

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. E911803

BRENDA MAGADAN

CLAIMANT

WASHINGTON MEDICAL CENTER
SELF INSURED

RESPONDENT

CCMSI,
INSURANCE CARRIER/TPA

RESPONDENT

OPINION FILED NOVEMBER 5, 2003

Hearing before ADMINISTRATIVE LAW JUDGE MICHAEL L. ELLIG in Springdale, Washington County, Arkansas.

Claimant represented by MARK FREEMAN, Attorney, Fayetteville, Arkansas.

Respondents represented by TOD BASSETT, Attorney, Fayetteville, Arkansas.

STATEMENT OF THE CASE

A hearing was held in the above styled claim on September 22, 2003, in Springdale, 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. Immediately prior to the commencement of the hearing, the parties agreed to add an additional issue, that being the effect of Ark. Code Ann. §11-9-411 on any additional indemnity benefits the claimant is now seeking. A copy of this pre-hearing order with that amendment noted thereon, was made Commission's Exhibit No. I to the hearing.

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

1. On January 1, 1999, the relationship of employee-self insured employer-third party administrator existed between the parties.
2. The appropriate weekly compensation rates are \$359.00 for total disability and \$269.00 for permanent partial disability.
3. On January 1, 1999, the claimant sustained a compensable injury to her lumbar spine.
4. There is no dispute over the payment of medical expenses incurred through

December 26, 2002.

5. There is no dispute over temporary total disability benefits accruing through July 11, 2002.

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 after December 26, 2002.
2. The claimant's entitlement to additional temporary total disability from July 12, 2002 through a date yet to be determined.
3. Appropriate attorney's fee.
4. The effect of Ark. Code Ann. §11-9-411 on any indemnity benefits.

In regard to these issues, the claimant contends that she is entitled to reasonable and necessary medical treatment and temporary total disability benefits.

In regard to these issues, the respondents deny that the claimant was rendered temporarily totally disabled by her compensable injury on and after July 12, 2002. The respondents also deny that any medical services rendered to the claimant on and after December 26, 2002, constitutes "reasonably necessary medical services" within the meaning of Ark. Code Ann. §11-9-514. The respondents further contend that they are entitled to a set off against any additional temporary total disability benefits awarded, pursuant to Ark. Code Ann. §11-9-411, for benefits received by the claimant under a group disability policy during this same period.

DISCUSSION

_____I.

ADDITIONAL TEMPORARY TOTAL DISABILITY BENEFITS

The first issue to be addressed concerns the claimant's entitlement to additional temporary total disability benefits from July 12, 2002 through a date yet to be determined.

The burden rests upon the claimant to prove her entitlement to these additional benefits. In order to meet this burden, she must prove by the greater weight of the credible evidence that she continued within her healing period from the effects of her compensable injury and also continued to be totally disabled from regular gainful employment, as a result of the effects of the compensable injury, Arkansas State Highway and Transportation Department v. Breshears, 272 Ark. 244, 613 S.W. 2nd 392(1991).

The healing period has been defined as that period necessary for the healing of the physical injury, Ark. Code Ann. §11-9-102(13). Applicable case law provides that the healing period continues until the claimant has achieved the maximum benefit of time and medical treatment in regard to the resolution of the actual physical damage produced by the compensable injury. Once this underlying physical damage has resolved or at least stabilized, and nothing further in the way of medical treatment offers a reasonable expectation of improvement, then the healing period has ended, Roberson v. Waste Management, 58 Ark. App. 11, 944 S.W. 2nd 558(1997). Once the underlying physical injury or damage has resolved or stabilized, the mere continuation of chronic symptoms (even though the medical services may be necessary to provide symptomatic relief), is not sufficient, in and of itself, to extend the healing period, Mad Butcher v. Parker, 4 Ark. App. 124, 628 S.W. 2nd 582(1982).

The medical evidence reveals that the claimant has received sufficient diagnostic testing to reasonably ascertain the true nature and extent of her physical injury. She has been seen and evaluated by general practitioners, neurosurgeons, neurologists, physiatrists, and chronic pain management specialists. She has undergone multiple plain x-rays, numerous MRI's, and even a myelogram with an enhanced CT scan. She has also received electroneurological testing of her lower extremities, in the form of nerve conduction and velocity studies. Pelvic x-rays were even performed in an attempt to confirm Dr. Money's diagnosis of piriformis syndrome (a compression of the sciatic nerve

in the area of the piriformis muscle of the hip). The pelvic x-rays were interpreted as normal and not diagnostic of the presence of this diagnosed condition. The plain x-rays, MRI studies, myelogram, and enhanced CT scan all reveal various defects involving the claimant's spine (essentially all of which are degenerative in nature).

None of the physicians evaluating the claimant have given any indication that any of these defects require surgical intervention. The claimant has received extensive conservative care, including oral medication, injections, and physical therapy. Most importantly, the various tests performed over the claimant's three year period of treatment (including the MRI performed over the request of Dr. Atkinson on June 21, 2002) show no indication of any noticeable change in her spinal defects.

The medical record reveals that on and after July 12, 2002, the claimant has received no medical services directed toward reducing or alleviating any of the actual physical damage produced by the claimant's compensable injury and no such medical treatment has even been recommended. All of the medical services the claimant has received, since July 12, 2002, have been directed solely toward reducing or alleviating her chronic complaints of pain.

After consideration of all the evidence presented, it is my opinion that the claimant has failed to prove that she has continued within her healing period from the effects of her compensable injury on and after July 12, 2002. The facts in this case are strikingly similar to the case of Mad Butcher, Inc. v. Parker, cited supra, I find that case to be controlling in the present claim.

As the claimant has failed to prove by the greater weight of the credible evidence that she continued within her healing period from the effects of her compensable injury, on and after July 12, 2002, she cannot be awarded temporary total disability benefits during this period. This finding makes moot the issue of the effect of Ark. Code Ann. §11-9-411 on her entitlement to such benefits.

II.

LIABILITY FOR ADDITIONAL MEDICAL EXPENSES INCURRED AFTER DECEMBER 26, 2002

The final issue concerns the claimant's entitlement to additional medical services at the respondents' expense, on and after December 26, 2002. The burden again rests upon the claimant to prove her entitlement to these benefits. In order to meet this burden, the claimant must prove that the medical services, in question, represent "reasonably necessary medical services" for her compensable injury.

Medical services are "reasonably necessary" when 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 services intended to "treat" the actual physical damage caused by the compensable injury. Rather, this term extends to medical services which have a variety of intended purposes or goals. These include the accurate diagnosis of the nature and extent of the injury, maintaining the level of healing achieved, and (as recognized in the Mad Butcher case) reducing or alleviating chronic symptomatic complaints.

The record shows that all of the medical services the claimant has received after December 26, 2002, have been provided by Dr. Thomas Atkinson and Dr. R. David Cannon. All of the services provided by these physicians have been directed toward reducing or alleviating the claimant's complaints of chronic pain, primarily in her lower back with some radiation into the right hip and leg. The type of treatment these physicians have provided has primarily been in the form of orally administered narcotics (Oxycontin and Methodone).

In regard to this issue, the respondents have offered the reports of Dr. Randall Hendricks, an orthopaedic surgeon at the Central States Orthopaedic Specialist, Inc. in

Tulsa, Oklahoma. In his reports, Dr. Hendricks notes that he has reviewed the claimant's records and has personally evaluated her on one occasion. He expresses the opinion, based upon this simple evaluation and his review of the various "diagnostic studies", that these studies "have not suggested anything specifically abnormal which would be causing her complaints of pain". It is his further opinion that the treatment modalities that are being employed to treat the claimant's chronic pain complaints, by Dr. Atkinson and Dr. Cannon, are not appropriate and that the claimant is being provided "too much narcotic pain medications". It is important to note, that on his physical examination, he too noted the presence of paraspinal muscle spasms, which is another chronic complaint that has accompanied the claimant's chronic pain.

After consideration of all the evidence presented, it is my opinion that the treatment provided the claimant by and at the direction of Dr. Atkinson and Dr. Cannon, on and after December 26, 2002, constitutes reasonably necessary medical services for her compensable injury. The greater weight of the credible evidence shows that such services are necessitated by and are connected with the claimant's initial compensable injury. Further, the evidence indicates that these services have a reasonable expectation of accomplishing the purpose or goal for which they are intended.

Dr. Hendricks may be correct in his opinion that the radiographically demonstrated defects, particularly the defect at L5-S1, may not be producing the claimant's longstanding chronic pain complaints. However, this does not, in and of itself, cause these complaints to be unrelated to the claimant's compensable injury.

The claimant was clearly experiencing pre-existing degenerative changes in her lumbar spine prior to the compensable injury of January 1, 1999. However, there is absolutely no evidence that she was experiencing any significant back pain or any lumbar muscle spasms prior to this work related injury. In fact, she was able to perform her relatively strenuous employment duties for this respondent for a number of years without

any apparent difficulty or complaint involving her lower back. Contemporaneously with this injury, the claimant experienced the immediate onset of pain and muscle spasms, which have continuously persisted thereafter.

All of the previous physicians (with the possible exception of Dr. Money), who have evaluated and treated the claimant have expressed the opinion that the claimant's complaints of pain and muscle spasms involving her lower back are attributable to a physical injury to this portion of her body which she sustained in the employment related accident of January 1, 1999. These physicians do not particularly attribute these complaints to any of the particular radiographically demonstrated defects at L5-S1. These physicians include Dr. Vincent Runnels, a highly competent neurosurgeon with many years of expertise in the area of medicine associated with the diagnosis and treatment of spinal injuries and complaints. Thus, I find that the claimant has proven that her continued chronic pain and muscle spasms for which she has received medical services from Dr. Atkinson and Dr. Cannon are necessitated by or are related to her compensable injury of January 1, 1999.

Dr. Atkinson and Dr. Cannon are both highly competent physicians. Dr. Cannon has particular expertise in the area of medicine associated with the treatment of chronic pain complaints. Both of these physicians are obviously of the opinion that the appropriate treatment modality for the claimant's chronic complaints is the use of narcotic analgesics. It must be further noted that this treatment modality is generally recognized and commonly employed in the treatment of chronic pain complaints. There is no indication that the claimant is overusing or abusing the narcotic medication being provided. The actual levels of narcotic pain medication being prescribed are well within those customarily employed for the treatment of chronic pain. Therefore, the medical services being provided to the claimant by and at the direction of Dr. Atkinson and Dr. Cannon are medically appropriate and have a reasonable expectation of accomplishing the purpose for which they are

intended.

FINDINGS OF FACT & CONCLUSIONS OF LAW

1. The Arkansas Workers' Compensation Commission has jurisdiction of this claim.
2. On January 1, 1999, the relationship of employee-self insured employer-third party administrator existed between the parties.
3. The appropriate weekly compensation rates are \$359.00 for total disability and \$269.00 for permanent partial disability.
4. On January 1, 1999, the claimant sustained a compensable injury to her lumbar spine.
5. There is no dispute over the payment of medical expenses incurred through December 26, 2002.
6. The claimant has proven by the greater weight of the credible evidence that the medical services provided her by and at the direction of Dr. Thomas Atkinson and Dr. R. David Cannon, on and after December 26, 2002, constitutes reasonably necessary medical services for the claimant's compensable injury. Pursuant to Ark. Code Ann. §11-9-508, the respondent is liable for the expense of such services, subject to the medical fee schedule established by this Commission.
7. There is no dispute over the claimant's entitlement to temporary total disability benefits through July 11, 2002.
8. The claimant has failed to prove by the greater weight of the credible evidence that she continued to be temporarily totally disabled, as a result of the effects of her compensable injury, on and after July 12, 2002. Specifically, she has failed to prove by the greater weight of the credible evidence that she continued within her "healing period" from the effects of

her compensable injury on and after that date.

9. The respondents have controverted the claimant's entitlement to any temporary total disability benefits accruing on and after July 12, 2002, and any medical services provided on and after December 26, 2002.
10. A reasonable fee for the claimant's attorney is the maximum statutory attorney's fee on the controverted benefits herein awarded.

ORDER

The respondents shall be liable for the additional medical services provided to the claimant for her compensable injury by and at the direction of Dr. Thomas Atkinson and Dr. R. David Cannon, on and after December 26, 2002.

The respondents shall pay to the claimant's attorney one-half of the maximum statutory attorney's fee on 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 this maximum statutory attorney's fee.

The claimant's request for additional temporary total disability benefits must be and hereby is denied for the reasons heretofore set forth in this Opinion.

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

