

## Hicks, Freda

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### TREATMENT

#### Proper and necessary medical and surgical services (RCW 51.36.010)

Medical opinions that establish that a worker's condition would rapidly deteriorate and be life-threatening without further treatment provide a sufficient basis to conclude that the further treatment is proper and necessary. ...*In re Freda Hicks*, BIA Dec.,01 14838 (2004)

Scroll down for order.

**BEFORE THE BOARD OF INDUSTRIAL INSURANCE APPEALS  
STATE OF WASHINGTON**

1 **IN RE: FREDA K. HICKS** ) **DOCKET NOS. 01 14838, 02 12943, 02 18743,**  
2 ) **02 21737, 02 21738, 02 23787, 02 23788,**  
3 ) **03 11379, 03 11380, 03 11381, & 03 11382**  
4 )  
5 **CLAIM NO. J-126737** ) **DECISION AND ORDER**

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7 **APPEARANCES:**

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9 Claimant, Freda K. Hicks, by  
10 Boyer Law Office, per  
11 Jeffrey E. Boyer

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13 Provider, J. Clark Jones, M.D., Pro Se

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15 Employer, Rainier Wood Products, Inc.,  
16 None

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18 Department of Labor and Industries, by  
19 The Office of the Attorney General, per  
20 Kirsten Stecher, Assistant

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23 Docket No. 01 14838 is an appeal filed by the claimant's physician, J. Clark Jones , M.D.,  
24 on May 7, 2001, from an order of the Department of Labor and Industries dated April 10, 2001. In  
25 this order, the Department specified the only allowed conditions in this claim were low back, left hip,  
26 and depression, and denied authorization for opiates. The Department order is **REVERSED AND**  
27 **REMANDED.**

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30 Docket No. 02 12943 is an appeal filed by the claimant on March 27, 2002, from an order  
31 dated December 27, 2001. In this order, the Department affirmed its order dated November 15,  
32 2001, that ended time loss compensation as paid through December 15, 2001, placed the claimant  
33 on pension, effective December 16, 2001, deducted \$3,500 previously paid for permanent partial  
34 disability from the pension reserve, authorized treatment for depression, only for medication and  
35 one physician visit every 60 days for medication management, and excluded addictive medication  
36 for pain control and travel reimbursement. The Department order is **REVERSED AND**  
37 **REMANDED.**

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39 Docket No. 02 18743 is an appeal filed by the provider on August 26, 2002, from Remittance  
40 Advice No. 626452 dated July 23, 2002. This remittance advice is **REMANDED.**

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42 Docket No. 02 21737 is an appeal filed by the provider on November 8, 2002, from  
43 Remittance Advice No. 699821 dated October 15, 2002. This remittance advice is **REMANDED.**

1 Docket No. 02 21738 is an appeal filed by the provider on November 8, 2002, from  
2 Remittance Advice No. 712392 dated October 29, 2002. This remittance advice is **REMANDED**.

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4 Docket No. 02 23787 is an appeal filed by the provider on December 19, 2002, from  
5 Remittance Advice No. 724764 dated November 13, 2002. This remittance advice is **REMANDED**.

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7 Docket No. 02 23788 is an appeal filed by the provider on December 19, 2002, from  
8 Remittance Advice No. 737398 dated November 26, 2002. This remittance advice is **REMANDED**.

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10 Docket No. 03 11379 is an appeal filed by the provider on February 7, 2003, from  
11 Remittance Advice No. 749244 dated December 10, 2002. This remittance advice is **REMANDED**.

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13 Docket No. 03 11380 is an appeal filed by the provider on February 7, 2003, from  
14 Remittance Advice No. 761170 dated December 24, 2002. This remittance advice is **REMANDED**.

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16 Docket No. 03 11381 is an appeal filed by the provider on February 7, 2003, from  
17 Remittance Advice No. 772850 dated January 7, 2003. This remittance advice is **REMANDED**.

18  
19 Docket No. 03 11382 is an appeal filed by the provider on February 7, 2003, from  
20 Remittance Advice No. 784451 dated January 22, 2003. This remittance advice is **REMANDED**.

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22 **DECISION**

23 Pursuant to RCW 51.52.104 and RCW 51.52.106, this matter is before the Board for review  
24 and decision on timely Petitions for Review filed by the claimant, the Department, and the provider  
25 to a Proposed Decision and Order issued on June 19, 2003, in which the industrial appeals judge  
26 reversed and remanded the Department letter dated April 10, 2001, that provided the only accepted  
27 conditions under this claim were low back, left hip, and depression, and reversed and remanded the  
28 Department order dated December 27, 2001, that affirmed an order dated November 15, 2001, that  
29 terminated time loss compensation as paid through December 15, 2001, and placed the claimant  
30 on pension, effective December 16, 2001, deducted a previously paid award for permanent partial  
31 disability from the pension reserve, authorized continued payment of medication not to include  
32 addictive medication for pain control for the allowed condition diagnosed as depression, with one  
33 physician visit every 60 days for medication management, and denied reimbursement for travel  
34 expenses.

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36 The Board has reviewed the evidentiary rulings in the record of proceedings and finds that  
37 no prejudicial error was committed. The rulings are affirmed.

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39 We have granted review to reverse the Department decision that limited the allowed  
40 conditions under this claim to left hip, low back, and depression, and the Department order that  
41 ended time loss compensation and placed the claimant on pension. We remand to the Department  
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1 the remittance advices dated July 23, 2002, October 15, 2002, October 29, 2002, November 13,  
2 2002, November 26, 2002, December 10, 2002, December 24, 2002, January 7, 2003, and  
3 January 22, 2003, to reissue in accordance with our decision that the claimant is entitled to proper  
4 and necessary treatment, including opiate medication, for conditions that, but for the industrial  
5 injury, would not have occurred.  
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8 Ms. Hicks was injured on May 28, 1982, during the course of her employment. She has not  
9 worked since that date except for a brief, unsuccessful attempt to return to work in 1987. The injury  
10 aggravated a pre-existing degenerative condition of the spine such that it eventually required fusion  
11 surgery and is the proximate cause of her chronic back pain. A Board Order Adopting Proposed  
12 Decision and Order issued on April 12, 1990, determined that as of March 30, 1989, Ms. Hicks had  
13 gained 100 pounds because of inactivity and the use of steroid medications necessitated by the  
14 industrial injury. Since that time, continued inactivity and the use of steroid medications have  
15 resulted in additional weight gain for Ms. Hicks, who now has been diagnosed as morbidly obese.  
16 Morbid obesity as well as conditions commonly associated with obesity diagnosed as hypertension,  
17 sleep apnea, obesity hyperventilation syndrome, esophageal reflux, hemorrhoids, and headaches,  
18 are proximately caused by the industrial injury and must be allowed under this claim.  
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25 Marvin J. Hoffert, M.D., a board certified neurologist and pain medicine specialist, provides  
26 treatment to Ms. Hicks for severe back, hip, and leg pain. In addition to his private practice,  
27 Dr. Hoffert is the medical director for health care review with an organization that has contracted  
28 with the Department to provide decisions about authorizing medical procedures. Dr. Hoffert  
29 prescribes OxyContin and Percocet, opiate medication, for Ms. Hicks to control her pain and  
30 thereby support her level of functioning. In his opinion, withholding opiate medications would have  
31 disastrous results. Without them, the claimant would be unable to maintain even her very limited  
32 functional capacity and would be unable to carry on normal, life-sustaining, functions. Despite its  
33 addictive qualities, he has not seen any evidence that Ms. Hicks was abusing the medication.  
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38 J. Clark Jones, M.D., is a psychiatrist who has treated the claimant on a regular basis since  
39 1986 with medication and psychotherapy. He testified that without frequent, on-going  
40 psychotherapy, the claimant's depression would deepen to the point that she would not be able to  
41 care for herself. Her risk of suicide would increase.  
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44 The claimant argues that the conditions proximately caused by the industrial injury have not  
45 reached maximum medical improvement, a condition precedent to claim closure.  
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1 "Maximum medical improvement" occurs when no fundamental or marked change in an  
2 accepted condition can be expected, with or without treatment. Maximum medical improvement  
3 may be present though there may be fluctuations in levels of pain and function and though  
4 improvement or deterioration with the passage of time might be expected. Maximum medical  
5 improvement is equivalent to "fixed and stable," WAC 296-20-01002(3).  
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8 We accept the opinions of two of the claimant's very credible treating physicians that her  
9 condition would deteriorate rapidly without treatment. There is no expectation that the claimant's  
10 condition will improve with additional treatment, nor is there an expectation that the deterioration in  
11 her condition will occur gradually with the passage of time. Without treatment, her deterioration will  
12 be swift and life threatening.  
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15 We must conclude that as of December 27, 2001, Ms. Hicks had not reached maximum  
16 medical improvement, and her claim should not have been closed. In addition to the plain wording  
17 of the regulation defining "maximum medical improvement," we rely on the holding in *Pybus Steel*  
18 *Co. v. Department of Labor & Indus.*, 12 Wn. App. (1975) that acknowledged a deteriorating  
19 condition is not fixed and stable, and such claims should remain open for further treatment.  
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22 The Department's decision to close this claim is incorrect and is reversed. The claim should  
23 remain open for proper and necessary treatment, including psychotherapy and opiate medication for  
24 pain control as set forth herein.  
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### 28 **FINDINGS OF FACT**

- 29 1. On June 8, 1982, the claimant, Freda K. Hicks, filed an application for  
30 benefits, alleging an injury to her low back and left hip on May 28, 1982,  
31 during the course of employment with Rainier Woods Products. The  
32 claim was allowed and benefits provided.  
33

34 On March 30, 1989, the Department issued an order closing the claim  
35 with time loss compensation as paid and an award for permanent partial  
36 disability for mental health impairment.  
37

38 On April 27, 1990, following a timely appeal filed by the claimant, the  
39 Board of Industrial Insurance Appeals issued an Order Adopting a  
40 Proposed Decision and Order that reversed the March 30, 1989 closing  
41 order and directed the Department to provide medical and other benefits  
42 as required by the law and the facts.  
43

44 On April 10, 2001, the Department issued a letter stating the only  
45 accepted conditions were low back, left hip, and depression, authorized  
46 medical treatment, psychiatric care and anti-depressant medications,  
47 and denied authorization for opiate medication.

1 On May 7, 2001, the claimant's provider filed an appeal of the April 10,  
2 2001 letter. On June 12, 2001, the Board assigned Docket  
3 No. 01 14838 and denied the appeal. On July 13, 2001, the provider  
4 filed a Protest and Request for Reconsideration of the June 12, 2001  
5 Board order denying the appeal of the April 10, 2001 letter.  
6

7 On August 20, 2001, the Department corrected an earlier order and  
8 denied responsibility for unrelated conditions of cervical strain, thoracic  
9 strain, esophageal reflex, edema, hemorrhoids, fibromyalgia, obesity  
10 hyperventilation syndrome, obesity, hypertension, asthma, lipomas,  
11 headaches, bilateral knee strain, bilateral hand and wrist arthritis, left  
12 ankle fracture, and sleep apnea.  
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14 On September 5, 2001, J. Clark Jones, M.D., the claimant's attending  
15 psychiatrist, provided the Department with a copy of a letter he had sent  
16 to Marvin J. Hoffert, M.D., a treating physician for the claimant. That  
17 letter constituted a protest of the August 20, 2001 Department order  
18 denying responsibility for unrelated conditions.  
19

20 On November 15, 2001, the Department issued an order that terminated  
21 time loss compensation as paid through December 15, 2001, and  
22 declared the claimant permanently and totally disabled and on pension,  
23 effective December 16, 2001. An award for permanently partial  
24 disability previously paid was deducted from the pension reserve.  
25 Continued treatment was authorized only for medication for depression  
26 and one doctor visit every 60 days for medication management, not to  
27 include addictive medication for control of pain or reimbursement for  
28 travel expenses.  
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30 On November 20, 2001, the Board issued an Order Vacating the Order  
31 Denying Appeal in Docket No. 01 14838. On November 21, 2001, the  
32 Board issued an Order Granting Appeal in Docket No. 01 14838.  
33

34 On December 27, 2001, following a timely Protest and Request for  
35 Reconsideration, the Department affirmed the order dated  
36 November 15, 2001.  
37

38 On March 27, 2002, the claimant's timely Protest and Request for  
39 Reconsideration of the December 27, 2001 order was forwarded to the  
40 Board as a direct appeal.  
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42 On April 3, 2002, the Board issued an Order Granting Appeal of the  
43 December 27, 2001 order and assigned Docket No. 02 12943.  
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45 Remittance Advice No. 626452, issued on July 23, 2002, allowed  
46 \$315.94 of a charged amount of \$454.32. The provider filed an appeal  
47 on August 26, 2002. On October 7, 2002, the Board issued an Order  
Granting Appeal and assigned Docket No. 02 18743.

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2 Remittance Advice No. 699821, issued on October 15, 2002, denied  
3 payment of \$243.46. The provider filed an appeal on November 8,  
4 2002.

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6 Remittance Advice No. 712392, issued on October 29, 2002, denied  
7 payment of practitioner bills because the diagnosis/procedure was not  
8 authorized. The provider filed an appeal on November 8, 2002. On  
9 December 13, 2002, the Board issued an Order Granting Appeal and  
10 assigned Docket No. 02 21738.

11  
12 Remittance Advice No. 724764, issued on November 13, 2002, denied  
13 medical bills. The provider filed an appeal on December 19, 2002. On  
14 January 28, 2003, the Board issued an Order Granting Appeal and  
15 assigned Docket No. 02 23787.

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17 Remittance Advice No. 737398, issued on November 26, 2002, denied  
18 medical bills. The provider filed an appeal on December 19, 2002. On  
19 January 28, 2003, the Board issued an Order Granting Appeal and  
20 assigned Docket No. 02 23788.

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22 Remittance Advice No. 749244, issued on December 10, 2002, denied  
23 practitioner bills. The provider filed an appeal on February 7, 2003. On  
24 March 6, 2003, the Board issued an Order Granting Appeal and  
25 assigned Docket No. 03 11379.

26  
27 Remittance Advice No. 761170, issued on December 24, 2002, denied  
28 practitioner bills. The provider filed an appeal on February 7, 2003. On  
29 March 6, 2003, the Board issued an Order Granting Appeal and  
30 assigned Docket No. 03 11380.

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32 Remittance Advice No. 772850, issued on January 7, 2003, denied  
33 practitioner bills. The provider filed an appeal on February 7, 2003. On  
34 March 6, 2003, the Board issued an Order Granting Appeal and  
35 assigned Docket No. 03 11381.

36  
37 Remittance Advice No. 784451, issued on January 22, 2003, denied  
38 practitioner bills. The provider filed an appeal on February 7, 2003. On  
39 March 6, 2003, the Board issued an Order Granting Appeal and  
40 assigned Docket No. 03 11382.

- 41  
42 2. On May 28, 1982, the claimant, Freda K. Hicks, sustained an injury to  
43 her back during the course of her employment with Rainier Wood  
44 Products, Inc.  
45  
46 3. The injury aggravated a pre-existing degenerative condition of the  
47 claimant's spine that required fusion surgery and proximately caused  
the claimant's chronic back pain.

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4. The industrial injury proximately caused conditions of the low back and left hip, depression/dysthymia, morbid obesity, hypertension, sleep apnea, obesity hyperventilation syndrome, esophageal reflux, hemorrhoids, and headaches.
5. The industrial injury did not proximately cause conditions diagnosed as cervical strain, angina, asthma, lipomas, and left ankle fracture.
6. As of December 27, 2001, the claimant required treatment with psychotherapy and opiate medication for control of chronic pain. The claimant has not abused the opiate medication.
7. As of December 27, 2001, the claimant would be unable to maintain and carry on life-sustaining functions without opiate medication for pain control.
8. As of December 27, 2001, without medication and psychotherapy, the claimant's depression would deepen, and her risk of suicide would increase.
9. As of December 27, 2001, termination of treatment would result in a swift and dangerous deterioration of the claimant's condition.

#### **CONCLUSIONS OF LAW**

1. The Board of Industrial Insurance Appeals has jurisdiction over the parties to and the subject matter of these appeals.
2. As of December 27, 2001, the claimant's conditions proximately caused by the industrial injury of May 28, 1982, had not reached maximum medical improvement within the meaning of WAC 296-20-01002(3).
3. The Department letter dated April 10, 2001, that allowed only the conditions relating to the low back, left hip, and depression, and the Department order dated December 27, 2001, that affirmed an earlier order placing the claimant on pension as of December 16, 2001, and authorized continued treatment only for medication and medication management for depression, denied the use of addictive medication for pain control are incorrect and are reversed. This matter is remanded to the Department with directions to allow conditions of the low back and left hip; including chronic back pain; depression/dysthymia; morbid obesity; hypertension; sleep apnea; obesity hyperventilation syndrome; esophageal reflux; hemorrhoids; and headaches; deny conditions diagnosed as cervical strain; angina; asthma; lipomas; and left ankle fracture; allow the claim to remain open to provide proper and necessary treatment including psychotherapy and opiate medication for



