



**TENNESSEE BUREAU OF WORKERS' COMPENSATION
IN THE COURT OF WORKERS' COMPENSATION CLAIMS
AT KNOXVILLE**

TONYA LYNN STEPHENS,) **Docket No. 2018-03-1494**
Employee,)
v.)
QUALITY PRIVATE CARE d/b/a)
VOLUNTEER STAFFING, INC.,) **State File No. 59534-2016**
Employer,)
And)
BRIDGEFIELD CASUALTY)
INSURANCE COMPANY,) **Judge Lisa A. Lowe**
Carrier.)

**ORDER DENYING MOTION TO DENY SPINAL CORD STIMULATOR AND
DENYING MOTION TO HOLD EMPLOYER HARMLESS FOR BAD
OUTCOME**

This case came before the Court on Volunteer Staffing's Motion to Deny Spinal Cord Stimulator, or in the alternative, To Hold Employer Harmless for Bad Outcome; Employee's response; and the various replies of both parties. For the reasons below, the Court denies the motion.

History of Claim

Ms. Stephens worked as a licensed practical nurse providing in-home care for patients. While transferring a patient to a bed in August 2016, Ms. Stephens felt a pop in her left shoulder and experienced pain shooting down her left arm into her wrist and fingers. She also felt pain in her neck, back and left hip, and pain and numbness down her left lower extremity. Ms. Stephens reported the injury, and Volunteer Staffing provided authorized care.

Ms. Stephens initially underwent conservative treatment, but after continued pain and an MRI, Volunteer Staffing provided a panel of orthopedic surgeons. Ms. Stephens chose Dr. William Hovis, who diagnosed her with a rotator cuff tear and SLAP lesion and performed surgery. Due to Ms. Stephens's post-surgery pain, Dr. Hovis ordered a left shoulder arthrogram and performed another surgery after reviewing the results.

After the second surgery, Ms. Stephens experienced sensitivity symptoms, and Dr. Hovis diagnosed possible complex regional pain syndrome (CRPS). He recommended a stellate ganglion block, and Ms. Stephens underwent two without improvement. After Dr. Hovis recommended a third block, Ms. Stephens refused and elected to concentrate on physical therapy. She last saw Dr. Hovis in November 2017, and he referred her for evaluation with shoulder specialist, Dr. Sean Grace. Dr. Grace ordered another shoulder MRI. Afterward, He diagnosed CRPS and recommended evaluation with another specialist for possible sympathetic nerve blocks.

Instead of scheduling an appointment with the specialist, Volunteer Staffing offered another panel of physicians. Ms. Stephens chose Dr. David Newman, a pain management specialist, as her authorized physician. Dr. Newman evaluated Ms. Stephens, confirmed her diagnosis of CRPS, and recommended a spinal cord stimulator (SCS) trial. Volunteer Staffing submitted the SCS request to utilization review, where the reviewing doctor denied the request. However, when Volunteer Staffing sent a second request for SCS trial for utilization review, the reviewer stated Ms. Stephens had symptoms consistent with CRPS and that the previously denied SCS trial was now medically necessary and appropriate.

The Court entered an order on May 24, 2019, for the SCS and other treatments. However, Dr. Newman retired, and the parties were forced to find a new pain management physician who performed SCS trials. In the meantime, a psychologist evaluated Ms. Stephens for depression related to her pain and referred her to a pain management psychologist, Dr. Ted Jones. Ultimately, Volunteer Staffing provided Ms. Stephens with a panel of pain management physicians, containing both Drs. Jeffrey Hazelwood and James Choo and another physician. Ms. Stephen selected Dr. Choo from the panel.

Dr. Choo reviewed Ms. Stephens's records and performed an exam. He confirmed her CRPS diagnosis but stated he was unable to perform the SCS trial until Ms. Stephens got her blood sugar from her diabetes under control. In the interim, Ms. Stephens underwent the required psychological evaluation to qualify for the SCS trial with Dr. Jones. Although Dr. Jones diagnosed somatic symptom disorder, moderately severe depression and anxiety, and significant catastrophizing, he cleared Ms. Stephens for the trial.

Based on Dr. Jones's findings, Volunteer Staffing had Dr. Hazelwood review the records and provide an opinion. Dr. Hazelwood stated that, under the treatment guidelines, an SCS should not be undertaken in any patient diagnosed with somatic symptom disorder, and the AMA guidelines cite depression and anxiety as risk factors for failure of the stimulator. Further, Dr. Hazelwood stated the treatment guidelines provide that an SCS is counter-indicated in the absence of a true CRPS diagnosis. He argued the medical records document minimal to no true objective and consistent CRPS signs. Finally, Dr. Hazelwood suggested Dr. Jones was not an independent psychological reviewer due to his relationship with Dr. Choo, since he thinks they work in the same clinic.

In response, Dr. Jones stated there are varying degrees of somatic symptom disorder, and not all patients with the disorder should be ruled out. He believes clinical judgment is more important than the presence of a diagnosis. He explained that he uses Block testing and finds that it offers a systematic and valid method of assessing suitability for a trial because it offers an objective method of evaluation with a point-and-ranking system to determine suitability, making the evaluation process less subjective. Dr. Jones stated that, while Ms. Stephens had some contraindications, the Block system determined she was a suitable candidate for the procedure. Dr. Jones noted that most patients have some risk factors and those are considered, but 85% of the patients cleared for a trial had a good outcome.

Addressing his independence as an evaluator, Dr. Jones explained that his opinions are not influenced by Dr. Choo; he gets paid for the evaluation, not the results; and he has no financial incentive to bias the results. He merely rents office space from Dr. Choo's group and accepts referrals.

Turning to Dr. Choo, he referenced that during Ms. Stephens's treatment with Drs. Hovis, Grace, and Newman, she exhibited symptoms of and received diagnoses of CRPS. He stated that he reviewed all her prior records, performed a physical exam, and observed that her symptoms were consistent with the International Association for the Study of Pain criteria for CRPS. Dr. Choo noted that Dr. Jones is considered one of the nation's leading psychological experts on pain, and he has complete confidence in Dr. Jones's abilities and findings. He noted that Dr. Jones evaluated Ms. Stephens and deemed her a suitable candidate for SCS.

Regarding independence, Dr. Choo confirmed he has no financial relationship with Dr. Jones and does not receive outside compensation for performing spinal cord stimulator surgeries. Dr. Choo further explained that Dr. Jones's group rents office space from his clinic and they are not part of the same clinic. He noted that he has no influence over Dr. Jones's opinions made during psychological evaluations.

Findings of Fact and Conclusions of Law

Although this came before the Court in the form of a motion, the Court applies the same standard as that at an Expedited Hearing. Ms. Stephens must show that she is likely to prevail at a hearing on the merits. *See Tenn. Code Ann. § 50-6-239(d)(1)* (2020); *McCord v. Advantage Human Resourcing*, 2015 TN Wrk. Comp. App. Bd. LEXIS 6, at *7-8, 9 (Mar. 27, 2015). The Workers' Compensation Law requires an employer to furnish medical treatment made reasonably necessary by a work injury. Tenn. Code Ann. § 50-6-204(a)(1)(A).

Three statutory provisions explain medical necessity. First, Tennessee Code Annotated section 50-6-204(a)(3)(H) presumes medical necessity for "any treatment

recommended” by a physician selected from a panel. Second, section 50-6-204(a)(3)(I) provides:

Following the adoption of treatment guidelines pursuant to 50-6-124, the presumption of medical necessity for treatment recommended by a physician . . . selected pursuant to this subsection. . . shall be rebuttable only by clear and convincing evidence demonstrating that the recommended treatment substantially deviates from, or presents an unreasonable interpretation of the treatment guidelines.

Third, the Utilization Review statute, Tennessee Code Annotated section 50-6-124(h), also discusses the presumption as follows:

Any treatment that explicitly follows the treatment guidelines adopted by the administrator or is reasonably derived therefrom, including allowances for specific adjustments to treatment, shall have a presumption of medical necessity for utilization review purposes. This presumption shall be rebuttable only by clear and convincing evidence that the treatment erroneously applies the guidelines or that the treatment presents an unwarranted risk to the injured worker.

Here, Volunteer Staffing suggested that the Court could not or should not order treatment outside the treatment guidelines. The Court disagrees.

At issue is whether the medical necessity presumption applies. If, as Volunteer Staffing suggests, it does not apply, then the Court must weigh the differing expert opinions of Drs. Hazelwood, Jones, and Choo.

Volunteer Staffing argued that it contacted Dr. Hazelwood to perform a medical record review *after* obtaining the results of Dr. Jones’s psychological evaluation. However, Dr. Hazelwood noted in his October 2020 report that he previously performed a medical record review in April 2020 and did not think that Ms. Stephens had CRPS or was a candidate for SCS.

Of note, Volunteer Staffing had Dr. Hazelwood perform a record review and provide an opinion *before* placing him on a panel of physicians. Dr. Hazelwood was predisposed to finding that Ms. Stephens did not have CRPS and was not a suitable candidate for SCS in his October 2020 report, because to do otherwise would be in opposition of his April 2020 report.

Dr. Hazelwood is board-certified in physical medicine and rehabilitation with a subspecialty certification in pain management. He did not personally examine Ms. Stephens, performing a records review. He found minimal to no true objective signs

consistent with CRPS and that Ms. Stephens did not meet the SCS criteria because she has somatic symptom disorder, depression, and anxiety. Dr. Hazelwood did not address the utilization review opinion and questioned whether Dr. Jones is an independent, non-conflicted psychologist.

Dr. Jones has exclusively practiced pain psychology since 1998. He is a past president of the Tennessee Pain Society and current co-chair of the pain psychology special interest group for the American Academy of Pain Medicine. In 2018, he gave a presentation to the Tennessee Psychological Association annual convention on how to perform SCS evaluations. He stated that he has evaluated hundreds of patients for SCS, and 85% of the patients he cleared for the trial successfully proceeded to implantation.

Dr. Choo has specialized in pain management for the last twenty-four years and stated he does not perform unnecessary procedures. He informs patients of the potential risks and benefits, and the decision to proceed with surgery rests with the patient. He reported that in 2020, 153 patients were referred as possible SCS candidates; of those patients, 69% were referred to Dr. Jones; 80% passed the screening and proceeded to the trial; and his success rate for trials is 83%.

Dr. Hazelwood believes Ms. Stephens does not have CRPS. Drs. Hovis, Grace, Newman, and Choo all noted CRPS symptoms and referenced CRPS diagnoses. Most notably, Volunteer Staffing's own utilization review provider found that Ms. Stephens had symptoms consistent with CRPS and that the SCS trial was medically necessary and appropriate. That opinion was from Dr. Newman's second SCS request and before Drs. Jones's and Choo's examinations, which further supported the CRPS diagnosis and medical necessity of the SCS.¹ The Court gives greater weight to the opinions of the various providers over the single opinion of Dr. Hazelwood.

Dr. Hazelwood thinks that Ms. Stephens is not a candidate for SCS because she has somatic symptom disorder, depression, and anxiety. The treatment guidelines do not completely rule out SCS for those with anxiety/depression; they merely urge that caution be used. The guidelines do state that the procedure should not be undertaken with a diagnosis of somatic symptom disorder. However, the Court finds that Dr. Jones considered that contraindication and thoroughly explained that there are varying degrees and severities of the disorder. He also explained that the Block system makes the evaluation process less subjective and is a valid method of assessing a person's suitability for a stimulator trial. Despite the contraindications, the Block system categorized Ms. Stephens as a suitable candidate for the procedure. The Court finds that Dr. Jones established that Ms. Stephens is a candidate for SCS even with her somatic symptom disorder.

Finally, the Court finds that Drs. Jones and Choo clearly rebutted Volunteer

¹ Volunteer Staffing did not submit Dr. Choo's order for SCS to Utilization Review.

Staffing's assumption that a conflict of interest exists. They definitively outlined that neither exerts any pressure, financial or otherwise over the other.

The Court holds that Ms. Stephens established that she is likely to prevail at a hearing on the merits to entitlement to the SCS procedure. She sufficiently proved that she has CRPS and is a suitable candidate for SCS, and that the SCS is reasonable and necessary. Therefore, the Court denies the Motion to Deny the Spinal Cord Stimulator. Further, the Court finds that Volunteer Staffing provided no case law or support for its request that the Court hold it harmless from any bad outcomes, should the Court order the SCS. Thus, the Court also denies the Motion to Hold Harmless for Bad Outcome.

It is ORDERED.

ENTERED February 18, 2021.

Lisa A. Lowe
LISA A. LOWE, JUDGE
Court of Workers' Compensation Claims

RECORD

1. Emergency Motion to Halt Unsafe, Contraindicated Procedure or, in the Alternative, to Hold Employer Harmless for Bad Outcome (*Doc ID 47815*)
 - a. Medical Record Review of Dr. Jeffrey Hazelwood, October 10, 2020
 - b. Medical Records of Dr. James J. Choo
 - c. Medical Records of Ted Jones, PhD
 - d. Medical Record Review of Dr. Jeffrey Hazelwood, April 27, 2020
 - e. "Two Surgeries Do Not Always Make a Right: Spinal Cord Stimulation for Failed Back Surgery Syndrome", Yale Journal of Biology and Medicine 91 (218), pp. 323-331
 - f. United States of America v. Steven Mynatt and David Newman, No. 3:19-CR-59, United States District Court Eastern District of Tennessee at Knoxville
 - g. Washington State Health Care Authority Health Technology Assessment
 - h. Cheryl D. Joy v. Department of Labor and Industries, No. 42118-11, Court of Appeals of the State of Washington, Division II
 - i. Beverly Sehn v. Immaculate Cleaning Connection, Decision on Appeal of a Utilization Review Determination, Before the Industrial Accident Board of the State of Delaware

2. Employee's Partial Response to Employer's Emergency Motion to Halt Unsafe, Contraindicated Procedure or, in the Alternative, to Hold Employer Harmless for Bad Outcome Pending Treating Physicians Response to Allegations Set Forth in Employer's Emergency Motion and Employee's Motion for Relief from Five Day Response Requirement Required in Rule 080-02-21-.18 of the Court of Workers' Compensation Claims and Alternative Dispute Procedures to Allow Authorized Treating Physicians to Respond to Allegations Based on Jeffrey Hazelwood, MD's Opinion (*Doc ID 47962*)
3. Employer's Reply to Employee's Partial Response to Motion to Deny Spinal Cord Stimulator (*Doc ID 48344*)
 - a. Guides to the Evaluation of Permanent Impairment, Section 15.5 Complex Regional Pain Syndrome Impairment
 - b. Medical Record of David Newman, M.D.
 - c. Medical Record of Ted Jones, Ph.D.
 - d. Official Disability Guidelines
4. Employee's Supplemental Response to Employer's Motion to Deny Spinal Cord Stimulator (*Doc ID 48751*)
 - a. Correspondence of Ted Jones, Ph.D., November 16, 2020
 - b. Correspondence of Dr. James J. Choo, November 16, 2020
5. Agreed Order Extending Time for Response to Emergency Motion (*Doc ID 48841*)
6. Employee Correspondence, dated December 1, 2020 (*Doc ID 48895*)
7. Notice of Intent to Reply to Supplemental Response to Motion (*Doc ID 48965*)
8. Employee's Supplement to Employee's Response to Employer's Motion to Deny Spinal Cord Stimulator (*Doc ID 50799*)
 - a. Medical Record of Nakul Mahajan, M.D.
9. Employer's Reply to Employee's Supplemental Response to Motion to Deny Spinal Cord Stimulator (*Doc ID 50891*)
 - a. Medical Record Review Addendum of Dr. Jeffrey Hazelwood, December 29, 2020
10. Employee's Additional Supplement to Employee's Response to Employer's Motion to Deny Spinal Cord Stimulator (*Doc ID 51095*)
 - a. Notice of Appeal Rights for a Utilization Review Denial
 - b. Correspondence from Ted Jones, Ph.D., January 18, 2021
 - c. Utilization Review Notice of SMT Prospective Authorization Decision, January 2, 2019
11. Employer's Objection and Rely to Employee's Third and Fourth Supplemental Responses to Motion to Deny Spinal Cord Stimulator (*Doc ID 51253*)
12. Notice of Motion Hearing (*Doc ID 51304*)
13. Notice of Compliance (*Doc ID 52199*)

CERTIFICATE OF SERVICE

I certify that a correct copy of this Order was sent on February 18, 2021.

Name	Mail	Fax	Email	Service sent to:
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