

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F010031

SONDRA CLARK

CLAIMANT

ST. EDWARD MERCY MEDICAL CENTER

RESPONDENT

SISTERS OF MERCY HEALTH CARE SYSTEM
SELF INSURED

RESPONDENT

OPINION FILED DECEMBER 10, 2003

Hearing before ADMINISTRATIVE LAW JUDGE MICHAEL L. ELLIG in Fort Smith,
Sebastian County, Arkansas.

Claimant represented by RONALD McCANN, Attorney, Fayetteville, Arkansas.

Respondents represented by RANDY MURPHY, Attorney, Little Rock, Arkansas.

STATEMENT OF THE CASE

A hearing was held in the above styled claim on October 28, 2003, in Fort Smith, Arkansas. The deposition of Dr. Vincent B. Runnels was taken on May 5, 2003, and has been admitted as Respondent's Exhibit No. 2. The deposition of Dr. Anthony Capocelli was taken on June 10, 2003, and has been admitted as Respondent's Exhibit No. 3.

A pre-hearing order was entered in this case on August 28, 2003. This pre-hearing order set out the stipulations offered by the parties and outlined the issues to be litigated and resolved at the present time. A copy of this pre-hearing order was made Commission's Exhibit No. I to the hearing.

The following stipulations were offered by the parties and are hereby accepted:

1. On May 1, 2000, the relationship of employee-self insured employer existed between the parties.
2. The appropriate weekly compensation rates are \$394.00 for total disability and \$296.00 for permanent partial disability.
3. On May 1, 2000, the claimant sustained a compensable injury to her lower back.
4. There is no dispute over the payment of medical expenses incurred through

August 3, 2001.

5. There is no dispute over the payment of temporary total disability benefits, at present.

By agreement of the parties, the issues to be litigated and resolved at the present time were limited to the following:

1. The claimant's entitlement to additional medical services as recommended by Dr. Knox in his report of September 5, 2001.
2. Attorney's fees.

In regard to these issues, the claimant contends:

“The claimant contends that she sustained an on the job injury to her spine while in the course and scope of her employment with the respondent on May 1, 2000. She was initially treated at the Cooper Clinic. She was subsequently treated at the Beemer Back Center, by Dr. Anthony L. Capocelli, Dr. John Swicegood, Dr. Robert Wilson, Dr. Vincent B. Runnels, and Dr. D. Luke Knox, as well as St. Edward Mercy Medical Center and Northwest Medical Center. In his report of September 5, 2001, Dr. D. Luke Knox recommended doing an MRI of the lumbar spine, an LS spine series with flexion/extension views, as well as get a SPECT scan of the lumbar spine, along with other treatment options. It is the claimant’s contention that she is entitled to obtain the recommended testing and treatment.”

In regard to these issues, the respondents contend:

“Respondents contend that claimant has received all benefits to which she is entitled and that her problems after leaving employment with respondent are not related to the compensable injury.”

DISCUSSION

_____The sole issue, at the present time, is the claimant's entitlement to the additional testing that was recommended by Dr. Knox in his report of September 5, 2001. This additional testing consists of a repeat MRI of the claimant's lumbar spine, a series of plain x-rays of the claimant's lumbar spine from different perspectives, and a SPECT scan. The burden rests upon the claimant to prove her entitlement to these tests at the respondents’

expense.

In order to be entitled to these tests at the respondents' expense, the claimant must prove that these tests represent "reasonably necessary medical services" for her admittedly compensable injury of May 1, 2000. Medical services are "reasonably necessary" when they are connected with or necessitated by the compensable injury and have a reasonable expectation of accomplishing the purpose or goal for which they are intended. Clearly, medical tests necessary to reasonably insure an accurate diagnosis of the nature and extent of the compensable injury satisfy these two criteria.

After consideration of all the evidence presented, I find that a repeat MRI study of the claimant's lumbar spine, as recommended by Dr. Knox in his report of September 5, 2001, does not constitute a reasonably necessary medical service within the meaning of Ark. Code Ann. §11-9-508. The obvious purpose of this study would be to establish or exclude the existence of an injury to the claimant's lumbar spine that is producing compression or impingement of the spinal cord or the nerve roots in this area, thus resulting in radicular symptoms. However, the possibility of this type of injury has been amply explored by two previous MRI studies, a previous CT scan, and nerve conduction studies of the claimant's left lower extremity. There is no evidence, whatsoever, that would question the validity of these prior tests. The two previous MRI studies revealed no impingement or compression of the claimant's spinal cord or any of the exiting nerve roots in the lumbar area. The CT scan also failed to show any such defect. Finally, and most importantly, the electroneurological testing showed no evidence of any lumbar radiculopathy involving the nerves of the claimant's left lower extremity. Unless some new injury to this area has occurred (which the claimant denies), there is no reason to believe that a third MRI would yield any new or different result. Such a test would simply be unnecessarily cumulative and duplicative.

In reaching this determination, I recognize that the claimant has continuously voiced subjective symptoms involving her left lower extremity. These symptoms include radiating pain, tingling sensations, and weakness involving her entire left leg. However, the possibility that these symptoms are being caused by any compression or impingement on the claimant's spinal cord or exiting nerve roots in the lumbosacral area has been sufficiently investigated and effectively eliminated. Not only have such defects been eliminated by the findings on the above mentioned studies, but the presence of such defects is not supported by the claimant's physical examination. The claimant's complaints in her left lower extremity have consistently failed to follow any neurologic pattern. Physical examinations have also failed to reveal any degree of atrophy of any of the muscles in the claimant's left lower extremity. If the claimant's longstanding and extensive subjective complaints involving her left lower extremity were, in fact, due to a lumbar radiculopathy by this time, one would reasonably expect the appearance of atrophy of muscles innervated by the involved nerve.

In summary, I find that a repeat MRI study of the claimant's lumbosacral spine is not necessary to reasonably insure an accurate diagnosis of the nature and extent of her compensable lumbar injury, nor is such a test necessary to reasonably insure the development of an appropriate program of treatment. Thus, this particular test would not constitute a "reasonably necessary medical service" under Ark. Code Ann. §11-9-508 and liability for the expense of this test cannot be imposed upon the respondents herein.

After consideration of all the evidence presented, I find that the panel of plain x-rays and the SPECT scan, as recommended by Dr. Knox in his report of September 5, 2001, do constitute reasonably necessary medical services within the meaning of Ark. Code Ann. §11-9-508. The claimant's compensable lumbar injury and resulting difficulties have been consistently diagnosed as being attributable to physical damage and irritation of the structural components of the claimant's lumbar spine, primarily the facets of the vertebra

and the intervertebral discs. The accuracy of this diagnosis was bolstered by the successful elimination of any neurological component by the two MRI studies, the CT scan, and the nerve conduction and velocity studies. The clear purpose of the plain x-ray panel is to reveal any mechanical abnormalities in the movement or function of the components of the claimant's lumbar spine. The clear purpose of the SPECT scan is to reveal the presence of any chronic injury or irritation to any of these various components. There is no evidence that either of these studies have been previously performed. If either of these studies reveal the presence of a specific defect or damage to a particular structural component, then an appropriate treatment regimen focused on this defect can be developed. On the other hand, if these studies are normal, then any organic origin of the claimant's continuing complaints will have been effectively eliminated.

In summary, I find that the plain x-ray panel and SPECT scan that was recommended by Dr. Knox, in his report of September 5, 2001, is necessary to reasonably insure an accurate diagnosis of the nature and extent of the claimant's compensable injury and has a reasonable expectation of accomplishing this purpose. Thus, these tests constitute "reasonably necessary medical services" within the meaning of Ark. Code Ann. §11-9-508, and the respondents are liable for the expense of these tests (subject to the medical fee schedule established by this Commission).

FINDINGS OF FACT & CONCLUSIONS OF LAW

1. The Arkansas Workers' Compensation Commission has jurisdiction of this claim.
2. On May 1, 2000, the relationship of employee-self insured employer-third party administrator existed between the parties.
3. On May 1, 2000, the claimant earned wages sufficient to entitle her to weekly compensation benefits of \$394.00 for total disability and \$296.00 for permanent partial disability.

4. On May 1, 2000, the claimant sustained a compensable injury to her lower back and lumbar spine.
5. There is no dispute over the payment of medical expenses incurred for the claimant's compensable injury through August 3, 2001.
6. The greater weight of the credible evidence fails to prove that a third MRI study, as recommended by Dr. Luke Knox in his report of September 5, 2001, represents a "reasonably necessary" medical service, within the meaning of Ark. Code Ann. §11-9-508. Thus, liability for the expense of this test cannot be imposed on the respondents herein.
7. The greater weight of the credible evidence does prove that the plain x-ray panel and the SPECT scan, as recommended by Dr. Knox in his report of September 5, 2001, do constitute "reasonably necessary" medical services within the meaning of Ark. Code Ann. §11-9-508. These medical services are reasonably necessary to accurately diagnose the nature and extent of the claimant's compensable injury and to formulate an appropriate treatment regimen. Liability for the expense of these tests, subject to the Commission's medical fee schedule, is the liability of the respondents herein.
8. The respondents have controverted the claimant's entitlement to any of the additional tests that were recommended by Dr. Luke Knox, in his report of September 5, 2001.
9. A reasonable fee for the claimant's attorney is the maximum statutory attorney's fee on the controverted medical expenses herein awarded.

ORDER

The respondents shall be liable for the expense of the plain x-ray panel and SPECT scan that was recommended by Dr. Luke Knox, in his report of September 5, 2001. This liability is subject to the medical fee schedule established by this Commission.

The respondents are not liable to provide the claimant with a third MRI study, which was also recommended by Dr. Knox in his report of September 5, 2001, for the reasons heretofore set forth in this Opinion.

The respondents shall pay to the claimant's attorney one-half of the maximum statutory attorney's fee on the above controverted medical expenses herein awarded. The claimant's attorney is hereby authorized to receive from any future benefits which may hereinafter become due and payable to the claimant the remaining one-half of this maximum statutory attorney's fee.

All benefits herein awarded, which have heretofore accrued, are payable in a lump sum without discount.

This award shall bear the maximum legal rate of interest until paid.

IT IS SO ORDERED.

MICHAEL L. ELLIG
Administrative Law Judge