase her function. Gooslin's testimony confirms Dr. Snider and Dr. Valadao's observation that Dr. Mahmood's records indicate she does not realize any sustained and significant improvements in function, nor does her long-term use of opioids reduce pain levels using validated measures. The compelling evidence confirms that continued use of Hydrocodone is not reasonable or necessary given the well-documented adverse effects of opioids. Likewise, Family Dollar contends there is no medical evidence that the disputed muscle relaxers are reasonable and necessary for the 2014 work injury.

Drs. Day, Snider, and Amzat all provided opinions that muscle relaxers are not reasonable or necessary, based upon Gooslin's physical exam

findings and medical records. Dr. Day pointed out that Gooslin's records show no findings of spasms that would support use of muscle relaxers. Dr. Snider explained that muscle spasms are uncommon in chronic spine pain. Dr. Amzat likewise found no indication in the medical records for the use of muscle relaxers, pointing out that she does not have any of the symptoms that fall into prescribing guidelines. Further, according to Dr. Amzat, medical research reflects that muscle relaxers are not recommended for use longer than 2-3 weeks. Finally, Family Dollar contends the ALJ erred in inferring the prescriptions were causally related to the subject work injury. Family Dollar notes Dr. Mahmood made no mention of a work injury in his undated correspondence upon which to base a causal connection.

In a post-award medical fee dispute, the burden of proof and risk of non-persuasion with respect to the reasonableness of medical treatment falls on the employer. National Pizza Company v. Curry, 802 S.W.2d 949 (Ky. App. 1991). Similarly, the employer has the burden of proving any allegation that the treatment in question is not work-related. This was verified by the Kentucky Supreme Court in C & T of Hazard v. Stollings, 2012-SC-000834-WC, rendered October 24, 2013, Designated Not To Be Published. 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 must present facts and reasons to support that party's position. The Supreme Court explained:

> The party responsible for paying post-award medical expenses has the burden of contesting a particular expense by filing a timely motion to reopen and proving it to be non-compensable. *Crawford & Co. v. Wright,* 284 S.W.3d 136, 140 (Ky. 2009) (citing *Mitee Enterprises v. Yates,* 865 S.W.2d 654 (Ky. 1993) (holding that the

> burden of contesting a post-award medical expense in a timely manner and proving that it is non-compensable is on the employer)). As stated in *Larson's Workers' Compensation Law,* § 131.03[3][c], "the burden of proof of showing a change in condition is normally on the party, whether claimant or employer, asserting the change ...." 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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> The Board in finding that Stollings had the burden to prove that the medical expenses were work-related cited to *Addington Resources, Inc. v. Perkins,* 947 S.W.2d 421 (Ky. App. 1997). However, the only reference to the burden of proof in *Perkins* was the following sentence: "Since the fact-finder found in favor of Perkins who had the burden of proof, the standard of review on appeal is whether there was substantial evidence to support such a finding. *Wolf Creek Collieries v. Crum,* 673 S.W.2d 735, 736 (Ky. App. 1984)." We believe that this sentence did not indicate the claimant had the burden to prove that his treatment is work-related on a motion to reopen but instead was a recitation of the well-established standard of review as set forth in *Wolf Creek Collieries.* C & T also presents several unpublished opinions which indicate that the burden of proof is upon the claimant to show the medical expenses were work-related. However, we decline to consider those cases as persuasive. CR 76.28(4)(c). Thus, C & T had the burden of proof to show that Stolling's treatment was unreasonable and not work-related.

Slip Op. at 2.

Thus, Family Dollar had the burden of proof on all contested issues. Since Family Dollar was unsuccessful before the ALJ, the sole issue in this appeal is

whether the evidence compels a different conclusion. Wolf Creek Collieries v. Crum, 673 S.W.2d 735 (Ky. App. 1984).

Compelling evidence is defined as evidence that is so overwhelming no reasonable person could reach the same conclusion as the ALJ. REO Mechanical v. Barnes, 691 S.W.2d 224 (Ky. App. 1985). In other words, an unsuccessful party bearing the burden on appeal must prove that the ALJ's findings are unreasonable and, thus, clearly erroneous in light of the evidence in the record. Special Fund v. Francis, 708 S.W.2d 641 (Ky. 1986).

As fact-finder, the ALJ has the sole 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 to be accorded the evidence and the inferences to be drawn therefrom. Miller v. East Kentucky Beverage/Pepsico, Inc., 951 S.W.2d 329 (Ky. 1997); Luttrell v. Cardinal Aluminum Co., 909 S.W.2d 334 (Ky. App. 1995). The fact-finder may reject any testimony and believe or disbelieve various parts of the evidence, regardless of whether it comes from the same witness or the same adversary parties' total proof. Magic Coal Co. v. Fox, 19 S.W.3d 88 (Ky. 2000); Whittaker v. Rowland, 998 S.W.2d 479 (Ky. 1999); Halls Hardwood Floor Co. v. Stapleton, 16 S.W.3d 327 (Ky. App. 2000).

Dr. Mahmood's opinion constitutes substantial evidence supporting the ALJ's decision. His note reflects he had been treating Gooslin since August 6, 2014. The note also establishes Dr. Mahmood prescribed Norco and Zanaflex as part of his treatment and those medications are necessary. Additionally, Gooslin's

testimony indicates she has consistently treated with Dr. Mahmood for her back injury, and that she treats with her family physician for other medical conditions. She further testified Dr. Mahmood has continuously prescribed pain medication and muscle relaxers. There is nothing in the record to indicate the basis for Dr. Mahmood's treatment changed at any point. Thus, the ALJ could reasonably infer the pain medication and muscle relaxers prescribed by Dr. Mahmood were work-related. Gooslin's testimony establishes the medications provide substantial relief from the effects of her work-related injuries. Although the relief provided lessens after two hours, her testimony is sufficient to establish the contested medication provides some relief from the effects of the work-related low back injury.

The provision "cure and relief" in KRS 342.020 does not require that the care in question cure the condition. In Conley v. Super Services, LLC, 557 S.W.3d 917, 921-922 (Ky. 2018), the Kentucky Court of Appeals held:

> The ALJ determined that the proposed caudal epidural injection was not reasonable and necessary based upon Dr. Lewis's opinion that there was no evidence of improved functioning and no documentation that the injections resulted in any decrease in pain medication for any period. However, KRS 342.020(1) requires neither of these conclusions. "It is clear that KRS 342.020(1) places responsibility on the employer for payment of medical and nursing services that promote **cure and relief** from the effects of a work-related injury.... All that is required is that the services be for **cure and relief** of the effects of injury." *See Bevins Coal Co. v. Ramey*, 947 S.W.2d 55, 56 (Ky. 1997)(Emphasis added in original).
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> Dr. Lewis's UR report indicates that he reviewed Dr. Gutti's April 7, 2017, progress note, which "highlights [that Conley] received greater than 50% relief of pain from the caudal epidural steroid injection in March. [He] reported good relief with the radicular component

> of pain and the residual pains were tolerable on medications." Prior to the injection, Conley had suffered intractable back pain despite his many medications according to Dr. Gutti's office notes, which Conley filed as evidence. We cannot consider or imagine any evidence more compelling that a procedure is reasonable and necessary for the "cure and relief from the effects of an injury" than one which actually affords relief from the devastating misery of intractable pain. We agree with Conley that the ALJ did not use the proper standard in denying the epidural injection, and to that extent, we vacate the Board's opinion.

The above language applies in the case *sub judice.* Dr. Mahmood's statement that the medications are necessary and Gooslin's testimony demonstrate that the medications are reasonable and necessary for the cure and relief from the effects of the injury as it affords substantial relief from multiple symptoms. Similarly, the ALJ could reasonably conclude from Dr. Mahmood's note and Gooslin's testimony that without the medications, Gooslin would be unable to function on a daily basis in a reasonably normal manner. As explained in National Pizza Co. v. Curry, supra, "the words in KRS 342.020(1) 'cure and relief' should be construed as 'cure and/or relief.'" Dr. Mahmood's opinions and Gooslin's testimony establish the medications in question provide substantial relief from the symptoms caused by the work injury.

Family Dollar's arguments essentially are directed to the weight and credibility to be afforded Dr. Mahmood's opinion, which is a matter to be decided exclusively within the ALJ's province as fact-finder. Paramount Foods v. Burkhart, 695 S.W.2d 418 (Ky. 1985). Hence, we find no error in the ALJ's reliance upon Dr. Mahmood's opinions. Because substantial evidence and reasonable inferences drawn therefrom support the ALJ's determination, we affirm.

Accordingly, the November 6, 2020 Medical Dispute Opinion & Order and the November 30, 2020 Order rendered by Hon. R. Roland Case, Administrative Law Judge, are hereby **AFFIRMED**.

ALL CONCUR.

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