AMY BRUNS
(Appellee)

v.

SEBAGO, INC.
(Appellant)

and

ACADIA INSURANCE
(Insurer)

Argued: December 4, 2019
Decided: June 28, 2021

PANEL MEMBERS: Administrative Law Judges Chabot, Collier, and Stovall
BY: Administrative Law Judge Chabot

[¶1] Sebago, Inc., appeals from a decision of a Workers' Compensation Board administrative law judge (*Hirtle, ALJ*) granting Amy Bruns's Petition for Payment of Medical and Related Services. Sebago argues that the ALJ erred by (1) concluding there was clear and convincing evidence contrary to the independent medical examiner's (IME) opinion, *see* 39-A M.R.S.A. § 312(7) (Pamph. 2020); and (2) granting payment for future massage therapy without any limitation on the duration of that treatment. We disagree with these contentions and affirm the decision.

I. BACKGROUND

[¶2] Amy Bruns injured her right upper extremity while hand-sewing shoes for Sebago, Inc., with a date of injury of March 15, 1994. This injury led to chronic regional pain syndrome in her right upper extremity, and symptoms in her left upper

extremity due to compensatory overuse. Since approximately 2001, Ms. Bruns has received regular massage therapy to her left upper extremity and upper back, which Sebago has paid for.[1] In 2017, Sebago filed a notice of controversy contesting the reasonableness and necessity of massage therapy, after which Ms. Bruns filed her Petition for Payment of Medical and Related Services.

[¶3] Ms. Bruns underwent an examination pursuant to 39-A M.R.S.A. § 312 on July 10, 2018. The IME found that "[t]he neuromuscular massage therapy that she has been receiving for more than a decade now, while it is helpful in providing some degree of temporary comfort to her back symptoms, does not appear to be producing any improvement in her symptoms or function." At his deposition, the IME further explained that it was his opinion that the massage therapy "did not seem to be of any benefit other than some temporary improvement in the symptoms maybe lasting hours rather than days. So, I don't think it was of any lasting benefit and should not be continued."

[¶4] In contrast, Ms. Bruns's primary care physician, Dr. Jennifer Smith, opined the massage therapy "was medically necessary … to maintain functionality and adequate pain control." Ms. Bruns testified and the ALJ found that the massage therapy preserved her level of functioning even if it did not improve it.

[1] Massage therapy treatment was controverted in 2007, but a board decree granted Ms. Bruns's Petition for Payment of Medical and Related Services. *Bruns v. Sebago, Inc*., W.C.B. 94-00-27-05 (Me. 2007). The decree also established that Ms. Bruns' work injury to her right upper extremity caused symptoms in her upper back and left shoulder. *Id*.

[¶5] The ALJ initially adopted the medical opinion of the IME and denied Ms. Bruns' Petition for Payment of Medical and Related Services. Ms. Bruns filed a Motion for Further Findings of Fact and Conclusions of Law, which the ALJ granted, reversing his initial decision and determining that Ms. Bruns had met her burden of proving by clear and convincing evidence contrary to the IME's medical findings that the massage therapy treatments were reasonable and necessary. The ALJ thus granted the petition. This appeal followed.

II. DISCUSSION

A. Standard of Review

[¶6] The role of the Appellate Division "is limited to assuring that the [ALJ's] findings are supported by competent evidence, that [the] decision involved no misconception of applicable law and that the application of the law to the facts was neither arbitrary nor without rational foundation." *Moore v. Pratt & Whitney Aircraft*, 669 A.2d 156, 158 (Me. 1995) (quotation marks omitted). When a party requests and proposes additional findings of fact and conclusions of law, as was done in this case, "we review only the factual findings actually made and the legal standards actually applied" by the ALJ. *Daley v. Spinnaker Indus.*, 2002 ME 134, ¶ 17, 803 A.2d 446 (quotation marks omitted).

B. Rejection of the IME's Opinion

[¶7] Pursuant to 39-A M.R.S. § 312(7), an ALJ is required to adopt the medical findings of the independent medical examiner unless there is clear and convincing evidence to the contrary in the record that does not support the medical findings. Contrary evidence does not include medical evidence not considered by the independent medical examiner. *Id.* When the ALJ has rejected an IME's medical findings, we review that decision to determine whether the [ALJ] "could have been reasonably persuaded by the contrary medical evidence that it was highly probable that the record did not support the IME's medical findings." *Dubois v. Madison Paper Co.*, 2002 ME 1, ¶ 14, 795 A.2d 696.

[¶8] Initially, the ALJ found that Ms. Bruns's testimony and the medical opinion from Dr. Smith did not rise to the level of clear and convincing evidence contrary to the IME's opinion. On further findings the ALJ reversed that decision and rejected the IME's opinion because (1) the 2007 decree established that Ms. Bruns' work injury to her right upper extremity caused symptoms in her upper back and left shoulder; (2) the IME did not consider whether maintaining a level of functioning was a factor in determining whether treatment was necessary and reasonable; and (3) the IME did not examine Ms. Brun's back, or consider the benefit of the massage to the back. The ALJ determined that medical care that maintains Ms. Bruns's present level of limited functioning is "reasonable and proper." *See*

Boucher v. John F. Murphy Homes, Inc., Me. W.C.B. No. 15-6, ¶ 13 (App. Div. 2013) (concluding merely because a treatment is palliative does not make it non-compensable); *see also* 39-A M.R.S.A. § 206 (Pamph. 2020).

[¶9] Based upon all the findings, the opinion of Dr. Smith, and the conclusion that Ms. Bruns presented as a credible and earnest witness regarding the preservation of functioning, we conclude that the ALJ could have been reasonably persuaded that it was highly probable that the record did not support the IME's medical findings on the issue of whether massage therapy was reasonable, proper, and necessary medical treatment for Mr. Bruns pursuant to section 206.

C. The Decree's Award of Massage Therapy Treatments

[¶10] Sebago next contends that the ALJ's decision improperly grants payment for future massage therapy without placing appropriate limitations on the extent of that treatment, citing *Vaillancourt v. Viner Brothers,* Me. W.C.C. 89-136 (Me. App. Div. 1989) and *Boucher,* Me. W.C.B. No. 15-6, ¶¶ 15-16. We disagree.

[¶11] Although we have recognized that an ALJ has discretion to order future medical payments within certain guidelines, a decision that does not limit "the necessary length of time or required number of [future] treatments runs afoul of both the *Vaillancourt* decision and [certain] statutory prescriptions" governing medical payments. *Boucher* at ¶ 16.

[¶12] The ALJ's decision in this case merely granted Ms. Bruns' petition "with an order for the Employer to pay the disputed medical expenses submitted as exhibit EE 1 at rates consistent with the Board's medical fee schedule." Because the decree does not grant payment for future treatment, we do not need to consider whether it includes adequate limitations consistent with *Villancourt* and *Boucher*.

III. CONCLUSION

[¶13] We conclude that the ALJ did not err when rejecting the IME's medical findings based on clear and convincing contrary evidence. Moreover, because the ALJ did not award future medical payments for massage therapy, we find no error in granting the Petition for Payment and awarding payment for the designated medical services.

The entry is:

The administrative law judge's decision is affirmed.

Any party in interest may request an appeal to the Maine Law Court by filing a copy of this decision with the clerk of the Law Court within twenty days of receipt of this decision and by filing a petition seeking appellate review within twenty days thereafter. 39-A M.R.S.A. § 322 (Pamph. 2020).

Pursuant to board Rule, chapter 12, § 19, all evidence and transcripts in this matter may be destroyed by the board 60 days after the expiration of the time for appeal set forth in 39-A M.R.S.A. § 322 unless (1) the board receives written notification that one or both parties wish to have their exhibits returned to them, or (2) a petition for appellate review is filed with the law court. Evidence and transcripts in cases that are appealed to the law court may be destroyed 60 days after the law court denies appellate review or issues an opinion.

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1