

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

WILLIAM R. BAKER,)	HF # 55, 2015/16
)	
Claimant,)	
)	
vs.)	
)	
RAPID CITY REGIONAL HOSPITAL,)	DECISION ON REMAND RE:
)	REASONABLENESS AND NECESSITY OF
Employer, and)	PSYCHOLOGICAL TREATMENT
)	
HARTFORD INSURANCE,)	
)	
Insurer.)	

Judge DeVaney, Hughes County Court, Sixth Judicial Circuit, remanded this matter to the Department pursuant to Order dated June 28, 2019, finding the Department (1) erred in finding Claimant did not prove by clear and convincing evidence he suffered a compensable physical injury which is and remains a major contributing cause of his mental condition, and (2) did not err in finding Claimant was not permanently and totally disabled under the odd-lot doctrine; Those issues are not being further considered here; the Department is charged with determining whether Claimant’s psychological/psychiatric treatment received after the case was tried (October 2, 2017) is reasonable and necessary.

By the parties’ agreement, the record in this case consists of documents showing treatment and opinions by Dr. Richard Renka, additional psychological and psychiatric treatment records, and Dr. Gratzer’s May 21, 2020 report.

Facts

Claimant saw Dr. Brian Wilson, a psychiatrist, on January 3, 2017. Dr. Wilson reported Claimant presented with post-traumatic stress disorder (PTSD), depression, anxiety, and legal issues. Claimant had been taking Paroxetine, Lorazepam and Ativan. Claimant had a follow up with Dr. Wilson on December 5, 2017 in which Claimant said he had stopped taking Paroxetine in June, 2017 and would like to get back on. Among other things, Claimant said he continued to suffer from anxiety, decreased energy, sleep problems, nightmares, and "some thoughts of wanting to be dead." Dr. Wilson discontinued the Paroxetine (Paxil) and Ativan, and prescribed Mirtazapine and Hydroxyzine.

Claimant saw Dr. Eric Traub, a psychologist, for counseling from August 7, 2019 to October 14, 2019. Dr. Traub diagnosed chronic PTSD, major depressive disorder, recurrent, mild; and, on a provisional basis per Claimant's report, borderline personality disorder traits. He treated with cognitive behavioral therapy.

Claimant saw Dr. Richard Renka, a psychiatrist, from July 25, 2019 to February 10, 2020. Dr. Renka described symptoms of avoiding the public, struggling with traumatic memories, nightmares, concentration difficulties, paranoia, and sometimes delusional thoughts. Dr. Renka diagnosed PTSD and major depression; he initially recommended restarting Paxil/Paroxetine, but replaced it with Fluoxetine and added Prazosin and Lorazepam.

Dr. Renka was familiar with Claimant personally as "an ex-psychiatric technician at the West Unit where I served for 25 years." After he reviewed Claimant's records, he opined the treatment Claimant was receiving was "quite necessary," as Claimant had "deteriorated

markedly from his former cognitive and emotional status,” noting “his overall mental functioning is rather poor.” Dr. Renka opined Claimant had continued sequelae from his work injury in the form of “traumatic encephalopathy and subsequent loss of function,” which contributed to Claimant’s depression and anxiety. These physical and mental conditions required ongoing treatment.

On May 21, 2020, Dr. Thomas Gratzner, a psychiatrist, reviewed the records described above. He had previously been hired by Employer/Insurer to provide opinions concerning causation and treatment, and issued various reports from July 16, 2015 forward. In those previous reports, he opined that Claimant’s PTSD was in remission, and he continued with that view in his 2020 report. He believed Claimant’s mental health treatment from 2015 to 2020 was not reasonable and necessary “as relates to the work related injuries ... he had minimal physical sequelae associated with these injuries (and) his current struggles reflect his pre-morbid psychiatric condition and borderline personality dynamics and propensity to replay his childhood abuse issues in the context of current litigation.” He viewed Dr. Renka’s treatment as “countertherapeutic” and recommended Claimant have Dialectical Behavior Therapy (DBT) “to address his poor coping skills and propensity to project his anger in to outside events.” (Such treatment would be for borderline personality disorder.)

Analysis

The legal standards for establishing the reasonableness and necessity of medical treatment are well-established. Once notice has been provided and a physician selected, or 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 N.W. 2d 396, 399 (1990).

The parties have not disputed Dr. Renka's status as the treating physician for Claimant's various psychological/psychiatric conditions, and Dr. Renka has opined Claimant's treatment is reasonable and necessary, both up to now and on an ongoing basis. It therefore falls to Employer/Insurer to prove Dr. Renka's treatment is not necessary or suitable and proper. *Hanson*, 425 N.W. 2d at 399. Its case relies solely on Dr. Gratzner, who bases his opinion that Dr. Renka's treatment is unnecessary and "countertherapeutic" (and alternatively recommending DBT) on Claimant's PTSD being in remission and having pre-existing borderline personality disorder.

The Department was instructed on remand to focus on the reasonableness and necessity of treatment, and the parties have agreed causation is not a matter for the Department to consider. For the purpose of this ruling, then, the issue in this case should be framed in a similar manner as *Krier v John Morrell*, 473 N.W.2d 496 (S.D. 1991): "We are not confronted with the compensability of Krier's knee injury. Rather, the only issue is: Does Employer have an obligation to reimburse Krier for the costs of [treatment] prescribed by his treating physician?" *Krier v John Morrell*, 473 N.W.2d at 498.

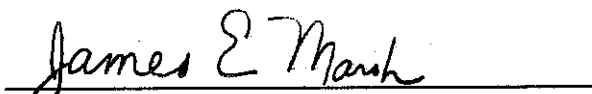
In that regard, Dr. Renka's summation of Claimant's work-related conditions follows that of Claimant's previous treating physicians, as well as Dr. Manlove's in his IME: Claimant

suffers from ongoing PTSD, depression, anxiety, traumatic encephalopathy, and subsequent loss of function. He has opined his treatment addresses those conditions, and that treatment does not appear to differ materially from what was provided by Dr. Renka's predecessors. Medical opinions addressing necessary treatment for those conditions should be considered; those addressing others are irrelevant. Dr. Gratzner's opinions do not speak to reasonableness and necessity in that context, and are therefore irrelevant. Claimant has demonstrated the psychological/psychiatric treatment he received after the case was tried (October 2, 2017) is reasonable and necessary.

Conclusion

The Department concludes the psychological/psychiatric treatment Claimant received after the case was tried (October 2, 2017) is reasonable and necessary. Claimant shall submit Findings of Fact, Conclusions of Law, and an Order consistent with this Decision, and if desired, Proposed Findings of Fact and Conclusions of Law, within twenty (20) days of the receipt of this Decision. Employer/Insurer shall have 20 days from the receipt of Claimant's Findings and Conclusions to submit Objections and/or Proposed Findings of Fact and Conclusions of Law. The parties may stipulate to a waiver of formal Findings of Fact and Conclusions of Law; if they do so, Claimant shall submit such stipulation together with a conforming Order.

Dated this 25th day of August, 2020.



James E. Marsh
Administrative Law Judge