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LEUTHARD V. ISD 912: THE TREATMENT PARAMETERS ESCAPE FROM THE JAWS OF THE RARE CASE EXCEPTION!

By Luke A. Smith

On April 29, 2021, the Minnesota Supreme Court issued a decision denying a claim for medical treatment not indicated pursuant to the treatment parameters.

The Employee sustained a work-related injury to the neck and upper spine, and subsequently experienced chronic pain. She attempted several treatment modalities without long term success, including physical therapy, medications, facet injections, and medial branch blocks. An independent medical examiner opined that any further facet injections were not reasonable and necessary, but did not comment on medial branch blocks. The treating physician opined that while ongoing facet injections were not ideal, they were “the only treatment that had significant and reproducible pain relief.” He continued to administer facet injections every three months. The Employer and Insurer denied the facet injections based on the three injection limit set forth in the treatment parameters.

Under the treatment parameters, specifically Minnesota Rule 5221.6205, Subpart 5.A(2)(c), up to three cervical facet joint injections are indicated. However, a departure from the treatment parameters may be indicated where two of the following three criteria are met: the Employee’s subjective pain complaints are progressively improving; the Employee’s objective clinical findings are progressively improving; and the Employee’s functional status is objectively improving. See Minn. R. 5221.6050, Subp. 8. The Employee requested a hearing to determine whether a departure from the treatment parameters was warranted.

At the hearing on the Employee’s request for payment for the injections, the Employee credibly testified that the injections provided subjective relief and allowed her to engage in additional physical activities. However, the Compensation Judge determined that a departure from the treatment parameters was not warranted, and that

the injections were not reasonable and necessary because the relief afforded by the injections was not long term. The Compensation Judge therefore denied the injections. The Employee appealed.

The WCCA vacated and remanded on the basis that the compensation judge should have considered the rare case exception to the treatment parameters. The courts have in the past awarded medical treatment not indicated pursuant to the treatment parameters under the judicially created “rare case exception,” which it describes as follows:

[The Minnesota Supreme Court] held that the treatment parameter rules were valid guidelines that should be followed by compensation judges. However, in holding that the treatment parameter rules were valid, we cited with approval the provisions of Minn. R. 5221.6050, subp. 8, stating that “the rules allow the judge to depart from the parameters when appropriate.” It was this type of “variability and flexibility” that made the treatment parameter rules a valid guide, rather than an invalid imposition on the discretion of compensation judges. *Id.* at 35. Yet we recognized that the rules were not infallible, and could not “anticipate every exceptional circumstance.” [The Minnesota Supreme Court] thus “acknowledge[d] that a compensation judge may depart from the rules in those rare cases in which departure is necessary to obtain proper treatment.”

Leuthard v. Independent School District 912, WC19-6290 (WCCA May 26, 2020), *rev'd* _____ N.W.2d _____ (Minn. 2021) (internal citations omitted). The WCCA reasoned that because the Compensation Judge credited the Employee’s testimony that the injections provided relief, but also found that the injections failed to provide significant and relief, the latter finding was not supported by substantial evidence.

The Employer and Insurer appealed to the Minnesota Supreme Court. The Minnesota Supreme Court reversed the WCCA and reinstated the decision of the Compensation Judge. The basis for the reversal was that the Employee had not presented the rare case exception to the compensation judge and, therefore, the Compensation Judge was not required to consider it. The Employee could not raise the issue for the first time on appeal.

In sum, the Minnesota treatment parameters continue to serve as a valid objective standard for what constitutes reasonable and necessary medical treatment. Where a claim for medical treatment is not indicated under the treatment parameters, a compensation judge can deny that treatment. However, the rare case exception continues to vest discretion in compensation judges to award medical benefits when adequately presented at hearing.

If you have questions about the applicability of the treatment parameters, or any other workers' compensation matter, please feel free to contact me or the Brown & Carlson Hotline at (855)844-7070.

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