STATE OF VERMONT
DEPARTMENT OF LABOR

Tuan Nguyen

v.

Best Foods Baking Company

Opinion No. 22-13WC

By: Phyllis Phillips, Esq.
Hearing Officer

For: Anne M. Noonan
Commissioner

State File No. P-05594

OPINION AND ORDER

Hearing held in Montpelier, Vermont on July 8, 2013
Record closed on August 30, 2013

APPEARANCES:

Charles Powell, Esq., for Claimant
Justin Sluka, Esq., for Defendant

ISSUE PRESENTED:

Does Claimant's current narcotic pain medication regimen constitute reasonable medical treatment for his August 6, 1998 compensable work injury?

EXHIBITS:

Joint Exhibit I:	Medical records, Volume 1
Joint Exhibit II:	Medical records, Volume 2
Claimant's Exhibit 1:	*Curriculum vitae*, Mark Pasanen, M.D.
Claimant's Exhibit 2:	DVD of Dr. White examination, 05/26/11

CLAIM:

Medical benefits pursuant to 21 V.S.A. §640(a)
Costs and attorney fees pursuant to 21 V.S.A. §678

FINDINGS OF FACT:

1. At all times relevant to these proceedings, Claimant was an employee and Defendant was his employer as those terms are defined in Vermont's Workers' Compensation Act.

2. Judicial notice is taken of all relevant forms and correspondence contained in the Department's file relating to this claim.

3. Claimant was born in Vietnam in 1969. He immigrated to this country with his mother and siblings. During high school, he worked part time at Defendant's bakery. Upon graduation, he became a full time employee, first as a machine operator and then as a crew leader.

Claimant's Work Injury, Diagnosis and Current Symptoms

4. While at work on August 6, 1998 Claimant slipped on a wet floor and fell backwards, hitting his head and landing on his right arm. He immediately experienced pain in his right wrist, for which he sought medical treatment. Defendant accepted this injury as compensable and began paying workers' compensation benefits accordingly.

5. Though initially diagnosed with tendinitis, Claimant's wrist pain failed to respond to either physical therapy or splinting. X-rays were negative for any fracture, and diagnostic arthroscopy did not reveal any ligament tears or other obvious pathology. Ultimately, Claimant was diagnosed with complex regional pain syndrome (CRPS), Type II, an irreversible condition.

6. Claimant's CRPS-related symptoms have remained largely unchanged in the years since his injury. He experiences constant pain in his right hand, wrist and forearm, often radiating up into his shoulder and neck as well. Sometimes the pain is like a "needle inside," sometimes like "a hammer slamming down." When the pain is severe, he becomes dizzy. The pain increases with any movement of his right hand or arm, and is only minimally relieved by resting. As documented repeatedly in the medical records, he has little if any functional use of his right upper extremity. At the formal hearing, his right hand was visibly swollen, and he held his right arm motionless by his side.

7. Except for a failed trial of modified duty work in 2000, Claimant has not worked since his injury. He was determined to have reached an end medical result in 2002, following which he was rated with a 73 percent whole person permanent impairment referable to his right upper extremity. In November 2004, the Department approved the parties' Form 14 settlement (medical benefits open) for $325,000.00.

Medical Treatment and Use of Narcotic Pain Medications

8. In the years since his injury, Claimant has undergone a myriad of treatments designed to afford him some measure of pain management and symptom relief, including stellate ganglion blocks, physical therapy (both ambulatory and in-patient), occupational therapy, acupuncture, TENS, psychological counseling, anti-inflammatories, neuropathic pain medications and narcotics. Unfortunately, none of these therapies have proven effective at restoring, or even approximating, his pre-injury functional status.

9. Claimant's treating medical providers first prescribed Oxycontin, a narcotic pain medication, for relief of his CRPS-related chronic pain in August 2000. After much experimentation with varying dosages, and in conjunction with other non-narcotic medications, since February 2006 he has been maintained on a dosage of 300 milligrams per day.

10. Although his functional status is still very poor, and his pain levels are still very high, I find from both the medical records and from Claimant's credible testimony that the Oxycontin has been of benefit to him in important respects. For example, whereas before the narcotic was prescribed his pain was consistently uncontrollable – an eight or higher on a ten-point scale – at his current dosage it is sometimes, however briefly, as low as a six or seven. And whereas before he reported to his mental health counselor that as a consequence of frustration with his unremitting pain he was "acting crazy," "ugly" with his children, and even physically abusive to his girlfriend and dog, now he feels less helpless and his interpersonal relationships are improved. He is able to get outside more often and occasionally he can use his arm for short periods of time. These changes may appear modest, but I find that in Claimant's particular circumstance, they are not insignificant.

Expert Medical Opinions as to Claimant's Narcotic Pain Medication Regimen

(a) Dr. Pasanen

11. Claimant's primary care provider, Dr. Pasanen, has for many years overseen his Oxycontin regimen, either personally or in concert with the other providers in his practice group. Dr. Pasanen is board certified in internal medicine. Approximately 20 percent of the patients in his current practice have chronic pain as a focus of their treatment. He has twice presented on the pharmacology of pain at recent national meetings of the American College of Physicians. More locally, for the past year he has assisted with a state-sponsored project designed to improve the decision-making process for primary care physicians who are contemplating opiate therapy for their patients.

12. At the formal hearing, Dr. Pasanen testified in strong support of Claimant's Oxycontin regimen. Although acknowledging that the use of opiates for chronic pain relief is somewhat controversial, from his observation the treatment has proven effective in Claimant's case. Dr. Pasanen described the challenge of managing Claimant's CRPS in the early 2000's as "an enormous struggle," involving frequent trips to the emergency room for treatment of acute pain flares, severe depression, outbursts of frustration and anger and an almost complete inability to function. Since being started on Oxycontin, his routine is steadier, he sleeps better, his depression is improved and he is able to enjoy his family more. While admittedly the concept of "quality of life" is difficult to measure, in Dr. Pasanen's opinion Claimant is doing "remarkably better" with the narcotic than he was without it, and in that respect his quality of life is improved. I find this analysis credible.

13. Regarding the risks of long-term opiate use – most notably, misuse or abuse, decreased function and hypersensitivity to pain over time – Dr. Pasanen credibly testified that these have not been of primary concern in Claimant's case. Claimant has occasionally undergone random urine screening, but because he has never exhibited any triggers indicative of drug abuse, such as missed appointments or requests for early refills, Dr. Pasanen has not required regular testing. He is confident that no misuse has occurred, a conclusion I find reasonable. As for decreased function, it is true that Claimant remains unable to return to work, but as noted above, his quality of life is at least somewhat improved and in that sense Dr. Pasanen believes the use of narcotics for pain relief has been efficacious.

14. As for the risk of hypersensitivity, a paradoxical phenomenon in which rather than alleviating pain opioid therapy actually renders the patient more susceptible to it, Dr. Pasanen found no evidence of this in Claimant's case. Patients with hypersensitivity typically require ever-increasing dosages of narcotics in order to realize the same level of pain relief. Claimant having been maintained on the same dosage of Oxycontin for more than seven years, Dr. Pasanen credibly interpreted this as a sign that hypersensitivity is not an issue for him.

15. Dr. Pasanen acknowledged that Claimant's treating physical medicine and rehabilitation specialist, Dr. Zweber, was not supportive of a narcotic pain regimen in Claimant's case. Dr. Zweber cautioned against the use of narcotics at various times in 2000. Upon reevaluating Claimant in 2008, Dr. Zweber continued to maintain that "an ideal medical model" for managing his CRPS symptoms would not include Oxycontin.

16. Other physiatrists have concurred with Dr. Pasanen's approach, most recently Dr. Pino, who evaluated Claimant at Dr. Pasanen's request in 2012. As Dr. Zweber had, Dr. Pino noted the dearth of evidence to support the use of opioids in neuropathic pain syndrome patients. However, given that Claimant obtained pain relief and improved function with Oxycontin, he recommended continuing its use nonetheless.

17. I accept as credible Dr. Zweber's general admonition against using narcotic pain medications such as Oxycontin to combat chronic, disabling pain. However, given Claimant's long struggle to find a routine that affords even a modicum of relief, I am doubtful that applying the "ideal medical model" is realistic in this case. For that reason, I find the more practical approach endorsed by Drs. Pasanen and Pino more compelling.

18. Dr. Pasanen testified that he continues to consult routinely with other pain management specialists to ensure that he is not overlooking new treatment strategies that might prove effective in Claimant's case. In his opinion, which I find credible in all respects, tapering or discontinuing Claimant's use of Oxycontin in the meantime would cause him unreasonable suffering and is therefore medically unjustifiable.

(b) Dr. White

19. At Defendant's request, in May 2011 Claimant underwent an independent medical examination with Dr. White, a board-certified specialist in occupational medicine. Dr. White also reviewed Claimant's medical records. Dr. White does not currently maintain a clinical practice, but in the past he treated many patients who suffered from chronic pain, primarily lower back-related.

20. Dr. White testified against the use of opioid analgesics as an appropriate treatment regimen in Claimant's case. In his opinion, the risks of long-term Oxycontin use, most notably hypersensitivity and decreased function, outweigh whatever modest benefit Claimant may have realized from the drug. Were Claimant his patient, Dr. White's strategy would be to reduce or eliminate narcotic pain medications and instead direct him into a functional restoration program as a means of achieving "some relatively normal" level of function. The medical records amply document Claimant's longstanding inability to tolerate the physical aspects of such a program, however. Perhaps more notably, they document as well his consistent lack of insight as to the psychological components of his pain condition. For these reasons, I find little evidence from which to conclude that functional restoration would be effective in his case.

21. In support of his opinion, Dr. White cited various research studies tending to show that using opioid analgesics to treat chronic pain disorders is ineffective and potentially harmful. None of the articles he referenced dealt specifically with CRPS-related pain. Furthermore, of the 21 studies cited, eleven concerned either the risk of fatal overdose or the incidence of hypersensitivity. As Dr. Pasanen credibly testified, there are no red flags for either of these hazards in Claimant's case.

22. One of the sources cited by Dr. White, the practice guidelines published by the American College of Occupational and Environmental Medicine (ACOEM), admonishes generally against the use of opioid analgesics for treating chronic pain conditions. However, elsewhere in the guidelines the ACOEM in fact recommends their judicious use in "select patients with chronic persistent pain, neuropathic pain or CRPS." Dr. White admitted that Claimant met at least some of the criteria for that category.

23. On cross-examination, Dr. White agreed that some might consider the ability to get out more, or to get along better with one's family, or to avoid frequent emergency room visits, as the equivalent of functional improvement. He acknowledged that if it could be proven, by way of a three- or six-month drug holiday, for example, that Claimant's quality of life measurably deteriorated in these respects without Oxycontin, he might acquiesce to its continued use. Comparing Claimant's experience in the years prior to incorporating the drug into his pain management regimen with his experience since then, I find that evidence to that effect already exists.

CONCLUSIONS OF LAW:

1. The disputed issue in this claim is whether Claimant's continued use of narcotic pain medications, specifically Oxycontin, as part of the pain management regimen for his work-related CRPS is medically reasonable, such that Defendant should be obligated to continue paying for it under 21 V.S.A. §640(a).

2. Vermont's workers' compensation statute obligates an employer to pay only for those medical treatments that are determined to be both "reasonable" and causally related to the compensable injury. 21 V.S.A. §640(a); *MacAskill v. Kelly Services,* Opinion No. 04-09WC (January 30, 2009). The commissioner has discretion to determine what constitutes "reasonable" medical treatment given the particular circumstances of each case. *Id.* A treatment can be unreasonable either because it is not medically necessary or because it is not related to the compensable injury. *Baraw v. F.R. Lafayette, Inc.*, Opinion No. 01-10WC (January 20, 2010).

3. As to the medically necessary component, the determination whether a treatment is reasonable must be based primarily on evidence establishing the likelihood that it will improve the patient's condition, either by relieving symptoms and/or by maintaining or increasing functional abilities. *Cahill v. Benchmark Assisted Living,* Opinion No. 13-12WC (April 27, 2012), citing *Quinn v. Emery Worldwide*, Opinion No. 29-00WC (September 11, 2000). An injured worker's subjective preferences cannot render a medically unreasonable treatment reasonable. *See, Britton v. Laidlaw Transit,* Opinion No. 47-03WC (December 3, 2003). As is the case with many aspects of medical decision-making, however, there can be more than one right answer, and thus more than one reasonable treatment option for any given condition. *Lackey v. Brattleboro Retreat*, Opinion No. 15-10WC (April 21, 2010).

4. The parties presented conflicting medical evidence as to whether the ongoing use of Oxycontin in Claimant's case is reasonable. In such circumstances, the commissioner traditionally uses a five-part test to determine which expert's opinion is the most persuasive: (1) the nature of treatment and the length of time there has been a patient-provider relationship; (2) whether the expert examined all pertinent records; (3) the clarity, thoroughness and objective support underlying the opinion; (4) the comprehensiveness of the evaluation; and (5) the qualifications of the experts, including training and experience. *Geiger v. Hawk Mountain Inn*, Opinion No. 37-03WC (September 17, 2003).

5. In this case, the first factor weighs heavily in my determination. Having overseen Claimant's care for more than ten years, Dr. Pasanen is well positioned to evaluate how effective – or not – the various attempts to manage his CRPS-related pain have been. I place great stock in his conclusion that of all the medications Claimant has tried, in whatever combinations and dosages, Oxycontin has offered the most relief. I am confident that Dr. Pasanen has adequately weighed the risks of long-term opiate therapy against the benefits in Claimant's case. I accept as valid his conclusion that no better treatment alternative yet exists. For that reason, I share his concern that discontinuing the drug will cause Claimant to suffer unreasonably.

6. I acknowledge and appreciate Dr. White's perspective – that according to the available research, the use of long-term opiate therapy to treat chronic pain conditions is often ineffective and always fraught with risk. Were there sufficient evidence to convince me that a more effective treatment was available, one that likely would afford Claimant both better symptom control and greater function, I would find more credible his conclusion that narcotic pain medications should be discontinued in this case.

7. While quality research can appropriately inform the decision to choose one medical treatment over another, the test in the end is always one of balancing the relative risks and benefits to a particular patient in a particular case. *Cahill*, *supra; see also*, *Estate of George v. Vermont League of Cities and Towns*, 2010 VT 1 (cautioning against use of epidemiological studies to establish specific work-related causation in a workers' compensation claim). Here, I accept as credible Dr. Pasanen's conclusion that narcotic pain medications have provided Claimant with the most effective symptom relief possible, and that the benefits of their continued use outweigh the risks. Therefore, I conclude that the current narcotic pain medication regimen is medically justifiable, necessary and reasonable, and that Defendant is obligated to continue paying for it.

8. As Claimant has prevailed on his claim for benefits, he is entitled to an award of costs and attorney fees. In accordance with 21 V.S.A. §678(e), Claimant shall have 30 days from the date of this opinion within which to submit his itemized claim.

ORDER:

Based on the foregoing findings of fact and conclusions of law, Defendant is hereby **ORDERED** to pay:

1. All medical costs associated with the prescribed use of narcotic pain medications as treatment for Claimant's compensable CRPS-related chronic pain condition, in accordance with 21 V.S.A. §640(a); and

2. Costs and attorney fees in amounts to be determined, in accordance with 21 V.S.A. §678.

DATED at Montpelier, Vermont this 2nd day of October 2013.

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Anne M. Noonan
Commissioner

Appeal:

Within 30 days after copies of this opinion have been mailed, either party may appeal questions of fact or mixed questions of law and fact to a superior court or questions of law to the Vermont Supreme Court. 21 V.S.A. §§670, 672.