COMMONWEALTH OF MASSACHUSETTS

DEPARTMENT OF INDUSTRIAL ACCIDENTS **BOARD NO. 053738-89**

Christopher Lewin	Employee
Danvers Butchery, Inc.	Employer
Public Service Mutual	Insurer

REVIEWING BOARD DECISION
(Judges Carroll, Levine and Maze-Rothstein)

APPEARANCES
William N. Batty, Esq., for the employee
Paul R. Matthews, Esq., for the insurer

CARROLL, J. The employee appeals a decision in which an administrative judge denied and dismissed his claim for § 30 medical benefits to pay for chiropractic treatment that he claimed was causally related to his accepted 1989 industrial injury. The employee argues that the judge applied the wrong standard in deciding that the employee's palliative treatment was not compensable. We agree that the judge, while recognizing that palliative treatment can be compensable, appeared to base his denial of the claim on the lack of medical improvement gained from the treatment. We therefore recommit the case for clarification and further findings.

Mr. Lewin injured his back in an industrial accident on September 30, 1989. He remained out of work until 1991, when he lump summed his case, and returned to work in Georgia. He did not treat during the four years he lived in Georgia, although he experienced ongoing back pain the entire time. In 1995, the employee returned to Massachusetts, and began to treat with Dr. Steven Galena, a chiropractor in Danvers. (Dec. 3.) He had daily treatments for the first week and then gradually decreased to one visit per week. (Dec. 3-4.) The employee felt better after each visit to the chiropractor although the

relief was only temporary. (Dec. 4.) He was working as a house manager for a group home throughout the period of disputed treatment. Id.

Mr. Lewin filed a § 30 medical benefits claim for chiropractic treatment from 1995 through December 17, 1996. (Dec. 7.) The insurer resisted the claim. Following a § 10A conference denial of the claim, the employee appealed to a hearing *de novo.* Pursuant to § 11A, the employee underwent an impartial examination by Dr. Daniel F. Sullivan, a New Hampshire chiropractor. (Dec. 4.) The impartial examiner found decreased ranges of motion and objective signs of low back pain causally related to the industrial injury, noting that the employee took analgesic medicines on an as-needed basis. (Dec. 5.) However, the doctor maintained that purely symptomatic and palliative chiropractic treatment, such as the employee's, was not "compensable." Id. On the basis of that statement, the judge allowed additional medical evidence into the record. Id. The judge stated that he was disinclined to agree with Dr. Sullivan's statement that every case of palliative treatment for a condition that is at an end result is not "compensable." (Dec. 5-6.) The employee introduced a report from Dr. Galena, which the judge found both to be unpersuasive, and in direct contrast with the employee's testimony that he received temporary but not any lasting or incremental improvement in his condition while under Dr. Galena's care. (Dec. 6.)

In his final analysis, and despite having allowed additional medical evidence because of Dr. Sullivan's view of what constitutes compensable treatment, the judge found the opinions of Dr. Sullivan regarding the medical necessity of the employee's chiropractic treatment to be compelling. (Dec. 6.) The judge adopted Dr. Sullivan's opinion, quoting the doctor's conclusion:

> If the treatment that Mr. Lewin received had achieved some therapeutic goal, if it had regained the normal ranges of motion that had been lost, if he reached a point where he no longer had to rely on taking analgesic medication, if he was able to function without pain on a daily basis, then I would have given Dr. Galena or any other treating provider the benefit of the doubt and said, his treatment is reasonable and necessary. (depo. pp. 47, 48).

(Dec. 7.)

The judge therefore determined that "there has been no medical benefit achieved . . . [and] the claimed chiropractic treatment is not medically necessary in accordance with Sections 13 & 30 of the Act." (Dec. 7.) The judge reserved the employee's right to pursue "reasonable, necessary,[1] and related medical treatment for his low back injury" concluding that such right was not affected by the present decision. Id. The employee appeals to the reviewing board.

The judge was correct in noting that palliative treatment may be compensable. Marticio v. Fishery Prods., Int'l., 11 Mass. Workers' Comp. Rep. 648, 650 (1997); Meuse's Case, 262 Mass. 95, 98 (1928); Santana v. Belden Corp., 5 Mass. Workers' Comp. Rep. 356, 359 (1991). We agree with the employee, however, that the judge's findings are flawed. In reaching his conclusion with respect to the compensability of the chiropractic treatments, the judge seems to place decisive weight on the fact that the employee did not experience any medical improvement from the treatments. (Dec. 4-6.) Certainly, the excerpt from Dr. Sullivan's deposition quoted with approval by the judge, see supra, conditions the determination of whether treatment is compensable on the attainment of medical goals, not temporary pain relief. However, treatment does not have to achieve a "therapeutic goal" or restore lost function. See Meuse's Case, supra; Levenson's Case, 346 Mass. 508, 511 (1963)(treatment may be compensable if it alleviates pain and reduces dependence on addictive narcotics). The employee testified -- and the judge found -- that he experienced temporary relief of his symptoms from the chiropractic treatments. (Dec. 4.) Such pain relief can be found to be a compensable "medical

[1] The judge characterized the standard for compensability under § 30 of the Act as "reasonable [and] necessary." (Dec. 7.) While this has been the conventional way of expressing it, in fact, § 30 provides that "The insurer shall furnish to an injured employee adequate and reasonable health care services . . . so long as such services are necessary." "Adequate and reasonable" relates to the nature of the hospital or medical services provided or to be provided by the insurer. "Necessary" relates to the length of time an employee may be entitled to such health care services. It was added to the statute in 1948 when the duration of medical benefits was expanded to an indefinite period from what had earlier been limited to as few as two weeks. See L. Locke, Workmen's Compensation §§ 363 and 364 (2d ed. 1981) (detailed discussion of the history and meaning of § 30).

benefit." (Dec. 7.) Because the judge did not confine his analysis in determining the compensability of the subject chiropractic treatments to the appropriate legal standard it is appropriate to recommit the case.[2]

So ordered.

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Martine Carroll
Administrative Law Judge

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Frederick E. Levine
Administrative Law Judge

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Susan Maze-Rothstein
Administrative Law Judge

Filed: January 29, 1999
MC/jdm

[2] The frequency of the employee's chiropractic treatments varied over time. Judging compensability by the proper standard, the judge may order payment for some, all or none of the treatments.