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APPLICATION OF THE TREATMENT PARAMETERS TO DISPUTED MEDICAL TREATMENT: *JOHNSON V. DARCHUKS FABRICATION, INC.*

By Sean M. Abernathy

The Minnesota Supreme Court recently entered a ruling regarding the application of the Minnesota Medical Treatment Parameters. These treatment parameters are found within the Minnesota Rules governing Worker's Compensation practice and procedures, Minn. Rule 5221.6010 through 5221.6600. Under Minn. Rule 5221.6020, Subp. 2, the medical treatment parameters do not apply to the treatment of an injury after an Insurer has denied primary liability for that injury. The treatment parameters, however, do apply to treatment initiated after primary liability has been established.

In the *Johnson v. Darchuks Fabrication, Inc.* case, the Employee suffered a right ankle injury in 2002 when he stepped on a piece of scrap metal while working for Darchuks Fabrication Inc. The Employee developed sharp pain and burning sensations that progressed up his right leg. The Employee's symptoms persisted, and he was ultimately diagnosed with the condition known as Complex Regional Pain Syndrome, (CRPS), which is sometimes known by its previous name of Reflex Sympathetic Dystrophy Syndrome (RSD). The Supreme Court noted that Complex Regional Pain Syndrome, or CRPS, is recognized and governed by the Minnesota Worker's Compensation medical treatment parameters in Minn. Rule 5221.6305. They noted that condition features symptoms affecting and individuals' extremities such as reduced range of motion, swelling, changes in skin texture or color, sensitivity to touch or cold and abnormal skin temperature regulation.

Mr. Johnson continued to seek medical care undergoing physical therapy and injection therapies followed by recommendation for pain program consultation and a trial of a variety of medications to manage his symptoms and improve quality of life. The Employee's symptoms consistently included paresthesias (a/k/a numbness and tingling), hypersensitivity, intolerance to heat and cold, skin atrophy and pain with physical activity. The Employee reported constant pain that was always present and difficulty sleeping without medication. The Employee was noted not to have been able to return to work following his injury.

Mr. Johnson ultimately brought a claim for workers compensation benefits, which was resolved with a Stipulation for Settlement. This occurred in 2004. The settlement indicated that the Employer, Darchuks Fabrication, Inc., accepted Worker's Compensation liability for the Employee's ankle injury and, agreed to pay ongoing medical expenses that were reasonable and necessary to cure and relieve Mr. Johnson's symptoms. A lump sum payment was also made as part of this resolution. Following the stipulation for settlement, Darchuks Fabrication, Inc. via its insurer paid for the Employees' medical treatment. Then in July, 2016, they made a determination that medical treatment being sought by Mr. Johnson was no longer reasonable or necessary.

The Supreme Court noted that following the settlement, the Employee went on to receive treatment from a general practitioner physician. He had not consulted with a pain specialist, as had been previously recommended. The Employee's general practitioner

physician had prescribed a combination of medications including muscle relaxants, calcium channel blockers, nerve medications, sleep medication, opioid analgesics and anti-anxiety medication. The Supreme Court noted that, by virtue of that combination of medications, Mr. Johnson had achieved some measure of control over his symptoms, but had never been able to eliminate them altogether.

Despite taking these medications, Mr. Johnson's capacity to manage his daily life declined, even with stable symptoms. Per medical records, his capacity to do household chores and outside housework diminished during 2013 and 2015. He also reported increased difficulty with daily exercise. By October, 2016, Mr. Johnson had told his physicians that his pain had begun to completely interfere with his general activity and sleep on a regular basis. Then, in May, 2016, the Employer and Insurer requested that Mr. Johnson undergo an Independent Medical Examination. The Court took note that this was the fourth Independent Medical Examination conducted over the course of the Employee's claim. Up until the 2016 medical examination, every physician who had examined the Employee had agreed with the diagnosis of Complex Regional Pain Syndrome and had agreed that the condition was causally related to the 2002 ankle injury. However, the May, 2016 Independent Medical Examination Report called the diagnosis of Complex Regional Pain Syndrome into question.

Based on the IME report, the Employer and Insurer advised the Employee's physician in writing that it was discontinuing coverage for treatment and medication for the alleged Complex Regional Pain Syndrome diagnosis. In the letter, the Employer and Insurer asked the treating physician to begin a plan within 30 days to wean the Employee from opioid medications and bring the treatment into alignment with the treatment parameters governing long-term use of opioid medication as found at Minn. Rule 5221.6110. The Court noted that the Employee's physician did not put a compliance plan in place. Physician's notes from October, 2016 showed the Employee's symptoms persisted and that the combination of prescription medications in place at that time provided better outcomes than the combinations that had been attempted previously over the years.

Based on the IME opinion, the Employer and Insurer suspended payment of medication expenses. Based on this, the Employee then filed a Medical Request seeking payment of costs associated with his medication. This pleading was filed in November, 2016. The Employer and Insurer relied on the Independent Medical Examination findings contending that the Complex Regional Pain Syndrome had resolved. The Employer and Insurer also asserted that it was not obligated to pay for the requested medical treatment because it was not reasonable or necessary and that continuing medication treatment was not compliant with the applicable Worker's Compensation treatment parameter for long-term treatment with opioid analgesic medication. The Supreme Court noted that Minn. Rule 5221.6110 has detailed substantive and procedural requirements that physicians must follow in order to treat workers compensation patients with opioid pain medications and they also noted that the Rules provide for specific treatment parameters regarding treatment of Complex Regional Pain Syndrome at Minn. Rule 5221.6305.

The parties ultimately went to a hearing on these issues before a Worker's Compensation Judge on July 21, 2017. The Worker's Compensation Judge found that the Employee's testimony was credible, and that the diagnosis was correct. The Supreme Court noted the Judge implicitly concluded that the diagnosis was causally connected to the initial workplace injury. The judge also found that his condition had not resolved. The Judge also concluded that, by asserting the Employees Complex Regional Pain Syndrome had resolved, the Employer and Insurer had in effect "denied liability" for the alleged injury. Thus, the Judge held that the treatment parameters did not apply to the Employee's claim citing to Minn. Rule 5221.6020 Subp. 2 which specifically notes that the treatment parameters do not apply to treatment of an injury after an Insurer has denied primary liability for the injury. The Judge ordered the Employer and Insurer to pay for the Employee's medication and medical treatment, which the judge concluded was "reasonable and necessary to cure and relieve the effects of the work injury."

The Employer and Insurer then appealed the Judge's Decision to the Worker's Compensation Court of Appeals arguing that the Compensation Judge misunderstood its position that it continued to accept responsibility for reasonable and necessary treatment for the injury and, as such, the bar preventing the application of the treatment parameters under Minn. Rule 5221.6020, Subp. 2, had not been triggered. The WCCA rejected this argument and affirmed the Compensation Judge's Decision.

The Employer and Insurer then appealed the WCCA's decision to the Minnesota Supreme Court. In making the appeal, the Employer and Insurer did not challenge the Compensation Judge's finding that the Employee suffered from Complex Regional Pain Syndrome. Nor did the Employer and Insurer challenge the finding that the Employee's condition had not resolved. Their only legal contention on appeal was that the Worker's Compensation Judge and the WCCA had erred in concluding the treatment parameters did not apply to the course of treatment.

In their Decision, the Minnesota Supreme Court entered into a rather technical analysis of the statutory foundations supporting the Minnesota treatment parameters. They noted that the treatment parameters themselves serve to function as a "yardstick by which the treatment offered by the healthcare provider is measured." Citing to *Jacka vs. Coca-Cola Bottling Company*, 580 NW. 2nd, 27, 35 (Minn. 1998). They noted further that the treatment parameters themselves were meant to serve as cost controls for compensable medical treatment, noting that Minn. Rule 5221.6020, Subp. 1 state that the treatment parameters serve to prevent excessive services from being rendered.

The Court also noted that the Worker's Compensation statutes allow a workers' compensation Insurer to withhold payment if it determines that "the level, frequency or cost of a procedure or service of a [healthcare] provider is excessive, unnecessary, or inappropriate according to the standards established" by the treatment parameters, "unless the commissioner or compensation judge determines at a hearing" that the treatment "was not excessive under the rules." Minnesota Statute §176.83, Subd. 5(C). The Supreme Court expressly noted the rules provide that the treatment parameters do not apply to treatment if the Employer denied primary liability for the injury but do apply to treatment initiated after liability had been established.

The Supreme Court noted that the question before them was whether the Employer had lost the right to invoke the treatment parameters to challenge coverage for a treatment regime prescribed by the Employees' physician when the Employer and Insurer objected to the latest medical payment request. To do that, the Supreme Court expressly interpreted the phrase "denied liability" found within Minnesota rule 5221.6020, Subp. 2.

The Supreme Court then went on to conduct a further technical analysis of statutory interpretation. The Court found that the phrase "liability for the injury" found in Minn. Rule 5221.0620, Subp. 2, refers to an Employer's obligation to pay statutory benefits for personal injuries covered by the Worker's Compensation Act. Consequently, they noted that the denial of liability is referring to a dispute arising between the parties concerning whether an injury is covered under the Worker's Compensation Act. They noted that the treatment parameters therefore do not apply when an Employer and Insurer deny liability and claim that they are not at all obligated to pay for compensation related to an alleged injury. The Court drew a distinction, however, to an Employer's position disclaiming liability or objecting to liability connected to a *particular* treatment recommendation or regime. They found support in this by indicating that later in the Rule the treatment parameter specifically notes that the parameters "apply to treatment initiated after liability has been established." In other words, once a dispute about an injury is resolved in favor of benefit coverage by way of a determination of a compensation judge, stipulation of the parties or other mechanism, the ongoing treatment of a covered injury would then be subject to the treatment parameters. Accordingly, the Supreme Court found that the ban on applying the treatment parameters found in Minn. Rule 5221.6020 Subp. 2 applies only when an Employer denies that it has an obligation under the act to pay compensation for an alleged workplace injury.

The Court went on to note their express disagreement with the position taken by the lower courts that by putting the Employee's condition and treatment at issue, the Employer had, in effect, denied that a causal connection existed between the Employee's work-related injury and his then present symptoms. They noted that, although the Employer and Insurer had contested the validity of the Employee's diagnosis and had argued that the medical prescriptions were improper under the treatment parameters, the bar against applying treatment parameters was triggered only when an Employer denied liability for an *injury*. Because they found that the Employer had admitted and continued to admit that the Employee suffered a workplace ankle injury, and further admitted that the Employee had not fully recovered from that injury, that the Employer had Insurer and a continuing liability to cure and relieve the injury. Thus, they noted that

the Employer and Insurer had taken the position that they had an obligation to pay for ongoing medical treatment and had not denied liability for the injury as claimed by the Employee.

Because the Employer did not contest liability to pay for treatment that was reasonably required to cure and relieve the effects of the Employee's workplace ankle injury, the Minnesota Supreme Court expressly found that it had not "denied liability for the injury under Minn. Rule 5221.6020, Subp. 2. Rather, they found that the treatment parameters applied to the Employee's medical request because the lower courts had established that the Employee in fact suffered from Complex Regional Pain Syndrome, his condition was causally related to the workplace ankle injury and his condition had not resolved. Thus, the Supreme Court reversed the Decision of the Worker's Compensation Court of Appeals and remanded the case to the Worker's Compensation judge for application of the Minnesota medical treatment parameters to the Employees requested medical treatment.

That conclusion noted, it is important to recognize that this case does feature footnote 12 on page 15, that indicates that the outcome of the Supreme Court's analysis may have been different if the Employer and Insurer had asserted that the Employee no longer suffered from any symptoms causally related to his work-related ankle injury. They seem to indicate that if the Employer and Insurer had argued that the Employee's symptoms had completely resolved, then their argument for the application of the treatment parameters would not have been appropriate. However, the Supreme Court found that because Employer had not argued that the Employee's injury had resolved, the treatment parameters remained applicable.

This case, while highly technical, can be seen as instructive to cases that we encounter as Employers, Insurers, claims adjusters and attorneys. We can read this case as highlighting the Minnesota Supreme Court's reaffirmation of the proper application of the treatment parameters to medical treatment disputes. We should see this as encouragement to make active use of the treatment parameters wherever possible in order to ensure that medical treatment being proposed and rendered in claims where we have admitted primary liability is reasonable, necessary and not excessive. As shown by the Employer and Insurer in the *Johnson* case, we can argue that the treatment parameters apply to proposed procedures and diagnoses, even when we question the validity of that treatment recommendation or the diagnosis itself, with evidentiary support from an Independent Medical Examination Report or record review report.

In conclusion, this rather complex opinion can serve as a good reminder that the Minnesota Worker's Compensation medical treatment parameters exist to be used by Employers and Insurers arguing against the provision of medical treatment that is not reasonable, necessary or causally related to the claimed injury. We should carefully review claims involving admitted injuries and investigate whether we may have grounds to dispute the provision of proposed treatment based on the applicable Minnesota Treatment Parameters and Rules.

Should you have any questions regarding recommendations for medical treatment and the application of the medical treatment parameters, please feel free to contact our attorneys at Brown & Carlson PA.

Sean M. Abernathy
763-252-6365
sabernathy@brownandcarlson.com



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Brown & Carlson, P.A.
300 Highway 169 S.,#500
Minneapolis, MN 55426-1113
763-591-9950
F: 763-591-9202