SOUTH DAKOTA DEPARTMENT OF LABOR AND REGULATION
DIVISION OF LABOR AND MANAGEMENT

RAPID CITY REGIONAL HOSPITAL, **HF No. 46, 2008/09**

Employer,

and **DECISION**

FARM BUREAU MUTUAL INSURANCE COMPANY,

Insurer,

v.

EARLA M. HUNTER,

Claimant.

This is a workers' compensation case brought before the South Dakota Department of Labor and Regulation, Division of Labor and Management pursuant to SDCL 62-7-12 and ARSD 47:03:01. The parties stipulated to the submission of this case to the Department ALJ Donald W. Hageman, for a decision without live testimony or hearing. This decision is based on the written record consisting of depositions, affidavits and medical records. Claimant is represented by James D. Leach. Scott Hendricks Leuning represents Employer and Insurer.

Issue:

The following legal issues were addressed in this decision:

1. Whether Earla Hunter still requires treatment for depression caused her work-related injury? and

2. If so, whether Dr. Manlove's treatment of Hunter/ss depression is reasonable and necessary?

Facts:

The facts of this case are as follows:

1. Earla Hunter (Hunter) is 57 years old. She is married and lives with her husband in Box Elder, SD

2. . Hunter dropped out of high school in the tenth grade and has had no further education.

3. Hunter is mildly mentally retarded. Her Full Scale IQ is 67. Her Verbal IQ is 74. Her Performance IQ is 65. She reads at the fourth grade level. Her math skills are at the fifth grade level. She spells at the ninth grade level.

4. Hunter was employed as a cleaning lady at Rapid City Regional Hospital (Employer). She worked in the labor and delivery section, cleaning surgery and birthing rooms after delivery. Her duties also included cleaning the bedrooms and bathrooms.

5. On January 9, 2004, Hunter picked up some laundry at work that was heavier than she expected and felt a jerk. Initially she had pain in her left shoulder, but later developed numbness and pain in her neck radiating into her left arm.

6. At the time of Hunter's January 9, 2004 injury, Employer was insured by Farm Bureau Mutual Insurance Company (Insurer).

7. On May 10, 2004, an Orthopedic Surgeon, Dr. Rand Schleusener, M.D., performed a cervical fusion at C5-6 and C6-7.9. After her surgery, Hunter continued to experience pain and numbness.

8. On December 1, 2004, Dr. Schleusener performed another fusion at C4-5 to correct a disk herniation.

9. On March 10, 2005, Hunter told Dr. Schleusener that she was "improving but very slowly" and had "good days and bad days." On May 10, she was having left arm pain "about the same as what it was when she first began this work injury problem." Dr. Schleusener recorded that she was unable to return to work, and referred her to a physiatrist for treatment of chronic back and left arm pain.

10. During Hunter's March 10, 2005 appointment, Gloria Walz, a physician's assistant for Dr. Schleusener dictated: "She slumps in her chair and overall appears sad." Hunter reported that she had been feeling "really sad" since her two neck surgeries; that she was "very teary" and "crying up to several times a day"; that she had decreased appetite and had lost about 15 pounds; and that she was unable to focus or concentrate.

11. On March 15, 2005, Dr. Schleusener referred Hunter to the Community Health Family Practice Residency Clinic for treatment of depression.

12. On March 24, 2005, Ruth Thatcher, M.D. prescribed Paxil, an anti-depressant for Hunter.

13. On March 29, 2005, Hunter was seen by Dr. Thatcher n follow-up and the Paxil was continued.32

14. Dr. Schleusener referred Hunter to Dr. Brett Lawlor, M.D. for her pain. Lawlor is a physiatrist, who practices in in Rapid City.

15. On May 25, 2005, Dr. Lawlor saw Hunter. At that time, Hunter reported frequent pounding headaches and neck pain. He prescribed Neurontin, a Lidoderm patch and a Neuromuscular Electrical Stimulation unit.

16. Dr. Lawlor saw Hunter again on June 22, 2005. Her burning pain was better, but her headaches were the same or worse. He increased her Neurontin and started her on Nortriptyline.

17. On July 26, 2005, Dr. Lawlor again increased the Neurontin. Hunter was having fewer headaches, although the ones she had were still "fairly intense."

18. On October 17, 2005, Hunter reported that she was taking 20 mg. of Paxil daily.

19. On November 10, 2005, Hunter reported to Dr. Lawlor that she "is severely depressed since she is unable to work. She feels this is related to always being hard working and now being unable to do anything." He described her prognosis as "guarded."

20. On December 27, 2005, Hunter told Dr. Lawlor that she still had neck pain, and that she had pain, tingling, and numbness in her left arm.

21. Hunter returned to Dr. Lawlor on June 13, 2006, reporting "the same pain that she has always had; only she says it is more intense." She had "continued left arm symptoms, including numbness and pain, and this has not changed from her previous evaluation." Dr. Lawlor prescribed physical therapy and adjusted her medications.

22. On January 16, 2006, Greg Swenson, Ph.D., a psychologist in Rapid City, evaluated Hunter at the request of her attorney. Dr. Swenson reported that "Earla has become depressed during the course of the past year, as a result of her injuries, and the limitations that this has imposed on her." He stated that she experiences "anhedonia, withdrawal, obsessive thinking, and crying spells," as well as "chronic anxiety, and is more irritable than she was prior to her injury." He diagnosed Hunter Major depressive

disorder, Adjustment disorder with depressed mood, Receptive-expressive language disorder, and Reading disorder.

23. On February 6, 2006, the Family Practice Residency Clinic referred Hunter to psychiatrist Dr. Stephen Manlove, M.D., and psychologist Mark Perrenoud, Ph.D., for treatment of Major Depression/

24. On February 7, 206, Hunter saw Dr. Perrenoud, who reported that she "often feels "worthless" much of the time, due largely to her not working. A lot of her self-concept was related to her being employed. She states that she is losing hope about returning to work. "Returning to work was the primary reason that she underwent surgery."

25. Dr. Perrenoud diagnosed Major Depression and Mild Mental Retardation with Language-Based Learning Problems. He stated: "Earla is depressed subsequent to having a back/neck injury and no longer being able to work."

26. Hunter saw Dr. Perrenoud four times in follow-up. On February 16, she was "feeling better," although she "tends to become self-critical" and "tends to make assumptions that others are feeling equally negative toward her."

27. Dr. Manlove's first appointment with Hunter was on February 13, 2006. She reported that she was depressed, which she believed was because she was unable to work because of chronic pain in her neck and headaches. Dr. Manlove diagnosed Depression Due to Chronic Pain Syndrome and prescribed Cymbalta and Seroquel.

28. On March 9, 2006, Hunter was feeling better, and Dr. Perrenoud planned to "[c]ontinue to address thoughts related to depression, particularly the idea that she is better off not living."

29. On March 16, 2006, Hunter was "a little more withdrawn and isolated to home than she would like to be." Dr. Perrenoud commented: "Earla's mood remains depressed and she is self-critical and takes on more responsibility for others' problems than warranted."

30. In June 2006, Employer and Insurer entered into a written agreement with Hunter that provides that Hunter is entitled to permanent total disability benefits pursuant to the odd-lot doctrine due to chronic pain syndrome caused by her work injury on January 9, 2004

31. On August 15, 2006, Hunter saw Dr. Lawlor. He reported that she is back to "her baseline level of pain, which is 6/10." He told her to continue with a home exercise program.

32. After September of 2006, Dr. Lawlor managed Hunter's condition by telephone. She called in for pain medication refills, and Dr. Lawlor provided them, on September 25, 2006, October 26, 2006, January 5, 2007, February 14, 2007, March 23, 2007, May 1, 2007 and May 29, 2007.

33. Dr. Thomas Gratzer, a psychiatrist from Minnesota conducted several independent psychiatric medical examinations (IME) of Hunter on behalf of Employer and Insurer. Gratzer first examined Hunter on September 9, 2006 in Rapid City. At that time, Gratzer recorded that Hunter had a history of mild retardation, deep depression and anxiety. He opined that her depression was in remission but suffered from mood swings at the time of the examination.

34. In January 2007, Employer and Insurer entered into a written agreement with Hunter indicating that Employer and Insurer would pay for treatment of Hunter's depression, at that time, but reserve the right to updated psychiatric IMEs.

35. Since January of 2007, Hunter has undergone two psychiatric IMEs that were conducted by Dr. Gratzer. The first of these exams was on March 10, 2007. At that time, it was his opinion that her depression remained in remission but noted that she experienced mood swings.

36. On June 27, 2007, Hunter obtained pain medication refills and asked to return to physical therapy because of increased pain, which Dr. Lawlor approved.

37. Hunter obtained pain medication refills on July 31, 2007, August 28, 2007, October 3, 2007, November 9, 2007, December 6, 2007, January 10, 2008, February 5, 2008, March 6, 2008, April 28, 2008, June July 31, 2008, September 9, 2008, October 10, 2008, November 21, 2008, December 31, 2008, February 2, 2009, March 5, 2009, April 10, 2009, May 4, 2009, June 5, 2009, August 10, 2009, September 15, 2009 and February 23, 2010.

38. In 2008 and 2009, Hunter had various outside "stressors" that Dr. Manlove noted in his chart, including her husband having major surgery, and ultimately having a leg amputated, a sister-in-law who died and another sister-in-law who was diagnosed with cancer.

39. Dr. Gratzer again examined Hunter on July 21, 2008 after reviewing Hunter's medical and psychiatric records. It was Gratzer's opinion at that time that Hunter's depression was still in remission but that she experienced mood swings.

40. Dr. Gratzer testified in his deposition that depression is highly treatable and that it would be expected that it would go into remission with proper treatment.

41. On April 6, 2010, Hunter saw Dr. Lawlor in his office. He reported that she was taking Flexeril and Hydrocodone, and getting along "reasonably well" with "average daily pain" of "5-6/10." He continued her medications.

42. On October 5, 2010, Dr. Lawlor saw Hunter again and reported "[s]he has had no change in her medical condition." She told him that the Hydrocodone is "not working quite as well as it used to." He prescribed continuing her current medication, but increasing the dose of Hydrocodone, a narcotic.

43. Dr. Manlove treated Hunter regularly for depression from February 13, 2006, to the present. He has seen her 28 times. Dr. Manlove's notes show that Hunter's condition fluctuated a little, but remained largely the same. She had chronic neck pain, and sometimes pain in other parts of her body. Her lethargy and anhedonia varied. He consistently diagnosed Major Depressive Disorder, DSM-IV 296.21 (Mild), 296.22 (Moderate) or 296.25 (In Partial Remission). Mild and Partial Remission have been the most common, diagnosis during the most recent appointments

44. On January 6, 2011, Dr. Manlove commented in his records: "In the past week she [Hunter] has had more neck pain and subsequently more headaches. More pain creates more depression. Before the pain increased her mood was fairly good."

45. Dr. Manlove testified during deposition that Hunter has "a chronic pain syndrome that tends to make people more depressed and more likely to be depressed." He stated that when his diagnosis was 296.25, major depression in partial remission, this was because "she was still precarious. I felt like she never really quite got over the hump," in other words, "She still was functioning kind of marginally from a mood perspective. I mean, she was doing a lot better. And from her perspective she was saying, 'Yeah, you know, I'm pretty – I'm fine, doing okay.' But my observation of her was that she still had some depressive qualities to her." When his diagnosis was 296.21, major depression mild, this is "a little worse than being in partial remission."

46. Dr. Manlove opined that Hunter's chronic pain syndrome and inability to work, is a major contributing cause of her depression and need for continued treatment.

47. Dr. Gratzer testified during deposition that Hunter is not currently depressed. Gratzer advocates taking Hunter off the antidepressants' and her monitor her condition to see if the depression remerges. He stated that there is no way to know whether the depression will reoccur unless she is taken off the medications.

48. Currently, Dr. Manlove prescribes Buspar, Cymbalta, Seroquel, and Trazodone for Hunter. Buspar is for anxiety. Cymbalta is for depression and anxiety, and helps with pain. Seroquel is to help her sleep, and it makes the Cymbalta work better. Trazodone is for sleep.
49.
50. During his deposition, Dr. Gratzer was somewhat critical of the drug regime that Dr. Manlove prescribed for Hunter. In particular, he disapproved of the choices of Cymbalta and Seroquel.

51. Dr. Gratzer testified that Hunter's deep depression had responded well to Manlove's drug treatment.

52. Additional facts may be discussed in the analysis below.

Analysis:

Depression:

In this case, the Department must determine whether Hunter still requires treatment for depression caused her work-related injury. Claimant argues that treatment is still required.

"A claimant need not prove his work-related injury is a major contributing cause of his condition to a degree of absolute certainty." Darling v. West River Masonry, Inc., 777 N.W.2d 363, 367 (SO 2010); Brady Mem'l Home v. Hantke, 1999 S.D. 77, ¶16, 597 N.W.2d 677, 681. "Causation must be established to a reasonable degree of medical probability, not just possibility." Truck Ins. Exch. v. CNA, 2001 S.D. 46, ¶19, 624 N.W.2d 705, 709 (citing Enger v. FMC, 1997 S.D. 70, ¶18, 565 N.W.2d 79, 85). "The evidence must not be speculative, but must be "precise and well supported." Vollmer, 2007 S.D. 25, ¶14, 729 N.W.2d at 382 (quoting Horn v. Dakota Pork, 2006 S.D. 5, ¶14, 709 N.W.2d 38, 42).

The testimony of medical professionals is crucial in establishing the causal relationship between the work-related injury and the current claimed condition "because the field is one in which laypersons ordinarily are unqualified to express an opinion." Brady Mem'l Home v. Hantke, 1999 S.D. 77, ¶16, 597 N.W.2d 677, 681. (quoting Rawls v. Coleman-Frizzell, Inc., 2002 S.D. 130, ¶21, 653 N.W.2d 247, 252 (quoting Day v. John Morrell & Co., 490 N.W.2d 720, 724 (S.D. 1992))).

SDCL 62-1-1 (7) defines “injury” for purposes of workers’ compensation and states in part:

> The term does not include a mental injury arising from emotional, mental, or nonphysical stress or stimuli. A mental injury is compensable only if a compensable physical injury is and remains a major contributing cause of the mental injury, as shown by clear and convincing evidence. A mental injury is any psychological, psychiatric, or emotional condition for which compensation is sought;

SDCL 62*1-1 (7). In this case, Hunter must prove by clear and convincing evidence that her work injury is a major contributing cause of her alleged current depression.

In June of 2006, the Employer and Insurer entered into a written agreement with Hunter which states that Hunter is entitle to permanent total disability benefits because Hunter suffers from chronic pain syndrome as a result of her work-relate injury. Consequently, for purposes of this decision the Department acknowledges that Hunter is suffering from chronic pain for which she requires continuing treatment. The Department cannot alter that presumption here, despite Employer and Insurer’s suggestion that Hunter may no longer suffers from chronic pain.

In 2007, Employer and Insurer agreed to compensate Hunter for treatment of depression deemed at that time to be caused by her pain and inability to work. In this case, Employer and Insurer rely on the opinion of Dr. Gratzer who believes that Claimant is no longer depressed and no longer requires treatment for depression. In contrast, Hunter relies on the opinion of Dr. Manlove who believes that she is still marginally depressed and requires continued treatment.

Of the two opinions, Dr. Manlove’s is the more persuasive. Dr. Manlove is Hunter’s treating physician and has had the opportunity to observe Hunter over the course of many years and dozens of appointments. Dr. Gratzer has only seen Hunter three times over a 2 year period. Dr. Manlove’s records support his proposition that Hunter’s mood has fluctuated over the last few years between moderately depressed and in partial remission and that she still has not quite gotten “over the hump.” On the other hand, Dr. Gratzer has stated, in essence, that he thinks that Hunter no longer needs treatment but does not know for sure. He advocates taking Hunter off antidepressants to see.

Despite Hunter’s continuous pain and inability to work, Dr. Manlove’s treatment has successfully managed her depression. Dr. Gratzer testified that Hunter responded well to Dr. Manlove’s drug regime. Hunter’s condition has progressed from the deep depression she suffered after her surgeries to the point where she now has “good days” along with some bad.

Hunter has demonstrated by clear and convincing evidence that she is still marginally depressed and requires continuing treatment. In light of her medical record, it does not seem prudent to discontinue Hunter's antidepressants.at this time.

Treatment:

Employer and Insurer insist that the continued treatment of Hunter with antidepressants is no longer reasonable or necessary. Dr. Gratzer believes that Hunter should be taken off of her antidepressants and monitored to see if her depression reappears. Dr. Manlove opines that Hunter will not do well if she taken off her medications.

"It is in the doctor's province to determine what is necessary or suitable and proper. And when a disagreement arises as to the treatment rendered or recommended by the physician, it is for the employer to show that the treatment was not necessary or suitable and proper." Stacey v. Sturgis Pizza Ranch, 2011 SD 1 ¶ 23, 793 N.W.2d 378, 387-88 (internal quotations and citations omitted).

Here again, Dr. Gratzer does not seem to know whether Dr. Manlove's treatment is necessary or not. He advocates taking Hunter off her antidepressants but acknowledges that they may need to be restarted. Dr. Gratzer has also testified that Hunter responded well to Dr. Manlove's drug regime and then criticized Dr. Manlove's drug selection. Gratzer now advises taking Hunter off the regime that he credits helping her condition despite the fact that she still suffers from mood swings. On this issue, Dr. Gratzer's testimony seems both unsure and contradictory. Consequently, Employer and Insurer have failed to show that Hunter's current treatment is not reasonable or necessary.

Conclusion:

Claimant has demonstrated by clear and convincing evidence that she is still marginally depressed which requires treatment and that the major contributing cause of that depression continues to be her work-related injury. Employer and Insurer have failed to show that Hunter's current treatment of that depression is not reasonable or necessary.

Claimant shall submit Proposed Findings of Fact and Conclusions of Law and an Order consistent with this Decision, within 20 days after receiving this Decision. Employer and Insurer shall have an additional 20 days from the date of receipt of Claimant's Proposed Findings of Fact and Conclusions of Law to submit Objections and/or Proposed Findings of Fact and Conclusions of Law. The parties may stipulate to a waiver of formal Findings of Fact and Conclusions of Law. If they do so, counsel for Claimant shall submit such stipulation together with an Order consistent with this Decision.

Dated this 9th day of August, 2011.

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Donald W. Hageman
Administrative Law Judge