United States Department of Labor
Employees' Compensation Appeals Board

P.L., Appellant	)	
	)	**Docket No. 09-594**
and	)	**Issued: November 10, 2009**
	)	
U.S. POSTAL SERVICE, POST OFFICE, St. Petersburg, FL, Employer	)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
COLLEEN DUFFY KIKO, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On December 31, 2008 appellant filed a timely appeal from an October 23, 2008 merit decision of the Office of Workers' Compensation Programs denying his request for additional massage therapy. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of the case.

ISSUE

The issue is whether the Office abused its discretion in denying authorization for additional massage therapy.

FACTUAL HISTORY

On March 7, 1994 appellant, then a 37-year-old automation clerk, filed a traumatic injury claim (Form CA-1) alleging that on February 25, 1994 he was transporting a loaded bulk mail container when the upper door to the container opened and dropped on his shoulder, resulting in a possible bruise or fracture to the shoulder. The Office accepted the claim for contusion of the

left shoulder, cervical strain and herniated disc at C5-6 and C6-7 and left shoulder capsulitis.[1] On August 25, 1994 appellant underwent an anterior cervical discectomy and an anterior interbody fusion.[2] He underwent a left stellate ganglion block on June 1 and 6, 1995.

The record reveals that appellant received ongoing massage therapy almost continuously after June 24, 1994. The Office continued to authorize the massage therapy in response to repeated requests from appellant's physician.

On April 2, 2008 Dr. Alan K. Sichelman, a Board-certified pediatrician, requested authorization for massage therapy three times per week, for 52 weeks, for treatment of neck, back and shoulder pain. In a physical therapy authorization request, Gary R. Amundson, a licensed massage therapist, stated that the massage therapy was for treatment of burning pain and stiffness in appellant's neck, back and shoulders and was to help appellant function better daily.

By letter dated April 7, 2008, the Office stated that it had previously authorized and reimbursed massage therapy services for the period January 19, 2007 through January 18, 2008. It advised that additional medical evidence was required before it could authorize additional therapy.

In a May 9, 2008 medical report, Dr. Sichelman stated that he treated appellant since 2003 and that, as a result of a work injury, appellant sustained cervical and shoulder arthritis, reflex sympathetic dystrophy and chronic left shoulder impingement and was status post laminectomy, fusion and stabilization rod in August 1994. He opined that the conditions caused chronic pain, weakness, limited range of motion in the shoulder and neck and parasthesis in the hands and fingers. Dr. Sichelman reported that appellant experienced limitations with lifting, bending, sitting, standing and walking, which affected his dressing, bathing and sexual activity. He stated that the functional goals of therapy were to reduce stress and pain and improve range of motion. Dr. Sichelman noted that a massage generally improves pain resolution and provides better movement and reduced muscle stress. He stated that both outpatient and home-directed exercise programs had failed where a massage had greatly helped, thus, he recommended additional massage therapy.

On July 21, 2008 Dr. Sichelman without rationale or reasoning again requested authorization for massage therapy, three times per week, for 52 weeks, for neck, back and shoulder pain.

By letter dated July 24, 2008, the Office stated that it had previously notified appellant that further evidence was necessary to authorize additional massage therapy. It advised that Dr. Sichelman's report was insufficient to support the request for authorization. The Office

[1] In the October 23, 2008 decision, the Office stated that it had also accepted depression as related to the February 25, 1994 work injury.

[2] By decision dated May 28, 1997, the Office terminated appellant's compensation for failure to accept suitable work. On May 20, 1999 it notified appellant that he was not entitled to a schedule award because he refused suitable work and was not entitled to benefits for wage loss, which included schedule awards. Appellant subsequently requested reconsideration of the May 28, 1997 decision, which the Office denied as untimely and without showing clear evidence of error.

stated that, when evaluating the need for therapy, the claims examiner weighs the medical evidence to determine whether the therapy is being provided for the accepted injury or condition, whether the specific modalities, tests and measures include some active form of physical therapy, and whether the additional therapy produces measurable, functional improvement. It noted that pain alone does not constitute a functional deficient and that measurable findings must be shown, such as muscle spasm, atrophy, radiologic changes or that pain had placed measurable limitations upon a claimant's activities.

In a July 2, 2008 medical report, Sally M. Marlowe, a nurse practitioner, stated that appellant sustained connective tissue disease, bilateral upper and lower neuropathy and probable spinal stenosis due to his employment. She reported that there was no cure for any of the conditions and that they were difficult to bring under control. Medications, cortisone injections, counseling and massage therapy had allowed appellant to live a decent life, however, he was permanently depressed and disabled for life. Ms. Marlowe stated that massage therapy, which was a mainstay of significant control, was recently cut off and that appellant's condition was worsening and that he must return to therapy.

By decision dated October 23, 2008, the Office issued a formal decision denying authorization for massage therapy on the grounds that appellant did not submit objective evidence establishing that continued massage therapy services would have long-term benefits for resolution or stabilization of the accepted work injury. It advised that Dr. Sichelman's medical report did not include objective medical evidence establishing that the previously authorized massage therapy had measure benefits or that future massage therapy would result in appellant's ability to return to the workforce as a result of improved functionality related to the accepted work injuries.

LEGAL PRECEDENT

Section 8103 of the Federal Employees' Compensation Act[3] states in pertinent part: the United States shall furnish to an employee who is injured while in the performance of duty the services, appliances and supplies prescribed or recommended by a qualified physician, which the Secretary of Labor considers likely to cure, give relief, reduce the degree or the period of disability or aid in lessening the amount of the monthly compensation.[4] The Office's obligation to pay for medical treatment under section 8103 of the Act extends only to treatment of employment-related conditions and appellant has the burden of establishing that the requested treatment is for the effects of an employment-related condition. Proof of causal relationship must include rationalized medical evidence.[5] In interpreting this section of the Act, the Board has recognized that the Office has broad discretion in approving services provided under the Act. The Office has the general objective of ensuring that an employee recovers from his injury to the fullest extent possible in the shortest amount of time. The Office therefore has broad administrative discretion in choosing means to achieve this goal. The only limitation on the

[3] 5 U.S.C. §§ 8101-8193.

[4] *Id.* at § 8103(a).

[5] *Stella M. Bohlig*, 53 ECAB 341 (2002).

Office's authority is that of reasonableness. Abuse of discretion is generally shown through proof of manifest error, clearly unreasonable exercise of judgment or actions taken contrary to logic and probable deductions from established facts. It is not enough to show that the evidence could be construed so as to produce a contrary factual conclusion.[6]

ANALYSIS

The Office accepted that appellant sustained a contusion of the left shoulder, a cervical strain, herniated discs at C5-6 and C6-7 and left shoulder capsulitis due to his February 25, 1994 employment injury. The issue is whether the Office properly denied appellant's request for additional massage therapy.

In an April 2, 2008 note, Dr. Sichelman requested authorization for massage therapy for treatment of appellant's neck, back and shoulder pain. He expanded upon this request in a May 9, 2008 report. Dr. Sichelman diagnosed appellant with cervical and shoulder arthritis, reflex sympathetic dystrophy, chronic left shoulder impingement and status post laminectomy, fusion and stabilization rod in August 1994. He opined that these conditions were due to appellant's employment injury and that they resulted in limitations in lifting, bending, sitting, standing and walking and impaired his daily functions. Dr. Sichelman stated that the functional goals of the massage therapy were to improve pain, reduce stress and improve range of motion. He noted that outpatient and home directed exercise programs had failed but that massage therapy had greatly helped appellant.

Dr. Sichelman did not provide a rationalized medical opinion explaining how additional massage therapy would give appellant relief from his accepted conditions.[7] He stated that the goals of the massage therapy were to reduce stress and pain and improve range of motion caused by appellant's work-related conditions including cervical and shoulder arthritis, reflex sympathetic dystrophy and chronic left shoulder impingement. However, these conditions were not accepted by the Office as work related. Dr. Sichelman did not address how the massage therapy would provide relief from the accepted conditions of left shoulder contusion, cervical strain, herniated discs or left shoulder capsulitis.[8] Further, the record reveals that appellant received physical therapy almost consistently since 1994. Although Dr. Sichelman stated that the massage therapy had greatly helped, he did not provide examples or explain how appellant's prior 14 years of massage therapy had relieved appellant's work-related condition or how continued therapy would aid in his return to the workforce. Moreover, he opined that both outpatient and home-directed exercise programs had failed where the massage therapy had helped. Dr. Sichelman did not describe the types of programs previously implemented or how they had failed in achieving the goals of the massage therapy, nor did he explain whether the

[6] *Daniel J. Perea*, 42 ECAB 214 (1990).

[7] *See Dale E. Jones*, 48 ECAB 648 (1997).

[8] In order to be entitled to reimbursement for medical expenses, a claimant must establish that the expenditures were incurred for treatment of the effects of an employment-related injury by submitting rationalized medical evidence that supports such a connection and demonstrates that the treatment is necessary and reasonable. *See Debra S. King*, 44 ECAB 203 (1992).

massage therapy was medically necessary and reasonable for appellant's treatment or why the same therapeutic benefit could not be obtained through other, less expensive, means.[9]

The remainder of the medical evidence includes a July 2, 2008 medical report from Ms. Marlowe, a registered nurse, and an authorization request from Mr. Amundson, a licensed massage therapist. These reports do not constitute probative medical evidence as neither a registered nurse or a licensed massage therapist is included in the definition of a physician under the Act.[10]

The Board finds that the Office was within its discretion when it determined that the requested massage therapy would not be approved.

CONCLUSION

The Board finds that the Office did not abuse its discretion in denying authorization for additional massage therapy.

[9] *See Dale E. Jones*, *supra* note 7; *Leonard E. Fritz*, 39 ECAB 170 (1989).

[10] Under section 8101(2), the definition of physician includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors and osteopathic practitioners within the scope of their practice as defined by State law. 5 U.S.C. § 8101(2).

ORDER

IT IS HEREBY ORDERED THAT the October 23, 2008 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 10, 2009
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board