

**STATE OF MAINE
WORKERS' COMPENSATION BOARD
62 Elm Street
Portland, Maine 04101**

Charles W. March, Esq.
REBEN, BENJAMIN, MARCH
P O Box 7060
Portland, ME 04112

Doris V.R. Champagne, Esq.
NORMAN HANSON
P O Box 4600
Portland, ME 04112

Issuance Date: September 12, 2007
Mail Date: September 12, 2007
WCB FILE # 94-00-27-05

Within 25 days after issuing this decision, or 5 days after issuing findings of fact and conclusions of law, whichever is later, the hearing officer may request that the full Workers' Compensation Board review the decision. See 39-A M.R.S.A §320.

Within 20 days after receiving this decision a party may file a motion asking the Board to find further facts and make further conclusions of law and file the appropriate decision if it differs from the original decision; within 15 days after filing the motion, the party shall file its proposed findings of fact and conclusions of law pursuant to §318 of the Act. WCB R. Ch. 12 §5.

Any party in interest may request an appeal to the Maine Law Court by filing a copy of this decision with the clerk of the Law Court within 20 (twenty) days of receipt of this decision, and by filing a petition seeking appellate review with the Law Court within 20 days thereafter. See 39-A M.R.S.A. §322.

.....

AMY E. BRUNS
(Employee)

v.

SEBAGO, INC.
(Employer)
and

ACADIA
(Insurer)

Pending before the Board is the Employee's **PETITION TO FIX**, concerning a March 15, 1994 date of injury.

The Employee seeks payment of bills related to neuromuscular massage therapy beginning in August 2006 when payment was discontinued. The Employer maintains that the massage treatment at issue is not a reasonable or necessary medical expense.

In making the determination on these issues as set forth below, I have considered the testimony of Amy Bruns and Mark Babbitt, L.M.T., taken on May 18, 2007; Employee Exhibits 1 – 5; Employer Exhibit 1 and certain medical records entered by stipulation of the parties.¹ I have also taken notice of relevant Board filings in this matter.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. Amy Bruns is a 36-year-old resident of Bridgton. Ms. Bruns went to work at Sebago, sewing shoes, in approximately 1987. On March 15, 1994, Ms. Bruns suffered a work-related injury to her right upper extremity while hand sewing.

2. Ms. Bruns treated with Dr. Scott and had right pronator syndrome surgery in May of 1995. She returned to work with restrictions and eventually increased her hours to 40/week. Ms. Bruns persisted with significant pain in her right upper extremity, however. She sought treatment with Dr. Andrews for median neuropathy and sympathetically mediated pain syndrome. Dr. Andrews performed a stellate ganglion block in October of 1995 and prescribed MS Contin and Trazedone. The pain medication was not effective.

3. Ms. Bruns eventually had a peripheral nerve stimulator implanted in her right arm in 1997. This device did relieve her severe right arm pain but did not

¹ Employee Exhibit 5 was submitted by mail by agreement of the parties and is admitted to the record. That exhibit is a deposition transcript of Dr. Herzog taken on June 19, 2007.

restore the loss of function in the right arm.² Ms. Bruns had further surgery to address or replace the device in 2002 and 2005.

4. Despite the loss of function in her right arm, Ms. Bruns continued to work at Sebago as a customer service representative. She used her left arm exclusively to perform her work and began to experience problems with that arm related to overuse. Dr. Carrier took Ms. Bruns out of work in early 2002 because of her ongoing right upper extremity problems and her developing left upper extremity problems. Dr. Haigney opined in March of 2002 that she should perform no further work with her left upper extremity to preserve its functional use.

5. Ms. Bruns has had a variety of treatment for her bilateral upper extremity problems over time. These treatments have included osteopathic manipulation of her upper back and trapezius (Dr. Gerson 1999) and chiropractic treatment (Dr. Bracken 2001). Ms. Bruns was eventually referred to Dr. Carrier by the Employer in February of 2001.

6. Among other modalities of treatment, Dr. Carrier recommended neuromuscular massage and Ms. Bruns commenced this treatment with Michael Senechal, N.M.T in February of 2001. Ms. Bruns continued neuromuscular massage with Jessica Church L.M.T in June of 2002. In 2006, Ms. Bruns switched providers to Mark Babbitt, L.M.T.

7. Dr. Carrier has consistently prescribed neuromuscular therapy for muscle pain and knots in Ms. Bruns shoulder and upper back since 2001. This treatment was reimbursed by the Employer until August of 2006.

8. A §312 evaluation was conducted by Dr. Herzog in April of 2007. He has opined that “chronic massage therapy for complex regional pain would not be curative in nature, and is currently not reasonable and necessary for her right upper extremity condition.”

² As a measure of her loss of function, the Board notes that Dr. Carrier and Dr. Pier have assessed permanent impairment at 43% and 53%. Dr. Bean has assessed impairment at 60%. All of these physicians were chosen by the Employer to evaluate Ms. Bruns' condition.

9. Under the Act, Ms. Bruns has the burden of demonstrating that the neuromuscular massage therapy expense is a reasonable and necessary medical expense.

“An employee sustaining a personal injury arising out of and in the course of employment or disabled by occupational disease is entitled to reasonable and proper medical, surgical and hospital services, nursing, medicines, and mechanical, surgical aids, as needed, paid for by the employer” 39-A MRSA §206.

“When any services are procured or aids are required by the employee, it is the employee's duty to see that the employer is given prompt notice of that procurement or requirement. The employer shall then make prompt payment for them to the provider or supplier or reimburse the employee, in accordance with section 205, subsection 4, if the costs are necessary and adequate and the charges reasonable”

In making this determination, the Board is bound to adopt the medical findings of the independent medical examiner unless there is clear and convincing evidence to the contrary in the record that does not support the medical findings. 39-A MRSA §312(7). The Law Court has held that the clear and convincing standard requires a determination as to whether the hearing officer could have reasonably been persuaded by the contrary medical evidence that it was highly probable that the record did not support the examiner's medical findings. Dubois v. Madison Paper Co., 2002 ME 1.

I find that Ms. Bruns has carried her burden of demonstrating clear and convincing evidence to the contrary of Dr. Herzog's report.

10. First, I note that Dr. Herzog has opined that neuromuscular massage therapy is not “curative” and I find that that factor weighs heavily in his analysis that such treatment is not reasonable or necessary. All of the medical providers agree that neuromuscular massage therapy is not curative. There is dispute, however, about whether such therapy is nonetheless appropriate in Ms. Bruns' case.

I find that a treatment need not be curative to be necessary or reasonable under the Act. Many treatments are not curative but are nonetheless reasonable and necessary treatment. For instance, many medications do not cure an injury but they allow a person to function, or to function with reduced pain. The reality is that some employees suffer from significant work injuries and ongoing intractable pain. Diminution of pain, restoration of daily function and quality of life are appropriate goals of treatment. The fact that such treatment will not cure the underlying problem does not, in and of itself, answer the question of whether the treatment is reasonable and necessary.³

11. Second, there is significant medical evidence in the record that supports the notion that neuromuscular massage therapy is reasonable and necessary treatment for Ms. Bruns' condition. Dr. Carrier, who was initially chosen by the Employer and who often works with employers in the occupational medical setting, has long prescribed neuromuscular massage therapy for Ms. Bruns. He has treated Ms. Bruns for more than six years and he has been very clear about his opinion on the reasonableness and necessity of such treatment.

“I normally do not recommend prolonged myofascial or neuromuscular massage therapy for musculoskeletal conditions. However, Ms. Bruns' circumstance is very unique in that she has total disuse of her right upper extremity secondary to her complex regional pain syndrome. This results in significant disuse, muscle dysfunction and significant pain related to the muscle disuse. This circumstance is very unusual and very complex ... I feel strongly that the massage therapy is reasonable and necessary for ongoing care and that this is much more productive and helpful than medication would be. Muscle relaxants for this condition would be ineffective and overly sedative for her”

(Carrier, October 2, 2006)

Dr. Pier has also stated that neuromuscular massage treatment “is reasonable from a compassionate care standpoint in the sense that there has been few other treatments which, subjectively, provide her with relief. Unfortunately, I

³ For instance, Dr. Bean, who performed a §207 evaluation at the request of the Employer, opined that the implantation of a neural stimulator was not “curative” but was nonetheless reasonable because it was effective in dealing with Ms. Bruns' chronic pain.

cannot state this will be curative. It will maintain her present functional capabilities at best.” Pier, May 23, 2003.

I find that relief of chronic pain and maintenance of function are goals that are entirely consistent with the concept of reasonable and necessary medical treatment. I find that the medical records clearly support the connection between these goals and the prescribed massage therapy.

12. In addition, I note that there are many discrepancies between Dr. Herzog’s evaluation of Ms. Bruns’ condition and the medical records of other providers. Dr. Herzog implies that Ms. Bruns suffers from obesity and deconditioning and that massage therapy might feel good but is not reasonable and necessary. He states in his report that he does not believe that she suffers from significant pain in her upper quadrants and he testified in deposition that he did not believe she suffered from muscle spasms or knots in her upper back. He suggests that she is able to utilize her right arm and characterized her refusal to do so in examination as willful.

Dr. Carrier’s records, on the other hand, indicate that Ms. Bruns suffers from significant muscular pain that is related to the disuse of her right arm. Mark Babbitt’s records (and testimony) confirm the existence of muscle spasm or knots in her upper back that are relieved by massage treatment. Except for Dr. Herzog, the medical records reflect that Ms. Bruns has virtually no use of her right upper extremity and that her upper back muscular problems are related to her inability to use her right arm and her overuse of her left arm.⁴

I find that Dr. Herzog’s evaluation of Ms. Bruns is simply at odds with, and is not supported by, the rest of the medical evidence evaluating her overall condition. I also find that there is significant and persuasive evidence supporting the reasonableness and necessity of neuromuscular massage therapy. I find it highly probable that Dr. Carrier’s analysis of Ms. Bruns’ condition and her need for neuromuscular therapy is correct. For this reason, I reject Dr. Herzog’s conclusions regarding the reasonableness and necessity of ongoing neuromuscular

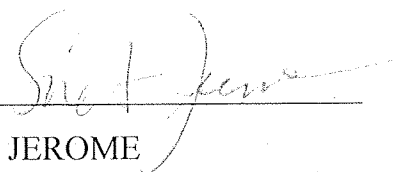
⁴ For instance, Dr. Bean states “it is clear that this Claimant’s right upper extremity shows unequivocal objective evidence of marked disuse atrophy. The objective findings clearly corroborate her report of not using her right arm for any activities whatsoever. The Claimant has described her right arm as being a “paperweight” This is not an unreasonable statement on her part.” Bean, June 22, 2006.

massage therapy and I find that Dr. Carrier's conclusions support payment of such treatment.

WHEREFORE, the Employee's **PETITION TO FIX** is granted. The Employer shall pay the medical bills contained in Employee's Exhibit 2, consistent with the Board's Medical Fee Schedule.

SO ORDERED.

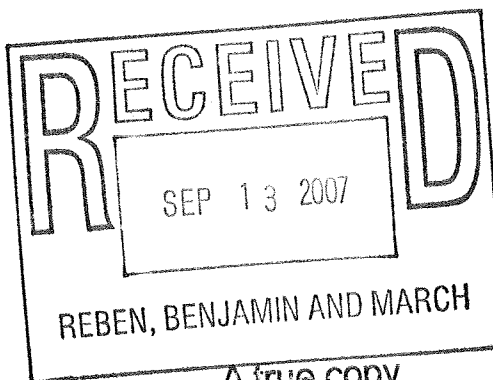
Portland, Maine



SUE A. JEROME

HEARING OFFICER

PURSUANT TO BOARD RULES CHAPTER 12, §19 ALL EVIDENCE AND TRANSCRIPTS IN THIS MATTER WILL BE DESTROYED IN 60 DAYS UNLESS (1) WE RECEIVE WRITTEN NOTIFICATION THAT ONE OR BOTH PARTIES WISH TO HAVE THEIR EXHIBITS RETURNED TO THEM OR (2) A PETITION FOR APPELLATE REVIEW IS FILED. THE 60 DAYS WILL NOT BEGIN TO RUN UNTIL ALL POST-DECREE MOTIONS HAVE BEEN DECIDED OR OTHERWISE DISPOSED.



A true copy

ATTEST



WCB CLERK