IMPORTANT NOTICE
NOT TO BE PUBLISHED OPINION

THIS OPINION IS DESIGNATED "NOT TO BE PUBLISHED." PURSUANT TO THE RULES OF CIVIL PROCEDURE PROMULGATED BY THE SUPREME COURT, CR 76.28(4)(C), THIS OPINION IS NOT TO BE PUBLISHED AND SHALL NOT BE CITED OR USED AS BINDING PRECEDENT IN ANY OTHER CASE IN ANY COURT OF THIS STATE; HOWEVER, UNPUBLISHED KENTUCKY APPELLATE DECISIONS, RENDERED AFTER JANUARY 1, 2003, MAY BE CITED FOR CONSIDERATION BY THE COURT IF THERE IS NO PUBLISHED OPINION THAT WOULD ADEQUATELY ADDRESS THE ISSUE BEFORE THE COURT. OPINIONS CITED FOR CONSIDERATION BY THE COURT SHALL BE SET OUT AS AN UNPUBLISHED DECISION IN THE FILED DOCUMENT AND A COPY OF THE ENTIRE DECISION SHALL BE TENDERED ALONG WITH THE DOCUMENT TO THE COURT AND ALL PARTIES TO THE ACTION.

RENDERED: JUNE 19, 2014
NOT TO BE PUBLISHED

Supreme Court of Kentucky

2013-SC-000212-WC

LOUISVILLE METRO GOVERNMENT — APPELLANT

V.

ON APPEAL FROM COURT OF APPEALS
CASE NO. 2012-CA-001248-WC
WORKERS' COMPENSATION NO. 90-23273

JAMES CISSELL; LORI L. BOND, LMT; SARAH MURROW, D.C.; TAMINA KAREM, LMT; HONORABLE CHRIS DAVIS, ADMINISTRATIVE LAW JUDGE; AND WORKERS' COMPENSATION BOARD — APPELLEES

MEMORANDUM OPINION OF THE COURT

AFFIRMING

Appellant, Louisville Metro Government, appeals from a Court of Appeals decision which held that Appellee, James Cissell, was entitled to continue receiving ongoing and frequent chiropractic treatment and massage therapy to relieve pain associated with a work-related injury. Louisville Metro argues that the ongoing therapy is not reasonable or necessary medical treatment based on the results of a utilization review report. For the below stated reasons, we affirm the Court of Appeals.

Cissell suffered a work-related injury in 1990, when a post driver fell on his head causing memory impairment, a seizure disorder, and ongoing head

and neck pain. His workers' compensation claim was settled based upon a 20% permanent partial disability. Cissell did not waive the right to receive future medical treatment related to his injuries. In 1995, Cissell's claim was reopened concerning his entitlement to chiropractic care. An Administrative Law Judge ("ALJ") determined that the ongoing treatment was reasonable and necessary to provide Cissell with temporary pain relief. The Workers' Compensation Board ("Board") affirmed.

Since 2008, Cissell has received chiropractic treatment and massage therapy approximately three times a week paid for by Louisville Metro. In 2011, Louisville Metro filed a motion to reopen to dispute the medical expenses based on a utilization report which questioned the medical necessity of such frequent treatments.

After a review of the evidence, the ALJ found that Cissell's frequent chiropractic treatments and massage therapy were reasonable and necessary. In so finding, the ALJ believed Cissell's testimony that without the treatments he experienced greater pain and functioned at a lower level. Cissell testified, that as of the date of the benefit review conference, he continued to have pain in his neck, charlie horses, and "rogue pain." But, due to the chiropractic treatments and massage therapy, Cissell said he no longer has to take narcotic medication to control his pain. The ALJ acknowledged that expert witnesses, Dr. Ellen Ballard and Dr. Steven Smith, both believed the three-times a week treatments were excessive, but chose to believe the findings produced by the individuals who provided Cissell's chiropractic treatments and massage

therapy. The ALJ also expressly rejected Dr. Ballard's diagnosis of diffuse idiopathic skeletal hyperostosis. A petition for reconsideration was denied and the Board and Court of Appeals affirmed.

The ALJ is the exclusive finder of fact pursuant to KRS 342.285(1). The ALJ has the sole discretion to determine the quality, character, and substance of evidence and to draw reasonable inferences from the evidence. *Paramount Foods v. Burkhardt*, 695 S.W.2d 418 (Ky. 1985). An ALJ may reject any testimony and believe or disbelieve various parts of the evidence. *Caudill v. Maloney's Discount Stores*, 560 S.W.2d 15, 16 (Ky. 1977). An ALJ's finding of fact must be affirmed if it is supported by substantial evidence, and we will not reverse unless it is erroneous as a matter of law. *Ira A. Watson Dept. Store v. Hamilton*, 34 S.W.3d 48, 52 (Ky. 2000).

KRS 342.020(1) provides in pertinent part:

> ... the employer shall pay for the cure and relief from the effects of an injury or occupational disease the medical, surgical, and hospital treatment, including nursing, medical and surgical supplies and appliances, as may reasonably be required at the time of the injury and thereafter during disability . . .

This statute requires that an employer "pay for any reasonable and necessary medical treatment for relief whether or not the treatment has any curative effect." *National Pizza Co. v. Curry*, 802 S.W.2d 949, 951 (Ky. App. 1991). A treatment which provides some form of relief is compensable, but a treatment which is unproductive or outside generally acceptable medical standards is not. *Square D Co. v. Tipton*, 862 S.W.2d 308, 309-310 (Ky. 1993).

In this matter, the ALJ's determination that Cissell's chiropractic treatment and massage therapy provides him pain relief and is a reasonable and compensable medical treatment is supported by substantial evidence. This conclusion is supported by Cissell's testimony and the records of those individuals who provide his therapy. The ALJ had the discretion to find this evidence persuasive. There is no error here, and we affirm the decision of the Court of Appeals.

All sitting. All concur.

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