

SOUTH DAKOTA DEPARTMENT OF LABOR AND REGULATION
DIVISION OF LABOR AND MANAGEMENT

LINDA MYHRE,
Claimant,

HF No. 184, 2009/10

v.

DECISION

RONALD R. JOHNSON,
Employer,

and

WAUSAU INSURANCE COMPANY,
Insurer.

This is a workers' compensation proceeding brought before the South Dakota Department of Labor and Regulation pursuant to SDCL §62-7-12 and Chapter 47:03:01 of the Administrative Rules of South Dakota. A hearing was held before the Division of Labor and Management, in Lemmon, South Dakota. Claimant, Linda Myhre appeared personally on her own behalf. Catherine M. Sabers represented Employer, Ronald Johnson and Insurer, Wausau.

Issues

Whether weekly deep-tissue massages remain reasonable and necessary medical treatment for Claimant's work-related injury?

Facts

Based upon the evidence presented and live testimony at hearing, the following facts have been established by a preponderance of the evidence:

Linda Myhre worked for Ron Johnson as a legal secretary. In June of 1990, she reported low back pain after repetitive file lifting. Myhre underwent three back surgeries and eventually the implantation of morphine pump. Employer/insurer paid for surgeries and the implantation of a morphine pump. Despite recommendations from Mayo Clinic to remove the pump, insurer has continued to pay for the pumps maintenance. The parties have agreed that Claimant is permanently and totally disabled and she continues to receive weekly benefits.

In May of 1996, Myhre began receiving myofascial release or massage therapy at Hands on Health Physical Therapy. This was recommended by her treating physician at the time, Dr. Roger Kennedy. Since 1996, the frequency of her treatments has gradually diminished from three times per week to one time per week. With massage therapy and myofascial release, Claimant has experienced pain relief and has been able to return to a functioning level of activity. In a letter dated December 17, 1996, from Dr. Kennedy, he indicated "use of physical therapy [in the form of myofascial relief, trigger point relief, mobilization, massage, and heat] for maintenance of function and comfort could be used indefinitely, although I suspect that it could be decreased from a level of two or three times per week." Dr. Kennedy has since that time retired from practice and no longer treats Myhre.

In 2009, Employer/Insurer requested an independent medical review from Dr. Jerry Blow to determine the reasonableness and necessity of continued lifelong, weekly massage therapy. Dr. Blow did not personally examine Myhre, but rather he conducted a complete review of her medical records. On December 2, 2009, Dr. Blow issued a report in which he opined that continuing weekly massage treatments for some 20 years post injury was "far beyond what would typically be done for failed back syndrome." Dr. Blow recommended that Myhre be weaned off the weekly massage treatments and into an independent home exercise program and suggested an as needed muscle relaxant for flare ups or a NMES unit if she preferred no additional medications. Dr. Blow concluded that weekly massage was neither reasonable nor necessary for her work injury. Based upon Dr. Blow's report, Insurer denied additional massage therapy beyond that outlined in his report.

Colleen Oliver, PT, the physical therapist who treats Myhre at Hands on Health Physical Therapy testified at hearing that continued lifelong, weekly myofascial release is necessary and medically appropriate due to the fact that Myhre has had complications from her back surgeries. Despite this testimony, Oliver admitted that she has never before seen a medical provider authorize lifetime massage therapy and that generally one of her main goals is to transition patients to a home exercise program. Oliver is not a physician.

Dr. Shelly A Killen wrote a letter to Liberty Mutual Insurance Company on Myhre's behalf. Dr. Killen works with Carol Miller, the nurse practitioner that sees Myhre for her morphine pump, however Dr. Killen had never treated Myhre or reviewed her extensive medical records. Dr. Killen disagreed with Dr. Blow's report claimant, "the area where she is receiving deep myofascial release type of massage is really an area that is difficult to reach with a home exercise program...I would contend that really her deep myofascial release massage is an integral part of her treatment plan and should not be tapered off and taken away from her."

In January 2010, Myhre reduced her massage therapy sessions from once a week to every other week. Despite the reduction in frequency, Myhre testified that she was able to remain active and her level of activity had remained the same.

Analysis

Pursuant to SDCL §62-4-1, the employer must provide reasonable and necessary medical expenses. It is well established by the South Dakota Supreme Court that the Employer has the burden to demonstrate that the treatment rendered by the treating physician was not necessary or suitable and proper.

Once notice has been provided and a physician selected or, as in the present case, acquiesced to, the employer has no authority to approve or disapprove the treatment rendered. It is in the doctor's province to determine what is necessary, or suitable and proper. When a disagreement arises as to the treatment rendered, or recommended by the physician, it is for the employer to show that the treatment was not necessary or suitable and proper.

Hanson v. Penrod Construction Co., 425 NW2d 396,399 (SD 1988).

It is clear from the record that Myhre has received numerous benefits from continued massage therapy and myofascial relief for over 20 years following her work related injury. Myhre has continued to stay active despite being permanently and totally disabled. However a lifelong prescription from a physician that no longer treats the Claimant is not appropriate. Claimant's condition must be continued to be monitored and treatment occasionally modified if necessary.

Employer/Insurer has met its burden to show that an indefinite prescription for a lifetime of weekly massage therapy is not reasonable and necessary under the workers' compensation statutes. While Claimant may in fact benefit from massage therapy and myofascial release, the frequency needs to be evaluated by her treating physician at regular intervals to determine what is necessary, suitable and proper to treat her current condition. Until such time as Claimant's treating physician determines that additional therapy is necessary, suitable and proper treatment of her work-related injury, the recommendations of Dr. Blow to gradually reduce the frequency of treatment and transition to independent home exercise program are to be followed.

The Department will retain jurisdiction over Claimant's continued medical expenses.

Conclusion

Employer/Insurer shall submit proposed Findings of Fact and Conclusions of Law, and an Order consistent with this Decision within ten (10) days from the date of receipt of this Decision. Claimant shall have ten (10) days from the date of receipt of

Employer/Insurer's proposed Findings of Fact and Conclusions of Law to submit objections thereto or to submit proposed Findings of Fact and Conclusions of Law. The parties may stipulate to a waiver of Findings of Fact and Conclusions of Law and if they do so, Employer/Insurer shall submit such Stipulation along with an Order in accordance with this Decision.

Dated this 10th day of August 2011.

SOUTH DAKOTA DEPARTMENT OF LABOR AND REGULATION

/s/ Taya M. Runyan

Taya M. Runyan
Administrative Law Judge