

Commonwealth of Kentucky
Workers' Compensation Board

OPINION ENTERED: March 13, 2020

CLAIM NO. 200564223

PARTON BROS. CONTRACTING, INC.

PETITIONER

VS.

APPEAL FROM HON. BRENT E. DYE,
ADMINISTRATIVE LAW JUDGE

WILLIAM MULLINS;
DR. DANIEL LALONDE,
ARH INTERVENTIONAL PAIN MANAGEMENT
AND HEADACHE CENTER; and
HON. BRENT E. DYE,
ADMINISTRATIVE LAW JUDGE

RESPONDENTS

OPINION
AFFIRMING

* * * * *

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

BORDERS, Member. Parton Brothers Contracting, Inc. ("Parton") appeals from the August 21, 2019 Medical Dispute Opinion rendered by Hon. Brent Dye, Administrative Law Judge ("ALJ"). In a Reopening to assert a medical dispute, the ALJ found the contested medication Tizanidine was unreasonable/unnecessary, and found the medications Hydrocodone, Methocarbamol, Clonazepam, and

Gabapentin were reasonable and necessary for William Mullins' ("Mullins") low back and cervical spine conditions and therefore compensable. The ALJ also found the challenged office visits of January 1, 2018, December 12, 2018 and January 17, 2019 were reasonable and necessary for treatment of Mullins' work-related injuries and are therefore compensable. No Petition for Reconsideration was filed.

On appeal, Parton argues the ALJ erred by rejecting the utilization review report it submitted because the utilization physician did not examine Mullins. It also argues the ALJ erred in rejecting the report of Dr. Daniel Primm by stating it was paid for by the employer. We find substantial evidence supports the ALJ's determination, and he sufficiently outlined the basis for his decision. Therefore, we affirm.

On November 21, 2007, Hon. Lawrence Smith, Administrative Law Judge, ("ALJ Smith") found Mullins did not meet his burden of proving entitlement to permanent partial disability ("PPD") benefits due to the injuries he sustained to his back and neck on October 14, 2005. Mullins filed a Petition for Reconsideration seeking a ruling on future medical benefits. On January 28, 2008, ALJ Smith found he was entitled to payment of past and future medical expenses per KRS 342.020. He also awarded a period of temporary total disability ("TTD") benefits.

On February 25, 2019, Parton filed a Form 112 Medical Dispute and Motion to Reopen challenging the reasonableness and necessity of the medications Tizanidine, Hydrocodone, Methocarbamol, Clonazepam, and Gabapentin and office visits of January 3, 2018, December 12, 2018, and January 17, 2019. The final hearing in the dispute was waived, and Mullins did not testify.

Dr. Muhammad Emran prepared a utilization report dated January 28, 2019. Dr. Emran performed a medical records review and was asked to opine whether the challenged medications and three office visits were reasonable or necessary for treatment of Mullins' work-related injuries. Dr. Emran opined that based on his review of the medical treatment records from Dr. William Lester and ARH Interventional Pain Management and Headache Center ("ARH") from October 8, 2005 through April 28, 2008, the challenged office visits, and the medications Tizanidine, Hydrocodone, Clonazepam, and Gabapentin are not reasonable or necessary for treatment of Mullins' work injuries. He felt the medical records indicated Mullins had essentially normal exams and the criteria does not support the use of the medications based on the clinical documentation reviewed. Dr. Emran also opined the office visits are not reasonable or necessary as Mullins' condition is stable. Dr. Emran prepared a second utilization report dated July 8, 2019 opining he saw no indication for the continued use of Hydrocodone and therefore found it is not reasonable for treatment of Mullins' work injuries.

Dr. Primm evaluated Mullins on May 1, 2019 and prepared a report. Dr. Primm saw Mullins in the underlying case on December 12, 2006. At that time, he received a history of Mullins suffering injuries to his neck and back due to a motor vehicle accident ("MVA") occurring when he hit a rock, his tie rod broke, he slid, hit a bank, and flipped over. At that time, Dr. Primm opined Mullins suffered neck and back injuries which, by the time he saw Mullins, had completely resolved to the extent no functional impairment was indicated. Dr. Primm again saw Mullins on May 1, 2019, reviewed all medical records, and performed an updated examination.

Based on the foregoing, Dr. Primm diagnosed Mullins as suffering from cervical and thoracolumbar strains by history, chronic deconditioning with chronic narcotic and muscle relaxer intake, and probable symptom magnification. Dr. Primm opined Mullins' condition had long ago resolved and he does not need any additional medical treatment or the medications Tizanidine, Hydrocodone, Methocarbamol, or Gabapentin.

Dr. Lester saw Mullins on seven occasions from October 17, 2017 through December 13, 2018. On each visit, Dr. Lester indicated Mullins consistently complained of back pain with radiation down both legs, occasional burning, and spasms. Dr. Lester noted Mullins' consistent neck pain complaints, and he receives relief from the challenged medications. On April 23, 2019, Dr. Lester prepared a letter indicating Mullins was no longer taking narcotic pain medicines and did better without them.

Dr. Daniel Lalonde saw Mullins on November 13, 2018. He noted Mullins ambulated with a cane, and on examination had evidence of tenderness to palpation from L2 to S1. He also exhibited muscle spasms in the lumbar spine. Dr. Lalonde indicated significantly diminished lumbar range of motion in all planes and complaints of constant spine pain. Dr. Lalonde noted Mullins admitted to having a drug screen indicating the absence of medication in his system, and he missed one random pill count, but he did not believe it impacted him. On November 13, 2018, Dr. Lalonde renewed the prescription for Hydrocodone and noted Mullins' pill counts were appropriate.

Dr. Matthew Breeding responded to a questionnaire dated June 18, 2019. Dr. Breeding opined it is still medically necessary for Mullins to have active treatment with ARH for his work injuries as he continues to have pain in his neck and back related to the MVA. Dr. Breeding opined the challenged office visits of November 13, 2018, December 12, 2018 and January 7, 2019 were reasonable and necessary for treatment of Mullins' work injuries from the October 5, 2005 accident as he continues to suffer from cervicalgia, lumbago, and sciatica resulting from the work injury. Dr. Breeding further opined the medications Norco, Methocarbamol, Clonazepam, and Gabapentin are reasonable and beneficial for treatment of Mullin's work injuries. Dr. Breeding noted Tizanidine is no longer being prescribed. Dr. Breeding stated he had read Dr. Primm's report and disagreed with his opinions.

A Benefit Review Conference was held on May 23, 2019. The reasonableness and necessity of ongoing office visits, including the ones on January 3, 2018, December 10, 2018, and January 7, 2019, and the reasonableness and necessity of Hydrocodone, Tizanidine, Methocarbamol, Clonazepam, and Gabapentin were identified as contested issues. The Formal Hearing was waived.

The ALJ's finding relevant to this appeal are as follows:

The ALJ reviewed and weighed all the evidence. The ALJ finds, and adopts, the stipulations the parties entered.

Unreasonable/Unnecessary treatment is treatment that is: (1) unproductive; and/or (2) outside the type that the medical profession generally accepts for the claimant's condition. Square D Co. v. Tipton, 862 S.W.2d 308 (Ky. 1993). This is a factual-finding, based on each case's unique facts and circumstances. Id. It is Parton's burden to prove the challenged treatment is unreasonable/unnecessary. To satisfy this burden, substantial

evidence, which is evidence sufficient to convince reasonable people, must support Parton's arguments. Durham v. Peabody Coal Co., 272 S.W.3d 192 (Ky. 2008).

The ALJ finds Parton did not meet its burden. Parton did not prove that ongoing pain management office visits, and the Hydrocodone, Methocarbamol, Clonazepam, and Gabapentin prescriptions are unreasonable/unnecessary treatment. It also did not prove the January 3, 2018, December 10, 2018, and January 7, 2019 office visits were unreasonable/unnecessary. Parton, however, did prove that the Tizanidine prescription is not compensable.

The ALJ primarily relies on Drs. Breeding and Lalonde. Their findings, opinions, and conclusions, are more credible and persuasive than the ones Drs. Emran and Primm issued. Drs. Breeding and Lalonde are Mullins' treating physicians. Dr. Breeding has treated Mullins for several years. He and Dr. Lalonde are more familiar with Mullins' condition, symptoms, problems, treatment course, etc., than Drs. Emran and Primm.

Dr. Emran has never examined or treated Mullins, let alone ever met him. His opinions are based on reviewing medical records, and general, non-binding medical guidelines and literature. Dr. Primm has also never treated Mullins. He has only examined Mullins on two occasions, which occurred at Parton's request and on its dime. Drs. Breeding and Lalonde's treating experience, training, and knowledge make them more qualified.

I. Hydrocodone

The medical records show that Mullins continues to experience significant symptoms and problems. His symptoms include neck and low back pain that radiate into his extremities, stiffness, tightness, numbness/tingling, reduced motion, and spasms. Chronic pain, intervertebral lumbar disc displacement, lumbago, cervicalgia, radiculopathy, and sciatica are Mullins' diagnoses. Dr. Lalonde documented that over-the-counter medications are not providing relief. He indicated Mullins' pain level, on a 0 to 10 pain-scale, is a seven.

Although Mullins previously had some prior inconsistent drug screens, Dr. Lalonde indicated he will closely monitor Mullins' narcotic use. The evidence shows Dr. Lalonde is closely monitoring it. On December 10, 2018 and January 7, 2019, he documented Mullins' had consistent urine drug screens, random pill counts, and KASPER reports. It appears Mullins is following his doctor's instructions.

Dr. Breeding opined the Hydrocodone helps provide pain and symptom relief, increases Mullins' functionality, and also improves his life quality. Based on the evidence's totality the ALJ determines Hydrocodone is productive medical treatment, and is compensable. Parton remains liable for it.

II. Methocarbamol & Tizanidine

Dr. Emran explained that Methocarbamol and Tizanidine are muscle relaxers. The medical records show that Mullins continues to experience muscle tightness and spasms. Drs. Lester and Lalonde documented these symptoms.

Dr. Breeding indicated the Methocarbamol helps relieve Mullins' muscle spasms that his back and neck pain produce. He also indicated it improves Mullins' motion. The ALJ infers and finds the Methocarbamol increases Mullins' functionality, and also improves his life quality.

Dr. Lalonde documented that over-the-counter medications are not providing relief. Based on the evidence's totality the ALJ determines Methocarbamol is productive medical treatment, and is compensable. Parton remains liable for it.

The Tizanidine prescription is unreasonable/unnecessary. The ALJ makes this finding for two main reasons. First, the medical providers almost unanimously agree that Tizanidine is unreasonable/unnecessary. Drs. Breeding, Emran, and Primm share this opinion. Dr. Breeding is Mullins' primary treating physician.

Secondly, although the credible evidence establishes Mullins experiences muscle spasms and tightness, there is not any credible evidence explaining why Mullins requires two muscle relaxers. He is already taking Methocarbamol. The ALJ determines the recommended Tizanidine prescription is currently unreasonable/unnecessary treatment. Parton is not currently liable for it.

III. Clonazepam

Dr. Emran explained that Clonazepam is a short acting benzodiazepine. Dr. Primm recommended against Clonazepam, and indicated it is essentially another muscle relaxant. The medical records, however, indicate Dr. Lester prescribed it, and Dr. Breeding recommends it, for Mullins' anxiety. Accordingly, Mullins is not taking Clonazepam for muscle relaxant purposes.

The medical records show that Mullins continues to experience anxiety and sleeping problems. Drs. Lester and Breeding documented these symptoms and problems. Drs. Lester and Breeding documented the Clonazepam helps Mullins' anxiety. Dr. Breeding stated, "I have tried unsuccessfully to taper. Patient had anxiety prior to injury, but worsened with his disability."

The ALJ infers and finds the Clonazepam increases Mullins' functionality, and also improves his life quality. Dr. Lalonde documented that over-the-counter medications are not providing relief. Based on the evidence's totality, the ALJ determines Clonazepam is productive medical treatment, and is compensable. Parton remains liable for it.

IV. Gabapentin

Dr. Emran explained that Gabapentin treats radiculopathy and neuropathy. The medical records show that Mullins continues to experience radicular-type symptoms. The symptoms include radiating pain, burning, and numbness/tingling. Drs. Lester and Breeding documented these symptoms.

Dr. Breeding indicated the Gabapentin helps relieve Mullins' radiculopathy that his back and neck pain produce. He also indicated it improves Mullins' motion. The ALJ infers and finds the Gabapentin increases Mullins' functionality, and also improves his life quality. Dr. Lalonde documented that over-the-counter medications are not providing relief. Based on the evidence's totality, the ALJ determines Gabapentin is productive medical treatment, and is compensable. Parton remains liable for it.

V. Office visits

Mullins' chronic and severe symptoms require ongoing pain narcotics, as well as several other medications. Dr. Lalonde is currently prescribing Norco 7.5-325 mg pills a month. Mullins takes one pill twice a day, or every 12 hours. The ALJ notes this is not a low dosage, and requires monitoring, especially provided Mullins' two prior inconsistent drug screens.

The credible evidence shows Mullins experiences significant neck and low back pain that radiates into his extremities. He also experiences ongoing spasms, stiffness, tightness, and anxiety. Again, his physicians are recommending and prescribing approximately four different medications, including controlled substances.

The ALJ finds ongoing office visits are reasonable, considering Mullins' current narcotic dosage, symptoms, complaints, and treatment. The ALJ is not a medical expert, and does not have a crystal ball. The ALJ will not speculate how often Mullins should treat.

The contested January 3, 2018, December 10, 2018 and January 7, 2019 office visits are work-related and not unreasonable/unnecessary treatment. The ALJ relies on Dr. Breeding's opinion. Dr. Breeding has treated Mullins for several years. He reviewed the medical dispute evidence, as well as his own medical chart. Dr. Breeding also reviewed Dr. Primm's report.

Dr. Breeding opined that Mullins' work-related chronic pain, cervicalgia, lumbago, and sciatica necessitated his January 3, 2018, December 10, 2018 and January 7, 2019 office visits and treatment. The ALJ notes Mullins

continues experiencing these symptoms. Mullins also continues taking medications for his problems. Based on the evidence's totality, the contested office visits were work-related and necessary. Parton is liable for them.

ORDER

Based upon the foregoing Factual-Findings and Legal Conclusions, **IT IS HEREBY ORDERED AND ADJUDGED:**

- (1) The challenged Tizanidine prescription is currently unreasonable/unnecessary medical treatment. Parton is not currently liable for them.
- (2) The challenged Hydrocodone, Methocarbamol, Clonazepam and Gabapentin prescriptions, as well as ongoing office visits, are currently compensable. Parton is currently liable for them.
- (3) The challenged 1/3/18, 12/10/18, and 1/7/19 office visits are compensable. Parton is liable for them.
- (4) There are no just reasons for delay. This is a final and appealable Order. However, the parties have 14 days to submit a petition for reconsideration.

On appeal, Parton argues the ALJ erred in rejecting the Utilization report because the Utilization Review doctor did not examine the claimant. Parton contends the Kentucky workers' compensation system for payment of medical bills requires, pursuant to KRS 342.035 and 803 KAR 25:190, every individual self-insured employer, group self-insurance fund and insurance carrier to implement a utilization review and medical bill audit program and submit a written plan to the commissioner for approval. Parton sets forth in some detail the reasons for and what is accomplished through the use of utilization review.

Parton argues it complied with the law and regulations in this case and properly submitted the issues being litigated to Dr. Emran for Utilization Review. Dr. Emran's report and opinions were rejected by the ALJ based on the fact he never examined Mullins, let alone ever met him. The ALJ found his opinions are based on reviewing medical records and general non-binding guidelines and literature. Parton argues that in light of the public policy behind 803 KAR 25:190 and KRS 342.035, the rejection of the utilization report of Dr. Emran, because he did not examine Mullins, is inconsistent with Kentucky law and is arbitrary, capricious, and an abuse of discretion. Parton argues the effect of the ALJ's decision indicates an opinion of a non-examining expert can never constitute substantial evidence to contradict the opinions of a treating physician involved in a medical fee dispute.

Parton also argues the ALJ erred in rejecting Dr. Primm's reports because the cost of the examination was paid for by the employer's insurance carrier. Parton points out in the original claim ALJ Smith relied on the opinions of Dr. Primm in denying PPD benefits to Mullins. Conversely, the ALJ rejected Dr. Primm's opinions on reopening observing he only saw Mullins on two occasions which occurred at Parton's direction. Parton argues there is no basis in the ALJ's reasons for rejecting the report of Dr. Primm. Parton argues Dr. Primm is a highly qualified medical expert. It argues that apparently the only reason for the ALJ's rejection of Dr. Primm's opinion was because he was paid by the employer's insurance carrier. Parton argues the actions of the ALJ in rejecting the report of Dr. Primm and improperly weighing the evidence is arbitrary and capricious, and must be reversed.

We initially note that in a post-award medical fee dispute, the employer bears the burden of establishing the requested medical treatment is not reasonable or necessary. The claimant maintains the burden to prove the contested treatment is causally related to the work injury. National Pizza Company v. Curry, 802 S.W. 2d 948 (Ky. 1991).

As the fact-finder, the ALJ has the sole authority to determine the weight, credibility, and substance of the evidence. Square D Co. V Tipton, 862 S.W.2d 308 (Ky. 1993). Similarly, the ALJ has the discretion to determine all reasonable inferences to be drawn from the evidence. Miller v. East Kentucky Beverage/ Pepsico, Inc., 951 S.W.2d 329 (Ky. 1997); Jackson v General Refractories Co., 581 S.W.2d 10 (Ky. 1979). The ALJ 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 party's total proof. Magic Coal Co. V Fox, 19 S.W.3d 88 (Ky. 2000). Although a party may note evidence supporting a different outcome than reached by an ALJ, such proof is not an adequate basis to reverse on appeal. McCloud v Beth Elkhorn Corp., 514 S.W.2d 46 (Ky. 1974).

The record contains substantial evidence supporting the ALJ's determination. We note the October 14, 2005 injury produced chronic neck and lumbar spine pain. Dr. Lalonde's opinions constitute substantial evidence supporting the ALJ's finding of compensability of the contested treatment. Dr. Lalonde noted Mullins had an antalgic gait, tenderness on palpitation from L2 to S1, and diminished lumbar range of motion in all planes. Mullins also complained of constant spine pain. As a result, Dr. Lalonde noted Mullins lives a sedentary

lifestyle and is not very active. Dr. Lalonde found it reasonable to keep a watchful eye out for such potential pain sources.

Dr. Breeding's opinion likewise constitutes substantial evidence. Dr. Breeding clearly opines it is medically necessary and reasonable for Mullins to remain under active medical treatment with pain management for his work-related injuries. He noted Mullins continues to suffer from continued neck and back pain as a result of his work injuries and the challenged office visits to ARH are reasonable and necessary for treatment of his work-related injuries. Dr. Breeding opined treatment with Norco was medically necessary and reasonable for relief and improvement of functionality. Dr. Breeding opined Methocarbamol was medically necessary for treatment of muscle spasms in the back and neck pain. He noted the medication improves Mullins' range of motion. Dr. Breeding likewise opined Clonazepam and Gabapentin were reasonable and necessary for providing relief from lumbar radicular pain and improve Mullins' range of motion. Therefore, the ALJ could reasonably conclude Dr. Lalonde and Dr. Breeding's opinions were the most persuasive, and both physicians were in the best position to determine the cause and reasonableness and necessity of the need for the contested treatment.

We do not believe ALJ Dye's decision was based on the fact that Dr. Emran did not actually see Mullins or for that matter was based on the fact Dr. Primm was paid for his evaluation by the employer's insurance carrier. We instead believe the comments by the ALJ were merely statements reflected on the weight to be given the evidence. Clearly, the opinions of Dr. Lalonde and Dr. Breeding

constitute substantial evidence supporting the ALJ's ultimate conclusion and the ALJ was well within his discretion in relying on this evidence.

Accordingly, the August 21, 2019 Medical Dispute Opinion and Order rendered by Hon. Brent Dye, Administrative Law Judge is hereby **AFFIRMED**.

ALL CONCUR.

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