

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F105903

VICKY MANN	CLAIMANT
HOBART SALES & SERVICE	RESPONDENT
WAUSAU BUSINESS INS. CO. INSURANCE CARRIER	RESPONDENT

OPINION FILED NOVEMBER 24, 2003

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

Claimant represented by RANDY SHOCK, Attorney, Fort Smith, Arkansas.

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

STATEMENT OF THE CASE

At the pre-hearing conference held on October 2, 2003, it was agreed by the parties that this matter would be submitted to the Commission on the Commission's pre-hearing order, agreed stipulations and briefs of the parties.

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

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

2. All prior opinions are res judicata and the law of this case.

3. The claimant filed a petition for a change of physician on September 10, 2002, and this petition was denied by the administrator of the Medical Cost Containment Division because the requested physician was not a member of the respondent's MCO.

4. On September 2, 2003, the claimant submitted a second request for a change of physician.

5. An order was issued by the Administrator of Medical Cost Containment on September 5, 2003, granting the claimant's requested change of physician.

By agreement of the parties the issue to be litigated is limited to the following:

1. The claimant's entitlement to a change of physician.

The claimant contended that she has not exercised her one time right to a change of physician as allowed by Arkansas law.

The respondents contend that once the initial petition for a change of physician dated September 10, 2002, was denied, there was no authority for the Commission to consider a second request for a change of physician.

The documentary evidence submitted in this matter consists of the Commission's pre-hearing order dated October 2, 2003, marked Commission's Exhibit No. 1. The respondents submitted a hearing brief with attachments as well as a reply brief marked Respondents' Exhibit No. 1 and Respondents' Exhibit No. 2. The claimant submitted a hearing brief with attachments marked Claimant's Exhibit No. 1. All these exhibits were agreed upon and admitted as the record.

#### DISCUSSION

The parties have stipulated that the claimant filed a petition for a change of physician on September 10, 2002, and this petition was denied by the administrator of the Medical Cost Containment

Division because the requested physician was not a member of the respondent's MCO. The stipulations also set out that on September 2, 2003, the claimant submitted a second request for a change of physician and an order was issued on September 5, 2003, granting the claimant's requested change of physician. It is from this September 5, 2003, granting of a change of physician that the respondent is appealing.

Ark. Code Ann. §11-9-514(a)(3)(ii) sets forth that;

Where the employer has contracted with a managed care organization certified by the Commission, the claimant employee, however, shall be allowed to change physicians by petitioning the Commission one time only for a change of physician to a physician who must either be associated with the managed care entity chosen by the employer or be the regular treating physician of the employee who maintains the employee's medical records and with whom the employee has a bona fide doctor patient relationship.

The claimant's change of physician was to Dr. Claude Martimbeau who is a member of the carrier's certified managed care organization.

The respondents are contending that the claimant exercised her one time change of physician request by her initial filing of a petition on September 10, 2002, which was denied based on the claimant's request to be changed to a physician outside the respondent's MCO. The claimant then filed a second request for a change of physician, this time to a provider within the respondent's MCO.

In Collins v. Lennox Industries, Inc., 77 Ark. App. 303, 75 S.W. 3d 204 (2002) the Court has written that Ark. Code Ann. §11-9-514(a)(3)(ii) establishes an absolute, statutory right to a one

time change of physician under the Workers' Compensation Act where the employer has contracted with a managed care organization and has exercised the right to select the initial primary care physician. The Collins case further sets out that current Arkansas law 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.

Applying the instruction of strict construction of the code in workers' compensation cases, it is my reading that Ark. Code Ann. §11-9-514(a)(3)(ii) emphasizes the claimant's one time right to a change of physician not their one time right to petition for a change of physician. I, therefore, find that the order granting the claimant's entitlement to be seen by Dr. Claude Martimbeau as set forth in the order dated September 5, 2003, is valid and should be upheld as her one time change.

#### FINDINGS & CONCLUSIONS

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

2. All prior opinions are res judicata and the law of this case.

3. The claimant filed a petition for a change of physician on September 10, 2002, and this petition was denied by the

administrator of the Medical Cost Containment Division because the requested physician was not a member of the respondent's MCO.

4. On September 2, 2003, the claimant submitted a second request for a change of physician.

5. An order was issued by the Administrator of Medical Cost Containment on September 5, 2003, granting the claimant's requested change of physician.

6. The claimant has shown that, in accordance with Arkansas law, she is entitled to her one time change of physician to Dr. Claude Martimbeau as ordered in the September 5, 2003, order issued by the administrator of the Medical Cost Containment Division. See discussion above.

ORDER

The claimant is entitled to her one time change of physician to Dr. Claude Martimbeau. This petitioned change of physician will constitute the claimant's statutory one time change of physician.

IT IS SO ORDERED.

---

ELIZABETH DANIELSON  
ADMINISTRATIVE LAW JUDGE