

**STATE OF VERMONT
DEPARTMENT OF LABOR AND INDUSTRY**

Joanne Heath)	Opinion No. 30-05WC
)	
v.)	By: Margaret A. Mangan
)	Hearing Officer
State of Vermont)	
Department of Aging/)	
Risk Management)	For: Laura Kilmer Collins
)	Commissioner
)	
)	State File No. T-14524

Pretrial conference held on October 18, 2004
Hearing held on March 22, 2004
Record Closed on April 18, 2004

APPEARANCES:

Christopher McVeigh, Esq., for the Claimant
Keith J. Kasper, Esq. , for the Defendant

ISSUE:

Is claimant’s treatment with Dr. Schaller compensable medical treatment under 21 V.S.A. § 640?

EXHIBITS:

Joint Exhibit I: Medical Records
Defendant Exhibit A: Curriculum Vitae of Nelson S. Haas, M.D.

CLAIMANT SEEKS:

Claimant seeks an award, pursuant to WC Rule 40, for payment of all Dr. Schaller’s treatment of claimant, and, if successful, an award of interest, attorney fees and costs of litigation.

STIPULATED FACTS:

1. On or about February 19, 2003, claimant suffered an injury arising out of and in the course of her employment with defendant within the meaning of the Vermont Workers' Compensation Act. (Act).
2. On April 28, 2004 claimant began receiving treatment from Dr. Schaller at the Sports & Family Chiropractic in Waterbury, Vermont.

FINDINGS OF FACT:

1. Claimant works as a Network Administrator for the State, a job that requires working on computers in different settings, keyboarding and using a computer mouse. After she developed right shoulder and neck pain in 2002, she moved the mouse to her left hand, which relieved the right-sided symptoms somewhat, but the symptoms returned in February 2003.
2. On doctor's orders, claimant reduced her time at work to four hours, five days a week from May 1, 2003 until August 20, 2003. She received treatment from her primary care physician, physical therapists, and massage therapists. Significant and lasting relief remained elusive.
3. By November of 2003 claimant was referred to a pain clinic where she had a series of injections that did not relieve her pain.
4. On March 26, 2004 her primary care physician placed claimant at medical end result because her condition had been stable, although she still had pain.
5. On April 28, 2004 on referral from a friend, claimant began treating with Dr. Keith Schaller, a chiropractic physician. Dr. Schaller works with athletes. He holds the philosophy of getting his patients better as quickly possible in part by directing them to engage in active treatment at home. Dr. Schaller performed a variety of chiropractic and manipulative treatments as well as acupuncture. The treatment was aggressive and in one instance, painful.
6. Dr. Schaller treated the claimant 32 times from April 2004 to February 2005, on average of twice a week at first, then once a week, then every other week and then once a month. When she has "setbacks" he increases the frequency. At present the treatment schedule is "as needed."
7. With Dr. Schaller's treatment, claimant felt less pain and longer lasting relief than she had had with any other treatment. Dr. Schaller's observations confirmed the improvement. Her range of motion improved. She increased her activities.
8. Although claimant still has pain, she uses tools Dr. Schaller taught her to manage her pain and seeks treatment from him when she has severe flares.

9. Dr. Nelson Haas is a medical doctor with expertise in occupational medicine who examined claimant for the defense. In his written report Dr. Haas raised questions about the consistency of claimant's reporting based on facts gleaned from the records of a different person with the same name, but different age and different activities.
10. Dr. Haas acknowledged that claimant reports significant improvement in symptoms and functioning with Dr. Schaller's treatment, the only treatment that has provided that relief. However, he concluded that the chiropractic treatment is not reasonable because the techniques used are not supported by the literature and because he could not find measurable improvement in objective findings. He attributes claimant's improvement to the passage of time and to unknown factors.
11. In pursuing this action, claimant's attorney has worked 43.8 hours and incurred \$264.59 in expenses.

CONCLUSIONS OF LAW:

1. Under the workers' Compensation Act, the employer must furnish "reasonable surgical, medical and nursing services to an injured employee." 21 V.S.A. § 640(a).
2. As in other cases with similar disputes, I am presented with conflicting expert opinions. In choosing between them, this department has traditionally examined the following criteria: 1) the length of time the physician has provided care to the claimant; 2) the physician's qualifications, including the degree of professional training and experience; 3) the objective support for the opinion; and 4) the comprehensiveness of the respective examinations, including whether the expert had all relevant records. *Miller v. Cornwall Orchards*, Op. No. WC 20-97 (Aug. 4, 1997); *Gardner v. Grand Union Op. No. 24-97WC* (Aug. 22, 1997).
3. Dr. Schaller has the advantage as the treating physician who has observed claimant's reaction to her treatment and her functional improvement. Nothing suggests that his objectivity has been compromised. On the question of qualifications the experts are on equal footing on the issue presented here, although their specialties lay in different areas, Dr. Schaller in chiropractic with a sports emphasis, Dr. Haas in medicine with an occupational emphasis. Both physicians had the relevant medial records. Claimant's improvement is undisputed, an assessment based on claimant's subjective reports, functionality and observations. When that improvement followed aggressive chiropractic treatment, I am more convinced that it was the treatment itself, not mere passage of time or an unknown variable, as Dr. Haas maintains, that accounts for it.

4. Accordingly, claimant has proven that the continued treatment with Dr. Schaller is compensable pursuant to 21 V.S.A. § 640(a).
5. As a prevailing claimant, she is entitled to the reasonable attorney fees and necessary expenses requested. 21 V.S.A. § 678(a); WC Rule 10.000.
6. Finally, claimant is entitled to interest from the date payments were requested until they are paid. 21 V.S.A. § 664.

ORDER:

Therefore, based on the foregoing findings of fact and conclusions of law, defendant is ORDERED to pay for:

1. Dr. Schaller's treatment;
2. Attorney fees of \$3942.00 (43.8 hours x \$90/hour) and costs of \$264.59 in expenses;
3. Interest from the date services were billed until paid.

Dated at Montpelier, Vermont this 27th day of April 2005.

Laura Kilmer Collins
Commissioner

Appeal:

Within 30 days after copies of this opinion have been mailed, either party may appeal questions of fact or mixed questions of law and fact to a superior court or questions of law to the Vermont Supreme Court. 21 V.S.A. §§ 670, 672.