

**OFFICE OF WORKERS' COMPENSATION
DISTRICT 9, SOUTHERN DIVISION
STATE OF LOUISIANA**

DOCKET #96-08049

OUR LADY OF THE SEA HOSPITAL

VERSUS

ANGELA CHERAMIE

CONSOLIDATED WITH

DOCKET #97-02658

ANGELA L. CHERAMIE

VERSUS

LADY OF THE SEA HOME HEALTH


J U D G M E N T

This matter came before this Court for a Hearing to Determine the Employee's Choice of Treating Physician on May 9, 1997, pursuant to regular fixing on the docket.

After considering the law and the evidence in this matter, this Court renders the following Judgment. Therefore:

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Dr. Clifford Ameduri is employee's treating physician.

JUDGMENT READ, RENDERED, AND SIGNED in Houma, Louisiana, this 15th
day of May, 1997.



GLYNN F. VOISIN, Judge
District 9, Southern Division
Office of Workers' Compensation
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Office of Workers' Compensation
District 9, Southern Division

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OWC-DIST. 9

5/19/97

**OFFICE OF WORKERS' COMPENSATION
DISTRICT 9, SOUTHERN DIVISION
STATE OF LOUISIANA**

DOCKET #96-08049

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REASONS FOR JUDGMENT

This matter came before this Court for a Hearing to Determine the Employee's Choice of Treating Physician on May 9, 1997, pursuant to regular fixing on the docket.

After considering the law and the evidence in this matter, this Court renders the following Reasons for Judgment.

The employee, Angela Cheramie, filed a Motion to Determine the Employee's Choice of Treating Physician seeking this Court to name Dr. Monica Benson as the employee's treating physician. The employer, Our Lady of the Sea General Hospital, is

requesting this Court to name Dr. Clifford Ameduri as the employee's treating physician.

From June 1993 through July 1995, the employee was examined by numerous physicians who were not able to definitively diagnose the employee's medical condition. On or about July 25, 1995, the employee was examined by Dr. Monica Benson, a physical medicine rehabilitation specialist in Luling, Louisiana. Dr. Benson diagnosed the employee as suffering from Reflex Sympathetic Dystrophy ("RSD") as a result of the work-related incident.

Dr. Monica V. Benson was deposed on January 23, 1996. In her deposition, Dr. Benson recommended employee undergo sympathetic nerve blocks and treatment at a pain management clinic as per further treatment of the RSD (Employer's Exhibit A, deposition of Dr. Monica Benson, pp 62-64). Dr. Benson does not have the facilities to provide such treatment. Therefore, Dr. Benson recommended Ochsner Hospital and Touro Pain Clinic as an appropriated pain clinic for the pain management treatment (Employer Exhibit A, deposition of Dr. Monica Benson, p 65). Dr. Benson also recommended the employee's treatment be administered outside of the Houma area (Employer Exhibit A, deposition of Dr. Monica Benson, pp 65-66).

Dr. Benson was questioned as to whether she recommended any additional treatment besides the sympathetic nerve blocks and pain management clinic. Dr. Benson testified that such pain management physician should make such decisions since such treatment would be considered a referral by her to said pain management physician (Employer Exhibit A, deposition of Dr. Monica Benson, p 68). Further, Dr. Benson testified that the Houma area does not have an out-patient clinic to deal with Sympathetic Nerve Block (Employer Exhibit A, deposition of Dr. Monica Benson, p 60). Pages 60-69

of Dr. Benson's deposition were admitted into evidence in opposition of this motion.

Based on the deposition testimony of Dr. Benson, she indicated she does not have the facilities to provide treatment for the employee's RSD condition. Dr. Benson testified that any future decision regarding further diagnostic treatment should be determined by the referral physician.

Accordingly, Dr. Benson testified that the employee's further treatment should be based on the referral physician.

In accordance with Dr. Benson's recommendation of a referral physician, the employer/carrier authorized employee to be treated by Dr. Clifford J. Ameduri, a Physical Medicine and Rehabilitation Specialist in New Orleans. Dr. Ameduri is in the same specialty as Dr. Monica Benson and has the facilities and access to diagnostic testing that Dr. Benson does not. Dr. Ameduri is affiliated with Gulf States Rehabilitation Associates, Ltd., and his practice has offices at Meadowcrest Hospital and Mercy Hospital.

Dr. Ameduri conducted treatment for the employee from July 1996 through the present. The medical records of Dr. Ameduri were admitted into evidence in opposition to this motion. However, in March of 1997, the employee went back to Dr. Benson for treatment. The employee returned to Dr. Benson even though she acknowledged Dr. Benson referred employee to another physical medicine and rehabilitation specialist who had facilities to treat employee's condition. Dr. Benson acknowledged she did not have the facilities or the technology to treat the employee for her RSD condition. Dr. Benson's referral to Dr. Ameduri is unequivocal. Dr. Ameduri's acceptance of the referral was unequivocal. The employee participated in physical therapy prescribed by Dr. Ameduri.

However, at the present time, the employee is seeking to be reassigned to Dr.

Benson even though Dr. Benson states she does not have the facilities, diagnostic testing capabilities and other technology to fully treat employee.

This Court finds that the employee made a *defacto* choice of her treating physician for purposes of the statutory right to choose one physician in any field or specialty for treatment, where she submitted to treatment by a physician. **Moore v. Sanderson Farms, Inc.**, 674 So.2d 478 (La.App. 1st Cir. 1996), writ denied, 679 So.2d 106 (La. 1996). The facts in **Moore** are similar to the facts in the matter before this Court. Specifically, in **Moore** the Claimant was originally treated by Dr. Dunn. The claimant accepted his treatment and did not express any dissatisfaction with his services until the claimant was released to return to work. Dr. Bankston was chosen by the employer. The claimant received treatment from Dr. Bankston from February 24, 1994, until June 16, 1994. He attended physical therapy as prescribed by Dr. Bankston. Dr. Bankston conducted diagnostic tests on the claimant and referred her to an anesthesiologist for nerve blocks. The Court in **Moore** ruled that the claimant had submitted to the treatment by Dr. Bankston. Accordingly, the Workers' Compensation Judge found that the claimant had *defacto* chosen Dr. Bankston as his treating physician. **Moore** *supra*. This Court also relied on **Comeaux v. Sam Broussard Trucking**, 657 So.2d 449 (La.App. 3rd Cir. 1995).

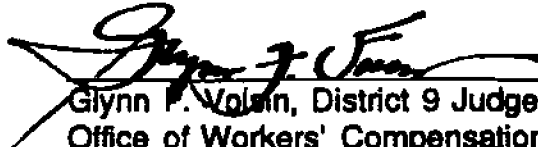
The employee has not obtained consent from the employer authorizing Dr. Benson to be the treating physician at the present time.

Accordingly, this Court finds that Dr. Ameduri is still to be considered as the treating physician of the employee.

Because the employee has submitted to the treatment of Dr. Ameduri from July,

1996 through the present, and because Dr. Benson testified she is unable to provide the treatment for the employee's RSD problems, this Court finds that Dr. Ameduri is the treating physician for the employee.

SIGNED in Houma, Louisiana, this 19th day of May, 1997.

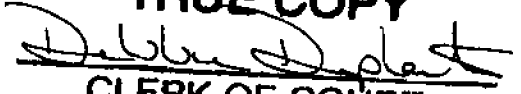


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