

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F107992

BECKY MAYFIELD	CLAIMANT
WESTERN SIZZLIN	RESPONDENT
STONEVILLE CLAIMS SERVICE, INSURANCE CARRIER	RESPONDENT

OPINION FILED JULY 23, 2003

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

Claimant represented by JAY TOLLEY, Attorney, Fayetteville, Arkansas.

Respondents represented by CURTIS NEBBEN, Attorney, Fayetteville, Arkansas.

STATEMENT OF THE CASE

A hearing was held in the above styled claim on April 28, 2003, in Springdale, Arkansas. The deposition of Dr. Cynthia Beemer was taken on May 20, 2003, and has been admitted subsequent to the hearing as Respondent's Exhibit No. 1.

A pre-hearing order was entered in this case on January 13, 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. Prior to the commencement of the hearing, the claimant withdrew the request for a determination on whether the respondents were liable for a penalty on the payment of medical expenses. A copy of the pre-hearing order with these amendment noted thereon, was made Commission's Exhibit No. I to the hearing.

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

1. The Opinion of April 30, 2002, has become final and is res judicata of all issues raised and addressed therein.

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

1. Respondents' liability for expenses incurred for medical services provided the claimant by and at the direction of Dr. Beemer.

2. Attorney's fees.

In regard to these issues, the claimant contends:

"Claimant received an award for payment of reasonable and necessary medical, and the respondents are taking the position that the treatment is not the result of the injury in question.

I don't know what it is the result of, considering she wasn't under any treatment before, but let's have another hearing so the respondents can pay more attorney fees and try to come up with another way to avoid having to pay this.

It doesn't make economic sense to me to spend \$4,000-\$5,000 on a lawyer to take a position such as this.

The claimant wasn't under any treatment before she got hurt and immediately went to the doctor and received treatment, so for all medical proof, it must be inferred that the reason for the treatment is a result of the injury. We have already been through that once and the simple fact of the matter now is that while they take the position they are taking, they're wrong. They have controverted the case and will have to pay a penalty, because the Commission has already ordered for that medical to be paid.

The way you're going to stop this is what I have said all along. You give reasonable application to dispute questions of fact and you don't allow a non sensical approach to these dispute questions.

I'm not writing a brief here, but I just can't understand why in good conscience, this company would take this position, other than they think that somehow they will wear the claimant, the doctor, or the claimant's attorney down.

Please give a penalty and a recontroversion to the payment of the outstanding medical."

In regard to these issues, the respondents contend that the chiropractic treatment rendered by Cindy Beemer, D.C. did not arise out of the compensable injury. Dr. Beemer treated the claimant for conditions other than her right hand and wrist.

DISCUSSION

_____The sole issue presented for resolution is the respondents' liability for expenses

incurred for medical services provided to the claimant by and at the direction of Dr. Beemer. In the prior Opinion of April 30, 2002, the respondents were found liable for any appropriate medical services provided the claimant for her compensable right hand/wrist injury by and at the direction of Dr. Beemer that were provided after March 9, 2001. This prior Opinion has become final and is res judicata of this issue.

However, during this same period of time, the claimant also received medical services from Dr. Beemer for various other conditions, which have been held to be non compensable (specifically conditions involving her neck, shoulders, upper back, and lower back). The parties have apparently had difficulty separating the treatment of Dr. Beemer for these non compensable conditions from the treatment she provided the claimant for her compensable right hand/wrist injury. As a result, apparently none of the expenses incurred for the services of Dr. Beemer have been paid.

The deposition of Dr. Beemer reflects that the services she provided the claimant, in the form of electrical stimulation, manual therapy (myofascial release), ultrasound, and hot packs, were rendered for the claimant's compensable right wrist and hand injury. This testimony by Dr. Beemer is corroborated by the testimony of the claimant.

I find the testimony of Dr. Beemer and the claimant to be persuasive on this issue. Thus, the medical services rendered to the claimant by and at the direction of Dr. Beemer, in the form of manual therapy, electrical stimulation, ultrasound, and hot packs represents reasonably necessary medical services for the claimant's compensable injury. Pursuant to the prior final Opinion, the respondents are liable for the expense of these services that were provided to the claimant by and at the direction of Dr. Beemer after March 9, 2001.

The occasions on which these particular services were provided the claimant can be ascertained from Dr. Beemer's billing statements. It appears that these services were provided on March 12, 2001; March 14, 2001; March 22, 2001; March 27, 2001; March 29, 2001; and March 30, 2001. Although the claimant testified that she continued to receive

these services after March 30, 2001, she was unable to give the specific dates for this continued treatment and no billing statements from Dr. Beemer have been offered in regard to such continuing treatment.

Therefore, I find that the respondents are liable for the expense of the foregoing services provided the claimant by Dr. Beemer on the afore stated dates. This liability shall be subject to the medical fee schedule established by this Commission.

FINDINGS OF FACT & CONCLUSIONS OF LAW

1. The Arkansas Workers' Compensation has jurisdiction of this claim.
2. On February 16, 2001, the relationship of employee-self insured employer-TPA existed between the parties.
3. On February 16, 2001, the claimant sustained a compensable injury to her right wrist/hand.
4. The medical services provided the claimant by and at the direction of Dr. Beemer on March 12, 2001; March 14, 2001; March 22, 2001; March 27, 2001; March 29, 2001; and March 30, 2001, in the form of manual therapy, electrical stimulation, ultrasound, and hot packs represent reasonably necessary medical services for the claimant's compensable right hand/wrist injury. Pursuant to the prior Opinion, the respondents are liable for the expense of these services, subject to the medical fee schedule established by this Commission.
5. The respondents have controverted the claimant's entitlement to the reasonably necessary medical services provided her by and at the direction of Dr. Beemer, which were previously awarded in the Opinion of April 30, 2002.
6. A reasonable fee for the claimant's attorney is the maximum statutory

attorney's fee on the controverted services of Dr. Beemer herein awarded.

ORDER

The respondents shall be liable for the expense incurred as the result of medical services provided the claimant for her compensable right hand/wrist injury by and at the direction of Dr. Beemer, in the form of manual therapy, electrical stimulation, ultrasound, and hot packs administered to the area of her right wrist/hand on March 12, 2001; March 14, 2001; March 22, 2001; March 27, 2001; March 29, 2001; and March 30, 2001. Such liability shall be subject to the medical fee schedule established b this Commission.

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

All benefits herein awarded have heretofore accrued and 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