

VERMONT DEPARTMENT OF LABOR

Becky Curtis

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State File No. HH-61695

v.

State of Vermont

ORDER

The Parties have represented the following facts to the Department, and I accept them as true for the purposes of this Order:

1. On March 21, 2016, Claimant Becky Curtis sustained a right upper extremity injury while employed in the victim advocate office for the State of Vermont. Her average weekly wage is \$1,238.60.
2. Defendant filed denials of medical expense benefits.¹
3. This matter was scheduled for Formal Hearing November 28, 2018 and rescheduled at Defendant’s request to February 22, 2019.
4. The disputed issues for the hearing are (1) what is the correct work injury diagnosis, and (2) what treatment is reasonable and necessary and has the injured worker reached maximum medical improvement.
5. On February 8, 2019, Defendant’s counsel confirmed Defendant’s intention to withdraw its denials, accept the diagnosis of CRPS, and pay for reasonable and related medical expense benefits:

After additional discussions with Chip and my client, the State is agreeable to accepting the condition of CRPS as a consequence of the March 2016 claim and paying any/all past

¹ The denials include:

August 18, 2016 Form 2 Denial for payment of “an invoice for treatment of CRPS.”

September 20, 2016 Form 2 Denial of a Dartmouth Hitchcock Medical Center request for preauthorization for “injections and biopsy for CRPS”.

May 30, 2018 Form 2 Denial of a May 24, 2018 preauthorization request for additional scrambler therapy.

July 5, 2018 Form 2 Denial of a June 19, 2018 preauthorization request for IV Ketamine infusion at Dartmouth Hitchcock Medical Center.

and present reasonable medical and prescription treatment associated with it and ongoing until/unless there is a basis to terminate. My proposal would be to have my client execute a Form 32 that includes CRPS. Chip's position is there remain issues of *what* is reasonable and necessary treatment and prescriptions. Chip points out the issues to be tried 2/22/19 are not simply the diagnosis CRPS. Specific treatments and scripts are denied, for example the scripts named and identified in the pleadings and for example the June IV-Ketamine identified in the pleadings. His client does not agree to cancel the hearing without the State of Vermont signed pleading confirming the State's withdrawal of Form 2s, and specific list identifying what treatments, providers and scripts the State has decided to accept and pay retroactively and to the present, and that such a list needs to be reviewed by you and Interim Ordered so there is specificity at last.

6. On February 13, 2019, a status conference was conducted.
7. At the status conference, Claimant's counsel made clear that Claimant was not "settling" or compromising any claim or benefit in connection with Defendant's unilateral decision to withdraw denials and accept the diagnosis of CRPS and related medical expense.
8. At the status conference, the parties reviewed and discussed a draft pleading to be signed by Defendant clarifying its acceptance of the diagnosis of CRPS and specifying its acceptance of related medical and prescription expenses. Defendant, through its agent Rebecca White, executed a document to that effect on February 18, 2019. Defendant's counsel has provided that document to the Department.

It is therefore **ORDERED** that Defendant's denials be noted as withdrawn. As such, Defendant is legally responsible for Claimant's diagnosed CRPS resulting from the March 21, 2016 work injury. Defendant shall pay all past and present reasonable medical expenses, including prescription drug costs, associated with that condition pursuant to 21 V.S.A. § 640, continuing until and unless there is a basis to terminate, specifically including:

1. Dartmouth Hitchcock Medical Center treatment of this diagnoses from date of diagnosis following the March 21, 2016 injury to present.
2. IV Ketamine treatment at Dartmouth Hitchcock Medical Center in June 2018.
3. Prescriptions
 - a. Amitriptyline
 - b. Compounded ointment/cream (bab6/keta5/lid5/dic3%)

- c. Lyrica
 - d. Tizanidine
 - e. Low dose naltrexone
 - f. Ketamine troches
 - g. Lidocaine
4. CALMAR Pain Relief for scrambler therapy and associated travel, meal and lodging.
 5. Dr. Gellis 1/25/19 referral to consult with Vincera Institute and associated travel, meal and lodging.
 6. Medical payments shall be in accordance with the Vermont Fee Schedule (Rule 40) unless otherwise agreed by the parties.

Because of Defendant's acceptance of CRPS as a covered condition and of the foregoing treatments, the formal hearing scheduled for Friday February 22, 2019 is cancelled. Claimant may, by separate motion, petition for an award of costs and attorney fees pursuant to 21 V.S.A § 678. Defendant shall have the same rights to contest any such petition as it would following a formal hearing.

Additionally, Defendant has requested an order to the effect that its acceptance of and payment for the foregoing benefits shall not prejudice Defendant's right to right to seek payment or other remedies against potential third parties who may be responsible for any or all of Claimant's injuries. Defendant's dated February 18, 2019 submission signed by Rebecca White asserts that nothing therein should be construed as a waiver or limitation of Defendant's rights as against third parties. However, absent a live case or controversy involving a third party, I decline to adjudicate the merits of any potential argument that a putative third party may assert in the future. Therefore, Defendant's request for such an order is denied without prejudice to its right to assert any meritorious defense to a future action that may ripen at a later date.

DATED at Montpelier, Vermont this 19th day of February 2019.



Stephen W. Brown
Administrative Law Judge

**STATE OF VERMONT
DEPARTMENT OF LABOR
WORKERS' COMPENSATION DIVISION**

BECKY CURTIS

v.

STATE FILE NO. HH-61695

STATE OF VERMONT

Employer agrees to withdraw its denials and accepts the condition of CRPS as a consequence of the March 21, 2016 claim and shall pay any/all past and present reasonable medical treatment and prescription(s) associated with it as provided by 21 V.S.A. §640 and ongoing until/unless there is a basis to terminate, including specifically:

1. Dartmouth Hitchcock Medical Center treatment of this diagnosis from date of diagnosis following the March 21, 2016 injury to present.
2. IV Ketamine treatment at Dartmouth Hitchcock Medical Center in June 2018.
3. Prescriptions:
 - a. Amitriptyline
 - b. Compounded ointment/cream (bab6/keta5/lid5/dic3%)
 - c. Lyrica
 - d. Tizanidine
 - e. Low dose naltrexone
 - f. Ketamine troches
 - g. Lidocaine
4. Calmar Pain Relief for scrambler therapy and associated travel, meal and lodging.
5. Dr. Gellis 1/25/19 referral to consult with Vincera Institute and associated travel, meal and lodging.
6. Medical and reimbursement payments will be according to the Vermont Fee Schedule (Rule 40) or as otherwise agreed by the parties.

Nothing in this document shall be considered a waiver and/or limitation of any and all rights that Employer has to enforce the liability of and/or pursue recovery against any third party person(s)

or entity(ies) for benefits/damages stemming from the above-captioned claim under 21 V.S.A. §624 and/or any other applicable law. Any and all such rights are hereby reserved.

DATED at Montpelier, Vermont this 18th day of February 2019.

STATE OF VERMONT

Rebecca White

Director of Risk Management
Operations