

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

WCC NO. F104176

AMY ELISSA NAPIER, EMPLOYEE	CLAIMANT
BAXTER INTERNATIONAL, INC., EMPLOYER	RESPONDENT
AMERICAN PROTECTION INSURANCE CO., INSURANCE CARRIER	RESPONDENT

OPINION FILED SEPTEMBER 18, 2003

Before Administrative Law Judge C. MICHAEL WHITE in Pulaski County, Arkansas.

The claimant was represented by Rick Spencer, Attorney at Law, Mountain Home, Arkansas.

The respondents were represented by Tom Harper, Jr., Attorney at Law, Fort Smith, Arkansas.

OPINION AND ORDER

This matter comes before this administrative law judge for an opinion on the stipulations and the record. A prehearing conference was conducted in this matter on April 1, 2003 and a prehearing order was filed on April 1, 2003. During the prehearing conference it was determined that the issue to be resolved is whether the claimant has an absolute right to select the physician to whom she changes. In this regard the claimant contends that she is entitled to a change of physician to Dr. William Galli, a Pulmonologist in Mountain Home, Arkansas. The respondents have agreed that the claimant is entitled to a one time change of physician; however, the respondents object to a change to Dr. Galli. In this regard the respondents contend that even though

Napier/F104176

the claimant has an absolute right to a one time change of physician, the claimant does not have an absolute right to select the physician.

Based on my de novo review of the stipulations and the record, the following findings of fact and conclusions of law are made in accordance with Ark. Code Ann. § 11-9-704 (Cumm. Supp. 1997):

FINDINGS AND CONCLUSIONS

1. The Arkansas Workers' Compensation Commission has jurisdiction over this claim;
2. The stipulations agreed to by the parties and set forth above are hereby accepted as fact;
3. I find that the claimant is not entitled to a change of physician to Dr. Galli.
4. I find that the claimant is entitled to a change of physician to one of the pulmonary specialists associated with Pulmonary Associates, P.A., 5800 W. Tenth Street, Little Rock, Arkansas 72204, which is associated with the respondent employer's managed care entity.

DISCUSSION

As indicated above, the parties in this matter agree that the claimant has an absolute right to a change of physician; however, the claimant contends that she has an absolute right to a change of physician to Dr. William Galli. On the other hand, the respondents contend that the claimant does not have a right to choose the physician and that the physician should be

Napier/F104176

selected by the Commission. Specifically, in its brief to the Commission the respondents contend that Ark. Code Ann. §11-9-514 mandates that even though an employee has a right to a one time change of physician the physician to whom the employee changes must be associated with the managed care entity chosen by the employer, or be the regular treating physician of the employee. In this regard Ark. Code Ann. §11-9-514(a)(3)(A) provides the following:

(ii) 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 (1) 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 demonstrated by a history of regular treatment prior to the onset of the compensable injury, but only if the primary care physician agrees to refer the employee to the managed care entity chosen by the employer for any specialized treatment, including physical therapy, and only if such primary care physician agrees to comply with all the rules, terms, and conditions regarding services performed by the managed care entity chosen by the employer.

(iii) Where the employer does not have a contract with a managed care organization certified by the commission, the claimant employee, however, shall be allowed to change physicians by petitioning the commission one (1) time only for a change of physician, to a physician who must either be associated with any managed care entity certified by the commission 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 demonstrated by a history of regular treatment prior to the onset of the compensable injury, but only if the primary care physician agrees to refer the employee to a physician associated with any managed care entity certified by the

Napier/F104176

commission for any specialized treatment, including physical therapy, and only if such primary care physician agrees to comply with all the rules, terms, and conditions regarding services performed by any managed care entity certified by the commission.

In the present claim the respondents have contracted with a Kemper Preferred Provider Network. The claimant has not shown that Dr. Galli is associated with Kemper Preferred Provider Network, as required by the Arkansas Workers' Compensation Law. Moreover, documentation submitted by the respondents indicates that Dr. Galli is not associated with the Kemper Preferred Provider Network. Consequently, I find that the claimant is not entitled to a change of physician to Dr. Galli.

In *Collins v. Lennox Industries, Inc.* 77 Ark. App. 303, 75 SW 3d 204 (2002) the Arkansas Court of Appeals interpreted the statutory language to give the claimant an absolute right to a one time right to a change of physician. In addition, the Court concluded that the statute contains no discretionary language regarding the change of physician but simply states that the right to a one time change "shall be allowed, by petitioning the Commission." Therefore, the court concluded that the Commission has no discretion in determining whether the claimant is, or is not, entitled to a change of physician.

However, there is nothing in either the decision of the Court or the Full Arkansas Workers' Compensation Commission, nor in the

Napier/F104176

language of the statute which gives the claimant an absolute right to change to a physician of their own choosing. I find that this is especially true under the circumstances of this case where the claimant has requested a change to a physician who is not associated with the managed care entity chosen by the employer or the regular treating physician of the employee. To allow such change simply is not allowed by the plain language of the statute.

In short, I find that the claimant is not entitled to a change of physicians to Dr. William Galli. However, I find that the claimant is entitled to a change of physician to one of the pulmonary specialists associated with Pulmonary Associates, P.A., 5800 W. Tenth Street, Little Rock, Arkansas 72204, which is associated with the respondent employer's managed care entity.

ORDER

Accordingly, based on my review of the entire record and for the reasons discussed herein, I find that the claimant is entitled to a one time change of physician to a pulmonary specialists associated with the employer's managed care entity, more specifically, Pulmonary Associates, P.A. 5900 W. Tenth Street, Little Rock, Arkansas 72204.

Napier/F104176

IT IS SO ORDERED.

HON. C. MICHAEL WHITE
ADMINISTRATIVE LAW JUDGE

rb