In the Matter of	)	
	)	
HAREGEWOIN DESTA,	)	
	)	
Claimant,	)	
	)	
v.	)	AHD No. 07-041 ***A***
	)	OWC No. 603483
LOEW'S WASHINGTON HOTEL,	)	
	)	
and	)	
	)	
LIBERTY MUTUAL INSURANCE GROUP,	)	
	)	
Employer/Carrier.	)	

Appearances:

STEPHEN A. BOU, ESQUIRE
For the Claimant

CHRISTOPHER R. COSTABILE, ESQUIRE
For the Employer/Carrier

Before:

AMELIA G. GOVAN
ADMINISTRATIVE LAW JUDGE

COMPENSATION ORDER

STATEMENT OF THE CASE

This proceeding arises out of a claim for workers' compensation benefits filed pursuant to the provisions of the District of Columbia Workers' Compensation Act of 1979, as amended, D.C. Code §§32-1501 *et seq*. (hereinafter, the "Act").

After timely notice, a full evidentiary hearing was held on September 20, 2007 before Amelia G. Govan, Administrative Law Judge. Haregewoin Desta (hereinafter, claimant) appeared in person and by counsel. Loew's Washington Hotel/Liberty Mutual Insurance Group (hereinafter, employer) appeared by counsel. Claimant testified on her own behalf. No witnesses testified on behalf of employer. Claimant Exhibit (hereinafter, CX) Nos. 1 - 2, Employer Exhibit (hereinafter, RX) Nos. 1 - 2, and Joint Exhibit (hereinafter, JX) No. 1, described in the Hearing Transcript (hereinafter, HT) were admitted into evidence. The official record closed on October 5, 2007, the date HT

was filed with this Division.

CLAIM FOR RELIEF

Claimant seeks authorization for continued medical treatment with Steven Macedo, M.D., along with payment of causally related medical expenses.

ISSUE

Whether further medical treatment for claimant's neck and right upper extremity conditions, under the aegis of Dr. Steven Macedo, is reasonable and necessary to the course of claimant's recovery from her March 27, 2004 work injury.

BACKGROUND/PROCEDURAL HISTORY

Claimant, a room attendant at employer's hotel, injured her right arm, right shoulder, right side, face, and head when she fell into the cab of an elevator at work on March 27, 2004. A full evidentiary hearing on her claim for benefits was held on February 6, 2007 before Administrative Law Judge Melissa Lin Klemens. In Judge Klemens' Compensation Order, claimant was awarded temporary total disability benefits from August 29, 2006 to the present and continuing. *Desta v. Loews Washington Hotel Corporation*, OWC No. 603483, AHD No. 07-041 (March 6, 2007)[hereinafter, "*Desta I*"].

Claimant has been treating with Dr. Steven Macedo and his colleagues at the Washington Medical Group, P.C. since at least January of 2006. Treatment provided included physical therapy, injections, biofeedback exercises, and medication; pain management has been recommended more than once. Since June of 2007, employer has not approved further treatment, with Dr. Macedo, related to claimant's complaints of continuing neck and right upper extremity symptoms. On July 5, 2007 a Peer Review of claimant's medical records was rendered, at employer's request, by Dr. Vaughn Cohan.

FINDINGS OF FACT

As an initial matter, I hereby incorporate by reference the Findings of Fact, Discussion, and Conclusions of Law from *Desta I*, in their entirety. Accordingly, it is not disputed that that there is jurisdiction and an employer/employee relationship pursuant to the Act; that there was an accidental injury which arose out of and in the course of claimant's employment on March 27, 2004; that there was timely notice of injury and timely filing of the claim; and, that claimant's average weekly wage is $506.57.

Based upon the record evidence, I make the following additional findings of fact.

Claimant has persistent complaints of cervical spine pain radiating down her right shoulder and arm. She is in need of medication and ongoing pain management to address these symptoms.

There is substantial record evidence to indicate the treatment protocols recommended by Dr. Macedo, which include ongoing evaluation and therapy, are reasonable, necessary, and medically appropriate to the course of claimant's recovery from her March 27, 2004 work injuries.

DISCUSSION

The arguments of both parties on the issues presented for resolution were given equal

consideration. To the extent an argument is consistent with my findings and conclusions, it is accepted; to the extent an argument is inconsistent, it is rejected.

Claimant avers she suffers intractable neck and radiating right upper extremity pain which was only alleviated, for short periods, by Dr. Macedo's most recent treatment protocols; that without authorization to continue treatment, she cannot tolerate the symptoms related to her work accident; and, that the treatment recommended by Dr. Macedo is reasonable and necessary to her recovery from the accident. Claimant further contends she is in need of ongoing treatment for residual symptoms related to the injuries she sustained when she fell at work in March of 2004.

Claimant's testimony indicates her problems with intractable neck and right upper extremity pain began on the date of the accident and worsened thereafter. Claimant further testified that she after June of 2007, she was not allowed to see Dr. Macedo because employer refused to authorize said treatment. Employer argues that although claimant has received extensive medical treatment from Dr. Macedo as well as other care providers, there is little objective evidence to support her ongoing, worsening complaints of intractable pain.

The medical opinions of record must be fully considered in making a determination of claimant's need, if any, for further medical treatment. In assessing the weight of competing medical testimony in workers' compensation cases, attending physicians are ordinarily preferred as witnesses rather than those doctors who have been retained to examine injured workers solely for purposes of litigation. *Stewart v. D.C. Department of Employment Services*, 606 A.2d 1350 (D.C. 1992). In that medical conclusions of treating physicians are given preference, a decision to credit another physician must be explained. *See Velasquez v. District of Columbia Department of Employment Services*, 723 A.2d 401, 405 (D.C. 1999), citing *Canlas v. District of Columbia Department of Employment Services*, 723 A.2d 1210 (D.C. 1999) and *Stewart, supra.*

Employer's evidence includes the (7/25/06) "Reevaluation Independent Medical" report of Dr. Marc B. Danziger, which pre-dates *Desta I*, and a July 5, 2007 "Peer Review" by neurology specialist Vaughn Cohen, M.D. of Broadspire Physician Review Services. In his July 25, 2006 report, Dr. Danziger opines that from the orthopedic perspective, claimant had reached maximum medical improvement such that further medical treatment was unnecessary. This opinion was based upon his examination of claimant and review of the medical records available to him at that time.

Dr. Cohan's July 5, 2007 peer review report reflects consideration of Dr. Danziger's opinions and the medical records of Dr. Macedo and chiropractor Mark Peller; Dr. Cohen also mentions a "peer-to-peer telephonic conference" with Dr. Macedo (on 7/2/07). Dr. Cohan's opinion is that there was no medical necessity or indication for continued medical treatment or care related to the March 2004 work injury.

I considered the record medical evidence in its entirety, including all expert evaluations, diagnoses or recommendations adduced by the parties. To the extent that there is disagreement among the medical experts who rendered opinions, it is within the province of the undersigned to draw any reasonable inference from the evidence presented. *Field v. Washington Metropolitan Area Transit*

Authority, Dir. Dkt. No. 88-1, H&AS No. 87-477, OWC No. 01004 (March 21, 1990), citing *George Hyman Construction Company v. District of Columbia Department of Employment Services*, 498 A.2d 563 (D.C. 1985).

The opinion of treating neurology specialist Macedo regarding the recommended treatment protocols, as expressed in his record medical reports, is clear and highly persuasive. By contrast, neither Dr. Danziger or Dr. Cohan weigh in regarding any possible alternative treatment protocol to address claimant's severe, debilitating pain. Claimant's testimony, as bolstered by the persuasive medical opinion of her treating physician, explains the actual nature and extent of her complaints, and how those complaints have not been fully addressed since her work accident.

Dr. Macedo's opinion, read in combination with the other medical records in evidence, informs a reasonable factual determination supporting the instant claim. Thus, claimant prevails on the issue of her need for the pain relief protocols recommended by Dr. Macedo for the neck and upper extremity conditions which are related to her March 27, 2004 work injury. *Stewart v. District of Columbia Department of Employment Services*, 606 A.2d 1350 (D.C. 1992); *Vaughn v. Hadley Memorial Hospital*, H&AS No. 86-204, OWC No. 48011 (July 28, 1986).

I did not find Dr. Cohan's recommendation regarding the absence of any need for Dr. Macedo's prescribed treatment protocols to be persuasive. As was stated previously, *inter alia*, the medical records on which employer relies include no pertinent diagnosis, description of alternative measures to address claimant's condition, or prognosis for the probable result thereof.

Employer has not adduced sufficient persuasive evidence to indicate further medical care is not reasonable or necessary. *See Sibley Memorial Hospital v. District of Columbia Department of Employment Services*, 711 A. 2d 105 (D.C. 1998); *see also Landesberg v. District of Columbia Department of Employment Services*, 794 A.2d 607 (D.C. 2002).

In sum, there is sufficient medical evidence, herein, to support a determination that the treatment requested by claimant is reasonable and necessary for relief of residuals of her work related injury. Further, the record evidence does not support the denial of claimant's request for further evaluation and therapy, related to her neck and right upper extremity complaints, as recommended by Dr. Macedo. *See Smith v. NCHP Property Management, Inc., H&AS No. 86-98, OWC No. 79676 (December 30, 1987); George Hyman Construction Company, supra.*

CONCLUSIONS OF LAW

Based upon the record evidence, I conclude procedures recommended by Dr. Macedo are reasonable and necessary to the course of claimant's recovery from the March 2004 work injury.

ORDER

It is hereby **ORDERED** that the claim for relief be **GRANTED.**

AMELIA G. GOVAN
ADMINISTRATIVE LAW JUDGE

December 7, 2007
Date