

Gagne v. Verdelle Village

(August 25, 2004)

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

Karen Gagne

Opinion No. 35-04WC

v.

*By: Margaret A. Mangan
Hearing Officer*

Verdelle Village

*For: Michael S. Bertrand
Commissioner*

State File No. M-09675

APPEARANCES:

*Karen Gagne, pro se, Claimant
Eric Johnson, Esq., for the Defendant*

ISSUE:

Is the chiropractic treatment claimant has been receiving since the summer of 2002 reasonable and causally related to her 1998 work related injury?

EXHIBIT:

*Joint I: Medical Records
Claimant's 1: Letter from Dr. Faxvog*

FINDINGS OF FACT:

- 1. In early November 1998, claimant was working as a licensed nursing assistant when she injured her back while lifting a patient during the course of her employment with defendant Verdelle Village.*
- 2. Following the injury, claimant sought medical, chiropractic and physical therapy treatment as well as surgical consultation for mid and low back pain.*
- 3. Claimant was a smoker, but according to Dr. Archamabault's notes, quit in 2000.*

4. *Claimant's back pain has been diagnosed as mechanical in nature or involving soft tissues. A January 1999 MRI of the lumbar spine revealed minor bulging, but no nerve involvement. There is no evidence to suggest that the minor positive findings are related to the work related injury.*
5. *In March of 1999 claimant participated in a pain program at the Spine Institute where it was noted that she had neck, thoracolumbar, and low back pain.*
6. *On May 12, 1999, George P. White, M.D. at the Spine Institute wrote that claimant saw no improvement in her back pain, despite treatment.*
7. *In May of 1999 claimant briefly returned to work, but left after experiencing back pain while lifting again.*
8. *On June 18, 1999, Toby Sadkin, M.D., claimant's primary care physician, assessed a work related back strain aggravated by a re-injury on May 8, 1999.*
9. *In June 1999 Dr. Hazard placed claimant at medical end result with a 5% whole person impairment.*
10. *Next, in September of 1999 claimant began to work for Joseph Marotti Company (Marotti) as a full time secretary. She worked there for two and a half years.*
11. *Claimant did not lose time from work for back pain while working at Marotti. She was able to garden, rake and take care of young children.*
12. *A July 31, 2000 note from Dr. Archambault documented persistent low back pain that began with the injury two years earlier at Verdelle Village.*
13. *A May 7, 2001 note from Matthew Begnoche, physical therapist, documents 1998 thoracolumbar injury with variable symptoms and frequent periods of exacerbation.*
14. *In September of 2001, Mr. Begnoche's physical therapy practice closed.*

15. *Claimant did not see Dr. Sadkin between June of 1999 and February of 2002. She then had 5 visits with him between February and October of 2002, none of which were for back pain.*
16. *After claimant left Marotti, she sought medical care for upper extremities. In a note from Dr. Archambault in April of 2002 is the statement that her past back problems were stable.*
17. *Notes from the first six months of 2002 from Dr. Archambault, Dr. Sadkin and physical therapist make no mention of back pain.*
18. *Then claimant, without a referral, sought treatment from Todd Faxvog, D.C. in July of 2002 for what she said was back pain from the work related injury four years earlier. Dr. Faxvog then appropriately and reasonably addressed claimant's complaints of mid back pain, headache, neck pain, rib pain and arm pain. He adjusted her pelvis, back, neck, head, shoulder, leg and arm.*
19. *In September of 2002, claimant began treating with Jeffrey Crandall, D.D.S. for temporo-mandibular joint (TMJ) problems. Dr. Crandall is a Diplomate, American Board of Orofacial Pain.*
20. *In April 2004, Dr. Johansson evaluated the claimant for the defense in this case. Based on a review of medical records and physical examination as well as his training and experience, he concluded that Dr. Faxvog's treatment is not causally related to her work injury at Verdelle Village. He also concluded that the chiropractic treatments are not reasonable or necessary.*
21. *In support of his conclusion, Dr. Johansson noted the gap in treatment for claimant's back pain, the stability Dr. Archambault found in April of 2002 and that the complaints claimant had before she saw Dr. Faxvog were not related to her back.*
22. *Dr. Faxvog submitted a letter in response to Dr. Johansson's report and testified in support of the claimant at hearing. In his opinion, claimant had not been able to get relief in her low and mid back after the injury at Verdelle Village and sought treatment with him. He noted that she had no back problems prior to the lifting injury. Because Dr. Faxvog's*

23. *Dr. Faxvog explained that in treating back pain, he uses a whole body approach and does not limit his treatment to one narrow anatomical area.*

CONCLUSIONS OF LAW:

1. *In workers' compensation cases, the claimant has the burden of establishing all facts essential to the rights asserted. Goodwin v. Fairbanks, 123 Vt. 161 (1963). The claimant must establish by sufficient credible evidence the character and extent of the injury and disability as well as the causal connection between the injury and the employment. Egbert v. Book Press, 144 Vt. 367 (1984).*
2. *There must be created in the mind of the trier of fact something more than a possibility, suspicion or surmise that the incidents complained of were the cause of the injury and the inference from the facts proved must be the more probable hypothesis. Burton v. Holden & Martin Lumber Co., 112 Vt. 17 (1941).*
3. *Under the workers' Compensation Act, the employer must furnish "reasonable surgical, medical and nursing services in an injured employee." 21 V.S.A. § 640(a). The need for such reasonable services obviously must have been caused by the work related injury.*

4. *The fact that claimant had reached medical end result for her work related does not preclude a conclusion that palliative care, such as Dr. Faxvog's treatment, is compensable. See Coburn v. Frank Dodge & Sons, 165 Vt. 529 (1996); Pacher v. Fairdale Farms 166 Vt. 626, 629 (1997); Coburn, 165 Vt. at 532. Nevertheless, the threshold question of causation must first be addressed.*
5. *From near the time of her injury in 1998, claimant treated with her primary care physician, Dr. Sadkin, and with a surgeon, Dr. Archambault. In the months leading up to her first visit with Dr. Faxvog, claimant saw both Dr. Sadkin and Dr. Archambault, yet mentioned nothing about back pain. In fact, her back condition was considered stable, although she had other problems that required treatment. Neither doctor recommended a referral to a chiropractor.*
6. *Even though claimant told Dr. Faxvog that back pain from the work related injury years earlier was her reason for consulting with him, the complaints she had leading up to that visit were not related to her back, but rather were for pain in other parts of her body.*
7. *Dr. Faxvog reasonably relied on the claimant's history and provided reasonable whole body treatment for the claimant's symptoms.*
8. *However, with no referral to Dr. Faxvog from the physicians who had treated the claimant for years and with no mention of back pain in their notes in the months leading up to the first visit with Dr. Faxvog, I cannot find that the treatment he has been providing is causally related to the work related injury of 1998.*

ORDER

Therefore, based on the Foregoing Findings of Fact and Conclusions of Law, this claim is DENIED.

Dated at Montpelier, Vermont this 25th day of August 2004.

Michael S. Bertrand
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.