

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. E012513

GLORIA GOODIN

CLAIMANT

COVINGTON COURT & REHAB

RESPONDENT

LIBERTY MUTUAL INSURANCE COMPANY,  
INSURANCE CARRIER

RESPONDENT

OPINION FILED NOVEMBER 26, 2003

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

Claimant represented by DAVID HARP, Attorney, Fort Smith, Arkansas.

Respondents represented by JEFFREY RICKARD, Attorney, Fort Smith, Arkansas.

STATEMENT OF THE CASE

A hearing was held in the above styled claim on October 21, 2003, in Fort Smith, Arkansas. A pre-hearing order was entered in this case on July 21, 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 submitted by the parties and are hereby accepted:

1. On June 17, 1990, the relationship of employee-employer-carrier existed between the parties.
2. On June 17, 1990, the claimant sustained a compensable injury to her lower back.
3. There is no dispute over any benefits except the additional medical services of Dr. Fisher.

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 by Dr. Fisher.

In regard to these issues, the claimant contends:

"Respondents have denied the claimant's right to continued medical treatment from her treating physician. That the claimant is entitled to an attorney's fee on all amounts controverted."

In regard to these issues, the respondents contend:

"The respondents will contend that they have provided all reasonable and necessary medical treatment for the claimant's compensable injury of June 17, 1990. Without waiving other defenses, the respondents contend that the claimant was involved in a motor vehicle accident which constituted an independent intervening cause."

### DISCUSSION

\_\_\_\_\_ The sole issue presented for resolution at the present time concerns the claimant's entitlement to additional medical services by and at the direction of Dr. Robert D. Fisher. The burden rests upon the claimant to prove her entitlement to these benefits.

In order to be entitled to the services of Dr. Fisher, the claimant must prove that they constitute "reasonably necessary medical services" for her admittedly compensable lumbar injury of June 17, 1990. Medical services are "reasonably necessary" if they are necessitated by or connected with the compensable injury and have a reasonable expectation of accomplishing the purpose or goal for which they are intended. The term "reasonably necessary medical services" is not limited to those medical services intended only to resolve the actual physical damage caused by the compensable injury. Reasonably necessary services also extend to those medical services necessary to accurately diagnose the nature and extent of the injury, to maintain the level of healing achieved, and even only to reduce or alleviate symptomatic complaints.

The record reveals that the claimant sustained an admittedly compensable injury to her lumbar spine on June 17, 1990. She ultimately underwent corrective surgery, in the form of a laminectomy. This corrective surgery was provided by Dr. Albert MacDade, a

neurosurgeon. This surgery appears to have alleviated some of the physical damage caused by the claimant's compensable injury and provided her with some degree of relief from her symptoms. However, she has continued to experience periodic episodes of back pain or discomfort. The claimant has been periodically evaluated for these continuing complaints, from a neurosurgical standpoint, by Dr. MacDade and subsequently by Dr. J. Michael Standefer. As of her last neurosurgical evaluation, on April 29, 2003, further surgical intervention was not deemed necessary. In 1993, the claimant was initially referred by Dr. MacDade to Dr. Robert Fisher, an anesthesiologist, and chronic pain management specialist. Since this referral, Dr. Fisher has provided the claimant with periodic medical services in the form of oral medication and occasional epidural steroid injections at the injury site. In 2002, the respondents' ceased to provide the claimant with these continuing services by Dr. Fisher. The claimant is now requesting this Commission require the respondents to provide her with this periodic treatment by Dr. Fisher.

The evidence reveals that the claimant was involved in a motor vehicle accident in October of 1997. However, there is no evidence to show that she sustained any physical injury or damage to her back or lumbar spine in this accident. There is also no evidence that this motor vehicle accident necessitated any medical services, particularly any services by Dr. MacDade, Dr. Standefer, or Dr. Fisher.

The claimant testified that she quit two of the employment positions she had since her initial release from treatment by Dr. MacDade, because these positions required her to violate the physical restrictions placed upon her by Dr. MacDade and produced temporary increases in the magnitude of her chronic symptoms. However, there is again no evidence that these activities actually produced any new physical injury or damage to the claimant's lumbar spine. There is also no evidence that these activities independently necessitated any medical treatment.

In his deposition, Dr. Standefer opined that the claimant is experiencing “failed back” syndrome. He stated that, in his experience, approximately 5% of the patients, who experience injuries similar to the claimant’s and undergo surgery will fall into this category and will experience continued chronic pain, sometimes for the remainder of their life. He indicated that the type of medical services, which have been provided by Dr. Fisher, are accepted and appropriate treatment modalities for chronic pain complaints. In fact, he indicated that the claimant was fortunate in that she requires such services only sporadically. He in no way attributed the claimant’s chronic pain complaints and need of medical services for pain management to any cause, other than her initial compensable injury and the surgery it required.

In his report of September 30, 2002, Dr. Fisher clearly attributed the claimant’s chronic pain complaints solely to her initial compensable injury and the subsequent surgery it required. He noted that objective tests performed on the claimant, after her surgery, revealed the continued presence of defects, involving her lumbar spine that would be consistent with her periodic chronic pain complaints. He emphatically stated that the claimant’s car accident had no effect on the claimant’s chronic pain complaints or necessitated any of the treatment he has provided.

Both Dr. Standefer and Dr. Fisher are highly competent specialists with considerable expertise in the area of medicine associated with the claimant’s compensable back injury and her chronic pain complaints. Their opinions are entitled to substantial weight and credit. Based upon my experience, as an Administrative Law Judge for this Commission, I must concur with Dr. Standefer that it is not “uncommon” in lumbar injuries, similar to the claimant’s, to have some degree of chronic pain complaints for substantial periods of time. I would also note that the type of medical services provided the claimant by Dr. Fisher are of a type and nature widely recognized and commonly employed by the general medical community as being an appropriate treatment modality to alleviate or reduce chronic pain

complaints, such as those experienced by the claimant.

After consideration of all the evidence presented, it is my opinion that the claimant's periodic chronic pain complaints, involving her low back or lumbar spine, are causally related to her initial compensable injury and the subsequent surgical intervention it required. It is these periodic chronic pain complaints that continue to necessitate the medical services of Dr. Fisher, to alleviate or reduce these chronic complaints. The evidence fails to establish the occurrence of any independent intervening cause of the claimant's chronic pain complaints or of her need for medical treatment for these complaints. Thus, the periodic medical services provided the claimant by Dr. Fisher for her chronic low back complaints constitutes "reasonably necessary medical services" for the claimant's compensable injury of June 17, 1990. Pursuant to A.C.A. §11-9-508, the respondents remain liable for the expense of these medical services, 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 June 17, 1990, the relationship of employee-employer-carrier existed between the parties.
3. On June 17, 1990, the claimant sustained a compensable injury to her lower back or lumbar spine. There is no dispute over any benefits, except the additional medical services of Dr. Fisher for the claimant's chronic low back or lumbar complaints.
4. The medical services of Dr. Fisher, in the form of chronic pain management, for the claimant's continuing periodic low back or lumbar complaints constitutes reasonably necessary medical services for her compensable injury of June 17, 1990. These medical services are causally connected to

and necessitated by her compensable injury of June 17, 1990, and have a reasonable expectation of accomplishing the intended purpose or goal for which they are being provided (i.e. chronic pain management). Pursuant to A.C.A. §11-9-508, the expense of such services, subject to the medical fee schedule established by this Commission, is the liability of the respondents herein.

5. A reasonable fee for the claimant's attorney is the maximum statutory fee on the additional controverted medical services herein awarded.

#### ORDER

The respondents shall be liable for the expense of continued medical services provided the claimant by Dr. Robert Dr. Fisher for management of her chronic pain syndrome involving her lower back or lumbar spine. This liability is be subject to the medical fee schedule established by this Commission.

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

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MICHAEL L. ELLIG  
Administrative Law Judge

