

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS
OFFICE OF THE JUDGES OF COMPENSATION CLAIMS
ST. PETERSBURG DISTRICT OFFICE

Edna McCoy,)	
)	
Employee/Claimant,)	
)	
vs.)	OJCC Case No. 04-031942LLH
)	
Pasco County School Board,)	Accident date: 4/3/2003
)	
Employer,)	
)	
and)	
)	
Gallagher Bassett Services, Inc.,)	
)	
Carrier/Servicing Agent.)	
_____)	

FINAL ORDER

After due notice to all interested parties, a final hearing on the merits of this cause was conducted by the undersigned on June 6, 2005, in St. Petersburg, Pinellas County, Florida.

By Petition for Benefits (PFB) filed January 3, 2005, the claimant seeks authorization of a morphine pump as prescribed by Dr. Haynes, costs and attorney's fees. Other claims presented in this PFB and one filed October 12, 2004, either were resolved or withdrawn before this hearing.

The employer/carrier, who defended in the parties' Pretrial Stipulations that they were investigating claimant's need for a morphine pump and there was no entitlement to costs or attorney's fees, subsequently filed a Notice of Denial contending the major contributing cause of any need for the pump was claimant's pre-existing condition (right lumbar L3-4 disc extrusion and L4-5 disc

displacement) which were not aggravated in the April 3, 2004, accident. At the hearing, they amended their defenses to deny authorization because the pump is not medically necessary.

The following documentary items were marked and admitted into evidence:

- A. Uniform Pretrial Stipulations and Pretrial Compliance Questionnaire; Order dated January 13, 2005; and those documents identified in Rule 9.180, Florida Rules of Appellate Procedure. (Court Exhibit #1)
- B. Deposition of Dr. Craig Bennett dated May 11, 2005. (Claimant Exhibit #1)
- C. Deposition of Eric Haynes, M.D., dated March 23, 2005. (Claimant Exhibit #2)
- D. Medical Composite of the records of two health care providers. (Claimant Exhibit #3)
- E. Deposition of Jorge Chaumont, M.D., dated May 5, 2005. (Employer/ Carrier Exhibit #1)
- F. Deposition of Edna McCoy dated January 4, 2005. (Employer/Carrier Exhibit #2)
- G. Supplemental Medical Composite by the Employer/Carrier comprised of the records of one health care provider. (Employer/Carrier Exhibit #3)
- H. Amended Supplemental Medical Composite by the Employer/Carrier comprised of the records of one health care provider. (Employer/Carrier Exhibit #4)
- I. Notice of Denial dated January 24, 2005. (Employer/Carrier Exhibit #5)

The claimant was the only witness to testify at the final hearing. Although I will not recite in explicit detail the witnesses' testimony and may not refer to each piece of documentary evidence, I have considered the evidence in its totality. I have observed the candor and demeanor of the witnesses and attempted to resolve all of the conflicts in the testimony and evidence. Based on the

foregoing and the applicable law, I make the following findings:

1. The stipulations as entered into between the parties are hereby readopted by me as findings of fact and are incorporated herein by reference.

2. Edna McCoy, now 55 years old, had worked at River Ridge High School for 21 years when, on April 3, 2003, she attempted to break up a fight between two students. After one of the students flung her into a door, she felt such severe pain in her low back she thought she had been stabbed. The accident was accepted as compensable and medical treatment authorized. Ms. McCoy continued to, and still does, work for the employer.

3. Before this accident, the claimant had had periodic bouts of low back pain for which she sought treatment. In August, 2001, she experienced a major flare up of low back pain and bilateral leg pain that resulted in an MRI being taken in September. It revealed multilevel degenerative disc disease and spondylosis at L5-S1. Medical records establish the claimant continued to receive pain management treatment, mainly medication, from Dr. Haynes and Dr. Colon who practice together.

4. A myelogram taken in August, 2002, revealed moderate diffuse disc bulge with narrowing of the right foramen at L3-4; mild diffuse disc bulges at L4-5 and L5-S1; and spondylosis at L5 without spondylolysis. Dr. Castellvi, an orthopedic surgeon, determined Ms. McCoy was not a surgical candidate but referred her for therapeutic injections. Beginning in September, 2002, Dr. Colon administered two epidural injections but the claimant missed the appointment for the third due to her husband's illness.

5. Ms. McCoy reported the injections had provided some relief but, thinking it insufficient, Dr. Haynes administered a hypertonic saline injection and prescribed Neurontin and

Percocet on February 8, 2003. When in March, 2003, she reported her "usual state of discomfort with pain in the back and radiating down the leg" despite the injections, Dr. Colon continued her prescriptions for medication and recommended a surgical evaluation with Dr. Giannakopoulos. However, the claimant had not gone to that appointment by the time she was thrown by the student on April 3, 2003.

6. The day after the accident at work, Ms. McCoy was authorized to see Dr. Vieira. She recited a history of multiple disc herniations and degenerative disc disease but current complaints of severe pain/spasm of the thoracic/lumbar spine with radiation but without neurological signs or deficit. Diagnosing acute back injury, strain/sprain/spasm of the thoracic/lumbar back and contusion of the right cheek bone, Dr. Vieira prescribed Vioxx, Percocet, Flexoril, an MRI, physical therapy and modified work.

7. The lumbar MRI performed in April, 2003, revealed right L4 nerve impingement due to large disc protrusion at L3-4; moderate stenosis from the protrusion without impingement at L3; and a smaller disk protrusion at L4-5 causing only minimal stenosis. On the April 14, 2003, MRI report was written: "The abnormal disks described above were present on the MRI from 9/26/01 but are worse than before." Thereafter, Dr. Vieira referred the claimant to Dr. Bennett, an orthopedic surgeon.

8. Evidently, Dr. Giannakopoulos, the neurosurgeon also evaluated Ms. McCoy. Diagnosing chronic lumbago secondary to degenerative disc disease, he recommended only physical therapy.

9. The authorized Dr. Bennett examined the claimant on May 7, 2003, and reviewed the 2003 MRI. As a result, he thought her current problems were mostly degenerative disc disease and

pain secondary to it and prescribed physical therapy and more Vioxx. When Ms. McCoy returned to Dr. Vieira with continued moderate distress, he re-prescribed Flexeril, Neurotin, Vioxx and Endocet, released her to sedentary work with frequent stretch breaks, and recommended pain management.

10. It appears the carrier authorized Dr. Haynes who had treated her before the accident because, in late May, 2003, Ms. McCoy returned to him complaining of a severe increase in her pain since being slammed into the wall. Noting the MRI taken shortly thereafter showed a worsening of her disc condition, he prescribed a trial of Duragesic and Lidoderm patches before considering a series of epidural injections. When, on June 6, 2003, the claimant reported a severe increase of pain, he increased the strength of Duragesic patch and again recommended a hypertonic saline injection. This injection was not authorized.

11. Ms. McCoy brought the report of the August, 2002, myelogram to Dr. Bennett when she saw him on June 11, 2003. In comparing it to the April, 2003, MRI, he recognized her spondylosis and foraminal narrowing as slightly worse and recommended she pursue epidural steroid injections with Dr. Colon. When the claimant returned in July, 2003, in tears and the epidural steroid injections had not been authorized, Dr. Bennett recommended another course of physical therapy and pars and facet blocks with Drs. Haynes and/or Colon.

12. In July, 2003, Dr. Haynes increased the strength of claimant's Duragesic and recommended facet blocks mentioned by Dr. Bennett. A nerve block performed in August, 2003, produced good results but wore off and it is unclear whether a second block was performed. Of the opinion that because her pain was more in her back than her leg, there was no surgical option for the claimant, Dr. Bennett released her to Dr. Haynes in September, 2003.

13. On September 17, 2003, Ms. McCoy continued to complain to Dr. Haynes of lower

back pain radiating all the way down to her right foot. He renewed the Duragesic, recommended a repeat MRI and indicated they could consider lumbar facet rhizotomy. Authorization for this MRI was denied. In November, 2003, he added morphine sulfate for breakthrough pain and recommended a lumbar facet block. When asked what percentage of claimant's complaints were attributable to the April 3, 2003, injury, Dr. Haynes responded 70% versus 30% for her degenerative condition.

14. Ms. McCoy long has had porphyria, a disorder resulting from a disturbance in metabolism. She testified her only symptoms are sores on the skin after exposure to the sun. However, beginning in late July, 2003, she had to have blood drawn as a result of this condition. Another phlebotomy with glucose infusion was necessary in December, 2003.

15. A lumbar facet rhizotomy procedure was performed in early January, 2004. It produced significant reduction in pain in claimant's right side but did not alleviate some residual pain in the left so Dr. Haynes reduced her pain medication and scheduled a left-sided procedure. When, by March, 2004, he thought the relief from the rhizotomy had not lasted long enough and nothing else was helping the claimant, Dr. Haynes replaced the Duragesic patch with Oxycontin. At this time, he gave her information on a morphine pump.

16. When Ms. McCoy's pain still was not under control by August, 2004, Dr. Haynes re-prescribed Duragesic and morphine sulfate. He also recommended a trial morphine pump and also that the claimant contemplate surgery. Dr. Haynes' recommendation is the issue of this hearing.

17. Dr. Hollowell, a neurosurgeon, evaluated Ms. McCoy on August 26, 2004. He noted her problems were chiefly low back pain with some pain in her right leg, sometimes both. In comparing the pre- and post-accident scan reports, Dr. Hollowell felt claimant's major problem pre-

existed the April, 2003, accident and had not been aggravated by it. Without a reasonable idea of the cause of claimant's symptoms, he did not recommend a morphine pump and opined the possibilities of this providing significant relief were less than probable.

18. Ms. McCoy returned to Dr. Bennett in February, 2005, reporting her pain had localized more to her right leg and thigh despite taking pain medications including Metrazol, Duragesic patches, morphine sulfate, methocarbamol, Trazodone, and Neurontin. Diagnosing low back pain and possible radiculopathy, he recommended another MRI to evaluate the claimant for radicular pain and further treatment recommendations. If this MRI has been authorized, Dr. Bennett had not evaluated by the time of this hearing.

19. The employer/carrier's IME regarding the recommendation for a "trial of intraspinal opiates in consideration of an intrathecal pump placement" was conducted by Dr. Chaumont, a pain management physician, on February 10, 2005. At this time, Ms. McCoy reported her low back pain, which had been continuous and increasing since April, 2003, was much worse than the leg pain. He recognized exquisite tenderness over L4-5 and L5-S1, a 40-50% limitation in range of motion in all planes, and positive straight leg raise test without lumbar spasm.

20. Dr. Chaumont disagreed somewhat with Dr. Hollowell's opinion that claimant's pre-existing spine disease had not been aggravated by the April, 2003, accident because he felt even a minor aggravation of her condition would have taken a much longer period of time, up to one year, to resolve back to her baseline condition. However, as two years had passed since the accident, he did not think it should be construed as the major contributing cause of her present condition or need for treatment. Instead, Dr. Chaumont attributed the overwhelming cause to claimant's severe and progressive degenerative spine disease. However, he thought EMG/nerve conduction studies should

be administered to evaluate the possibility of peripheral neuropathy which can be caused by porphyria.

21. Electrodiagnostic testing performed by Dr. Patterson on April 4, 2005, suggested early peripheral neuropathy. Though it showed no evidence of radiculopathy, he could not rule out some component of low grade S1 nerve root irritation or radiculopathy and recommended clinical correlation. The evidence would indicate neither Dr. Haynes nor Dr. Bennett reviewed this test before their testimony.

22. The employer/carrier argue first that the claim for authorization of a morphine pump is not ripe, due or owing. Indeed, Dr. Haynes explained the appropriate course will be to conduct a trial to determine if the claimant can tolerate a morphine pump before implanting one. The claim as stated on the Petition for Benefits is for authorization of a morphine pump "as per Dr. Haynes." There is no evidence the employer/carrier was prejudiced by the inability to understand or define the claim - their IME certainly knew what he was being asked to evaluate. Lastly, there is no evidence the employer/carrier were willing to authorize the trial either. Therefore, I find the claim is broad enough to encompass both the trial and, if appropriate, implantation of the pump so this defense is rejected.

23. The employer/carrier's second defense is that the industrial accident is not the major contributing cause of claimant's need for a morphine pump. In support of her claim, Ms. McCoy explained her pain has neither stopped nor gotten better since the April, 2003, accident. Before this accident, it used to come and go and did not require her to take medicine all the time. Currently, she takes increasing doses of two pain medications, an anti-inflammatory, a muscle relaxant, and nerve pain medication every day. Though able to continue working at her essentially sedentary job by

asking students to do some of the heavier and bending tasks, she maintains she cannot walk, sit, or even lie down for any length of time without pain. Also, her legs sometimes tremble and lock into position. I find Ms. McCoy's testimony on the nature and severity of symptoms to be credible.

24. Dr. Haynes, who is Board certified in anesthesiology and pain management, recommended a morphine pump for Ms. McCoy because she has not responded to anything else. He and the other physicians testified claimant's only other options would be surgery, a spinal cord stimulator or higher doses and/or different medications. At first, Dr. Haynes opined the industrial accident "could" be the major contributing cause of claimant's need for a morphine pump. He later clarified that his opinion is the major contributing cause, or more than 50% of her need for treatment, is the April 3, 2003, accident.

25. Though Dr. Bennett is not a fan of implantation of morphine pumps in fairly young, healthy and working patients, he conceded to Ms. McCoy's pain management physician's opinion on the medical necessity of one. Having written her condition was "slightly worse," Dr. Bennett testified that the April 13, 2003, MRI revealed a much larger herniation at L3-4 than the 2002 myelogram. Accordingly, he was of the opinion the major contributing cause of the current condition of claimant's lumbar spine is the exacerbation of her pre-existing condition that occurred in the April, 2003, accident. Though Dr. Bennett testified the exacerbation contributed 50% or more to her need for treatment "at the beginning," he was unable to say, without the MRI he had requested in February, that it still contributed this much when deposed in May, 2005.

26. Dr. Chaumont opined that the cause of claimant's current need for treatment is no longer the industrial accident. So did Dr. Hollowell. In reaching his opinion, Dr. Chaumont valued Dr. Hollowell's assessment about claimant's worsening condition over the opinion of the radiologist

who compared the April, 2003, MRI to the one from 2001 because the former physician was much more specific than the latter. Further, he believed the claimant would have returned to her baseline condition by at least one year after the accident.

27. In determining whether the major contributing cause of claimant's current need for a morphine pump is the industrial accident, I reject Dr. Chaumont's opinions and accept Dr. Haynes'. Importantly, Dr. Haynes is advantaged by having treated the claimant both before and after the industrial accident and in superior position to assess changes in her symptoms following it. Though Dr. Haynes did not have his earlier treatment notes when he testified, he was well aware he had diagnosed and treated the claimant for degenerative disc disease before this accident. Dr. Bennett also has the advantage of having treating Ms. McCoy over time. Dr. Chaumont, a one-time evaluator, reviewed neither Dr. Haynes' nor Dr. Bennett's records or opinions in reaching his. Their evidence - that the claimant still, after two years, is unable to go without narcotic medicine on daily basis - defeats the basis of his opinion that she has returned to her baseline condition. Having accepted Dr. Haynes' opinion and Ms. McCoy's testimony but rejected Dr. Chaumont's opinion, the totality of the evidence establishes the industrial accident is the major contributing cause of claimant's need for treatment.

28. Another component of the employer/carrier's major contributing cause defense is that Ms. McCoy's unrelated condition, porphyria, is the reason she needs a morphine pump. Dr. Chaumont felt claimant's pain drawing was incompatible with a disc herniation and more suggestive of neuropathy, which can be caused by porphyria. Clearly, her electrodiagnostic testing was suggestive of early neuropathy. However, the person who administered the test recommended clinical correlation but there is no evidence this was accomplished by the testifying physicians.

Further, these physicians knew of no reason porphyria would cause back pain. None of the doctors is a hematologist and there is no evidence Dr. Chaumont has any more expertise in this area than either Dr. Haynes or Dr. Bennett. Accordingly, I find the evidence insufficient to establish the pain necessitating the morphine pump is caused more by porphyria than by injury sustained in the industrial accident.

29. The employer/carrier's third defense is that a morphine pump is not medically necessary. To that end, Dr. Chaumont testified that an intrathecal opiate pump is only for patients who cannot tolerate high doses of opiates while Ms. McCoy not only tolerates them but receives "worthwhile" pain relief. Neither he nor Dr. Hollowell thought the pump likely to result in any better pain relief than claimant's current regimen. Even Dr. Bennett does not normally recommend morphine pumps in younger, working patients. However, Dr. Haynes thought the fact that Ms. McCoy continues to work full time irrelevant to the necessity for the pump since she is able to do so only by taking high doses of medication. He argued she would need significantly less medication with the pump, it should provide her better pain relief, and, with increased flexibility and ability to engage in more daily activities, she could have a better quality of life. To refuse to authorize at least a trial for a morphine pump on the argument that the claimant is not disabled from working forces her to become so in order to obtain medical treatment. This is not required in order for a procedure to be medically necessary. Therefore, I find the evidence establishes a morphine pump is medically necessary for Ms. McCoy.

30. Another component to the employer/carrier's defense that a morphine pump is not medically necessary, is that Dr. Haynes and Dr. Bennett wish to reevaluate the option of surgically correcting claimant's back before even the pump trial is conducted. However, the employer/carrier

failed to provide the tests these physicians needed in order for them to answer this question before the hearing. Also, the employer/carrier limited Dr. Hollowell's evaluation to the recommendation for a morphine pump without consideration of Dr. Haynes' and Dr. Bennett's recommendations that corrective surgery be evaluated again. Accordingly, it appears the claimant has exhausted all the treatment or evaluation short of the pump that the employer/carrier will offer. Therefore, I reject this component of the defense that a morphine pump is not medically necessary.

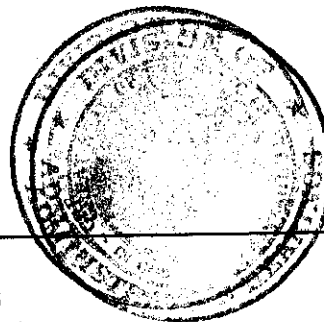
WHEREFORE, IT IS ORDERED AND ADJUDGED:

- I. The claim for authorization of a morphine pump as recommended by Dr. Haynes is GRANTED.
- II. The claim for attorney's fees and costs is GRANTED. Jurisdiction is reserved should the parties prove unable to agree on the amounts owed.

DONE AND ORDERED, in Chambers.

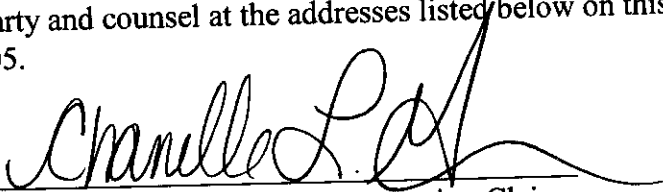


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CERTIFICATE OF SERVICE

This is to certify that the above Order was entered by the Judge of Compensation Claims and a copy was served by U.S. mail on each party and counsel at the addresses listed below on this 10th day of June, 2005.


Assistant to the Judge of Compensation Claims

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