

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F109956

KRISTA JARVIS	CLAIMANT
ST. EDWARD MERCY MEDICAL CENTER	RESPONDENT
SISTERS OF MERCY HEALTH SYSTEM INSURANCE CARRIER	RESPONDENT

OPINION FILED NOVEMBER 21, 2003

Hearing before ADMINISTRATIVE LAW JUDGE ELIZABETH DANIELSON in Fort Smith, Sebastian County, Arkansas.

Claimant represented by EDDIE H. WALKER, JR., Attorney, Fort Smith, Arkansas.

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

STATEMENT OF THE CASE

A hearing was held on September 18, 2003, in Fort Smith, Arkansas.

A pre-hearing conference was held in this claim, and as a result a pre-hearing order was entered in the claim on July 11, 2003. This pre-hearing order set forth the stipulations offered by the parties, the issues to litigate and the contentions thereto.

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

1. The Arkansas Workers' Compensation Commission has jurisdiction of this claim.

2. The claimant sustained a compensable injury to her low back on April 15, 2000.

3. Medical expenses have been paid until the claimant moved out of the state.

By agreement of the parties the issues to litigate are limited to the following:

1. Additional medical.
2. Attorney's fees.

In regard to the foregoing issues the claimant contends that she is entitled to additional medical benefits as a result of her admittedly compensable injury including a change of physicians to someone in or near her present hometown of Elk City, Oklahoma. The claimant contends that her attorney is entitled to an appropriate attorney's fee.

In regard to the foregoing issues the respondents contend that the claimant has received all benefits to which she is entitled. Respondents contend that the claimant is not entitled to further medical treatment or change of physician at their expense.

The documentary evidence submitted in this matter consists of the Commission's pre-hearing order marked Commission's Exhibit No. 1. The respondents submitted the personnel records marked Respondents' Exhibit No. 1 and medical information marked Respondents' Exhibit No. 2. All these exhibits were admitted without objection.

#### DISCUSSION

The claimant testified that she is a registered nurse and currently living in Elk City, Oklahoma. The claimant testified that on April 15, 2000, she was living in Fort Smith working for the respondent when she sustained a low back injury lifting a three hundred-pound patient. The claimant testified that she had back

pain as well as leg pain as a result of this injury. The claimant testified that she received medical treatment in the ER that day. The claimant testified that approximately one month after her injury she moved to Elk City which was her hometown and obtained employment in that area as a nurse. The claimant testified that she has not sustained any new back injury subsequent to April 15, 2000, but her symptoms have continued and are in the same location as they were when the event occurred in April 2000. The claimant agreed that at one point there was a hearing scheduled to determine if she was entitled to a change of physician but, due to her pregnancy, she was unable to make the five-hour trip for the hearing. The claimant testified that she has a family doctor in Elk City, Dr. Williams, but it is her wish to be seen by a specialist in Oklahoma City for her back problems. The claimant testified that she would like to be seen at the Spine Clinic which is associated with the respondent in Oklahoma City.

On cross examination, the claimant agreed that she left the Fort Smith area in order to return to her hometown. The claimant testified that when she made her move she already had employment at the Great Plains Regional Medical Center and since that time she has worked for that hospital as well as worked on a nurse registry, the Plainview Nursing Home, the Grace Living Center in Clinton, Oklahoma and currently she is back at Great Plains Medical Center. The claimant agreed that her family physician, Dr. Williams, is a general practitioner. The claimant testified that during her pregnancy she suffered from lots of back pain for which Dr.

Williams administered steroid injections. The claimant agreed that she has had a history of back problems and back pains but that each event had resolved prior to her injury of April 15, 2000. The claimant agreed that after her April 2000 injury she was treated by Dr. Sheikha at Cooper Clinic who ordered medications, off work for three days, light duty work and an MRI. The claimant agreed that Dr. Sheikha also recommended physical therapy but she did not follow up with this recommendation. The claimant testified that she went to see Dr. Capocelli on her own before she moved to Oklahoma. The claimant agreed that the only treatment she has had for her compensable injury is her visit at the ER, being seen by Dr. Sheikha and Dr. Capocelli. The claimant testified that once she was in Elk City, Oklahoma and working for the hospital, her medical bills were paid by her group carrier. The claimant testified that none of the treatment in Oklahoma was turned into or asked to be pre-approved by her workers' compensation carrier.

The claimant testified that during her pregnancy she had back pain which was a combination of her pregnancy as well as her ongoing back complaints. The claimant testified that she delivered her child by C section in June 2002. The claimant testified that she has been seeing Dr. Williams who is her family physician and he has recommended that she undergo an additional MRI. The claimant testified that she has just completed another round of epidural steroid injections administered by Dr. Michael Hacherl who is an anaesthesiologist. The claimant testified that she would like to be seen by a specialist for her ongoing back problems. The

claimant also agreed that she has not been in contact with the respondent in so far as any workers' compensation issues. The claimant testified that the reason she did not follow through with Dr. Capocelli's recommendation for physical therapy was that she was moving to Oklahoma the next day and, since the respondents would not pay for Dr. Capocelli, she did not think that they would pay for his recommended course of treatment. The claimant did agree that she did not request the respondents to pay for her physical therapy after she moved.

On redirect examination, the claimant testified that some two years ago the respondents were asked to authorize medical treatment for her back and the respondents refused to authorize additional medical treatment. On recross examination, the claimant agreed that her only contact with the respondents has been when her attorney filed a claim in September 2001 on her behalf.

The medical records set forth that this claimant was seen by Dr. Bill Spurlock on November 14, 1998, for complaints with her upper back. On December 19, 1998, the claimant was diagnosed with lumbar strain following an injury while moving a patient. A CT of the claimant's lumbar spine made on December 21, 1998, reveal that she had a mild disc bulge at L4-5, disc bulge and possible right para central protrusion at L5-S1. The claimant had an MRI made on December 23, 1998, which showed that she has disc degeneration at L5-S1 with a small central disc herniation and a mild defused degenerative disc bulging at L4-5. As a result of this 1998 low back injury, the claimant was off work for a few days as well as

underwent physical therapy for a period of time. The claimant was seen at the St. Edwards Mercy Medical Center on January 4, 2000, for complaints of low back pain and pain into both legs as a result of moving a patient. The claimant was again seen in the St. Edwards emergency room on April 15, 2000, for complaints of lower back pain. At this time, the claimant was diagnosed with lumbar strain with spasm as well as lumbar disc disease. Dr. Sheikha writes on April 18, 2000, that the claimant was seen for complaints of low back pain after lifting a patient who weighed three hundred pounds. Dr. Sheikha writes that he had seen the claimant previously for back pain due to a work injury and writes about the claimant's December 1998 MRI and the findings of this test. Dr. Sheikha continued the claimant's medications, referred her to physical therapy, diagnosed her with low back pain and muscle spasms and recommended a second MRI. The claimant's MRI, which was performed on April 24, 2000, sets forth that she has a central disc protrusion at L5-S1 similar to previous exam with associated annular tear as well as defused mild disc bulge at L4-5. Dr. Capocelli writes on May 10, 2000, that he has seen the claimant for her complaints of low back pain which radiates down into her legs. Dr. Capocelli notes the findings on the recent MRI and further notes that the current study was unchanged from the study of December 1998. Dr. Capocelli, after examination, diagnosed the claimant with lumbar sprain as well as bulging disc at L4-5 and L5-S1. The doctor continued the claimant on her medications as well as recommended physical therapy as well as for her to wear a brace

when she is doing any type of lifting. The claimant was seen by Dr. Gill on February 13, 2001, where she reports complaints of back pain noting that she was injured two years ago and that two weeks ago the claimant's back started really getting painful with pain down into her legs. Dr. Gill notes that the claimant has significant paraspinous muscle spasm and he diagnoses her with low back syndrome recommending medications and rest for one week. The claimant was seen in follow up by Dr. Gill on February 15, 2000, where it is noted that her back pain is improving and she has decreased muscle spasms. The claimant underwent epidural steroid injections at the Great Plains Regional Medical Center on April 24, 2001, at the recommendation of Dr. Gill. This same procedure was performed again on August 30, 2001. The progress notes from the Great Plains Regional Medical Center on August 30, 2001, indicate that the claimant got excellent results from her April 24, 2001, injection.

Ark. Code Ann. §11-9-514(a)(3)(ii) provides a claimant with an absolute one time right to a change of physician. The language in Subsection (a)(3)(ii) mandates that, "where the employer has contracted with a managed care organization certified by the Commission, the claimant, shall be allowed to change physicians by petitioning the Commission one time only for a change of physician." See Collins v. Lennox Industries, Inc., 77 Ark. App. 303, 75 S.W. 3d 204, (2002). The claimant, in this case, has petitioned the Commission for her one time change of physician requesting that she be seen by a specialist in Oklahoma City at a

clinic which is associated with the respondent. The Collins case as cited above sets forth that at Ark. Code Ann. §11-9-514(a)(3)(ii) that this section contains no discretionary phrase regarding approval of the change, but simply states that the right to a one time change "shall be allowed, by petitioning the Commission." Therefore, there is no discretion left to the Commission. The majority of the section deals with "how" the physician for this change will be selected, not "if" the physician will be selected. Therefore, this claimant is entitled to her one time change of physician to the Spine Clinic in Oklahoma City which is associated with the respondent. The claimant's testimony as well as the medical records set forth that she has had on going problems with her low back as well as medical treatment for these symptoms since her compensable injury of April 2000. The claimant has testified that, on her own, she has sought for and arranged for payment of this continuing medical treatment without seeking authorization from the respondent up to the filing of her request for additional medical treatment in September 2001. The unauthorized medical treatment will not be the responsibility of the respondent but as of the date of the claimant's filing for additional benefits in September 2001, the medical treatment from that date forward is both reasonable and necessary for the treatment of her compensable low back injury and should be the responsibility of the respondent.

FINDINGS & CONCLUSIONS

1. The Arkansas Workers' Compensation Commission has jurisdiction of this claim.

2. The claimant sustained a compensable injury to her low back on April 15, 2000.

3. Medical expenses have been paid until the claimant moved out of the state.

4. The claimant has proven by a preponderance of the evidence that she is entitled to her one time change of physician to a spine clinic in Oklahoma City which is associated with the respondent. See Ark. Code Ann. §11-9-514 as well as Collins v. Lennox Industries, Inc., 77 Ark. App. 303, 75 S.W. 3d 204, (2002).

5. The claimant has proven by a preponderance of the evidence that she is entitled to additional medical treatment for her compensable injury subsequent to the filing of her claim for additional benefits in September 2001. See discussion above.

6. The respondents have controverted this claimant's request for a change of physician as well as additional medical treatment.

7. The claimant's attorney is entitled to the maximum statutory attorney's fee as set forth for a change of physician as well as on the benefits awarded herein.

ORDER

The claimant is entitled to her one time change of physician to the Spine Clinic in Oklahoma City which is associated with the respondent.

The respondents should pay for additional medical treatment for this claimant's compensable injury subsequent to the filing of her request for additional benefits in September 2001.

The claimant's attorney is entitled to a statutory attorney's fee for granting of a change of physician in the amount of \$200.00.

The respondents shall pay to the claimant's attorney the maximum statutory attorney's fee on the additional benefits awarded herein, with one half of said attorney's fee to be paid by the respondents in addition to such benefits and one half of said attorney's fee to be withheld by the respondents from such benefits.

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.

---

ELIZABETH DANIELSON  
ADMINISTRATIVE LAW JUDGE