

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F013839

CAROL A. PALASACK,  
EMPLOYEE

CLAIMANT

CITY OF MAYFLOWER,  
EMPLOYER

RESPONDENT

MUNICIPAL LEAGUE WC TRUST,  
INSURANCE CARRIER

RESPONDENT

**OPINION FILED OCTOBER 13, 2003**

Hearing conducted before ADMINISTRATIVE LAW JUDGE MARK CHURCHWELL, at Little Rock, Pulaski County, Arkansas.

The claimant was PRO SE.

The respondents were represented by HONORABLE J. CHRIS BRADLEY, Attorney at Law, North Little Rock, Arkansas.

**STATEMENT OF THE CASE**

A hearing was held in the above-styled claim on August 12, 2003 in Little Rock, Arkansas. A prehearing order was entered in this case on or about June 27, 2003. A copy of this prehearing order set out the stipulations offered by the parties and outlined the issues to be litigated and resolved at the present time.

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

1. The employer-employee-carrier relationship existed on November 14, 2000.
2. The claimant sustained a compensable injury on November 14, 2000.

3. The claimant's average weekly wage was \$221.60; her temporary total disability rate is \$148.00.
4. The respondents have controverted further medical benefits not already paid.

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

1. The claimant seeks additional medical benefits pursuant to a Form-C filed on October 3, 2001.
2. The claimant's Form-C filed on October 3, 2001 indicates that private insurance (Qual-Choice) has paid benefits for her injury, so that an offset and set-aside under Ark. Code Ann. § 11-9-411 may apply if additional benefits are awarded.

The record consists of the transcript of the August 12, 2003 hearing, with exhibits contained therein, and the respondents' post-hearing brief received on August 22, 2003 which I have blue backed to make a part of the record.

#### **DISCUSSION**

The claimant was involved in a work related automobile accident on November 14, 2000, when she was apparently thrown from a tanker truck when it overturned. The claimant was taken by ambulance and treated at Conway Regional Health

System. At that time she was noted to have primarily right posterior rib pain, right hip pain, and right lower chest pain with a small area of redness on her right lower chest. When the claimant followed up with her family physician, Dr. Daniel Watson on December 6, 2000, Dr. Watson released the claimant to return to work if she felt like it. The respondents' payout record, introduced into the exhibits as claimant's Exhibit No. 2, indicates that the respondents paid for the claimant's medical treatment at Conway Regional Medical Center on November 14, 2000, follow up at the Autumn Road Family Practice on November 16, 2000, follow up at the Autumn Road Family Practice on December 6, 2000, an office visit at Autumn Road Family Practice on September 27, 2001, and an office visit at Autumn Road Family Practice on October 16, 2001. There appears to be no dispute that the claimant's treating physicians at Autumn Road Family Practice were Dr. Watson and his associate Dr. Morrow.

In addition to the above described medical treatment, the claimant asserts that the respondent should be liable for a variety of diagnostic and therapeutic treatment at issue, including (1) evaluations for a possible heart or cardiovascular condition received in November of 2001 and in July of 2002, (2) a CT of the chest with contrast for

sternal pain performed in October of 2001, (3) an abdominal ultrasound performed in November of 2001, and (4) chiropractic treatment received from Dr. Hurley beginning in May of 2002.

### **1. Change of Physician Rules**

In their post-hearing brief on appeal, the respondents assert in part that the respondents cannot be liable for Dr. Hurley's chiropractic treatment beginning in May of 2002, because the claimant was obligated, but did not, request and receive a change of physician from the Commission prior to beginning treatment with Dr. Hurley. In this regard, the respondents acknowledge that the respondents have stipulated that the respondents controverted further medical treatment after November 7, 2001. Nevertheless, the respondents interpret Act 796 of 1993 as requiring a claimant to seek and receive a change of physician from the Commission before presenting to a new doctor, even under circumstances where the respondents have controverted the claimant's entitlement to additional medical treatment from any physician.

As the respondents' brief on appeal notes, in interpreting the Arkansas Workers Compensation Law as it existed prior to the amendments of Act 796 of 1993, the Arkansas Court of Appeals held in Sanyo Mfg. Corp. v.

Farrell, 16 Ark. App. 59, 696 S.W.2d 779(1985), that the change of physician rules do not apply after a respondent controverts a claimant's entitlement to additional treatment from any physician.

Although the Arkansas Court of Appeals has apparently not in any published opinion revisited this precise legal issue after the Arkansas Workers' Compensation Law was amended by Act 796 of 1993, I note that the Full Commission has interpreted on several occasions in cases governed by Act 796 of 1993, and later amendments to the change of physician rules, that the change of physician rules still do not apply during a controverted period even after the amendments of Act 796 and subsequent revisions. Sandra Hawkins v. Jefferson Regional Medical Center, Full Workers' Compensation Commission, Opinion filed August 12, 2003 (E502382, E709020, F003389); Donna Chamness v. Wendy's, Full Workers' Compensation Commission, Opinion filed January 22, 2002 (E606801); Kenney v. Silom Springs School District, Full Workers' Compensation Commission, Opinion filed August 31, 2001 (E907076); Barnett v. Daniel, Full Workers' Compensation Commission, Opinion filed May 25, 2001 (E600078); Clements v. Shoney's, Full Workers' Compensation Commission, Opinion filed February 12, 1998 (E604632).

Furthermore, I note in passing that the respondents' suggestion that the legislature intended the claimant to follow the change of physician rules even during a controverted period appears to be contrary to the plain language of Ark. Code Ann. § 11-9-514(f).

Since there is no dispute that the claimant presented to Dr. Hurley during a period in which the respondents controverted the claimant's entitlement to benefits in their entirety from any physician, I find that the claimant was not required to seek and obtain a change of physician from the Arkansas Workers' Compensation Commission in order for the respondents to be liable for any treatment from Dr. Hurley which was reasonably necessary and causally related to the claimant's compensable injury.

**2. Reasonable necessity and the causal connection of the disputed treatment with the November 14, 2000 injury.**

Employers must promptly provide medical services which are reasonably necessary for the treatment of compensable injuries. Ark. Code Ann. § 11-9-508(a) (Repl. 2002). However, the respondent is only responsible for medical services which are causally related to the compensable injury. Injured employees have the burden of proving by a preponderance of the evidence that the medical treatment is

reasonably necessary for the treatment of a compensable injury. In determining whether a claimant has sustained her burden of proof, the Commission shall weigh the evidence impartially without giving the benefit of the doubt to either party. Ark. Code Ann. § 11-9-704; Wade v. Mr. C Cavenuaugh's, 298 Ark. 363, 768 S.W.2d 521 (1989).

In the present case, the claimant testified at the hearing that her current symptoms are mainly in her back and that she has a rib which dislocates. According to the claimant, she goes to the chiropractor to get the rib popped back into place. The claimant testified that she had no rib injury and received no chiropractic treatment for a rib condition prior to the accident on November 14, 2000. According to the claimant, when her chiropractic pushes on her back to push the rib back into place, the claimant feels it all the way down her arm with severe tingling. In addition, when she has pain from her sternum to the left side of her back, she has pain from that spot down her leg. The claimant testified that what she initially thought were heart symptoms were actually rib pain. When questioned regarding her lack of treatment between November of 2000 and May of 2002, the claimant acknowledged that she did not receive any treatment for a rib popping out during this

period, and indicated that she received no treatment because she could not afford it. The evidence which supports the claimant's claim includes her testimony regarding persistent pain from her sternum to her back and the initial ER reports of both rib pain and chest pain. In addition, I note that Dr. Watson wrote a letter to Amy Boswell of the Municipal League Worker's Compensation Trust on September 20, 2002. In that letter, Dr. Watson indicated that the claimant had not been experiencing sharp pains and a popping sensation of her sternal region prior to her accident at work, and that the claimant was seen on October 30, 2001 and November 7, 2001 for complaints of sharp pain in her mid sternal region with occasional popping which she had experienced since the time of her accident. Likewise, Dr. Hurley, the claimant's treating chiropractor wrote a letter to Amy Boswell on January 16, 2003 indicating that the claimant had been seen in Dr. Hurley's office for treatment of complaints arising from an automobile injury of November 2001. Dr. Hurley reported a history of pain in the claimant's thoracic spine and chest area that has been constant since the accident, and which caused the claimant to be evaluated for heart conditions. Dr. Hurley indicated that x-rays had revealed a compression fracture in the thoracic spine which was

previously undiagnosed and not treated at the time of the accident. According to Dr. Hurley, this compression fracture likely accounts for the claimant's constant and chronic pain in that area. In addition, Dr. Hurley attributed the claimant's neck, low back, and hip pain with radiation and constant aching to fibromyalgia, which Dr. Hurley also opined was caused by an automobile accident in November of 2001<sup>1</sup>.

For the reason discussed below, however, I find that the claimant has failed to establish by a preponderance of the evidence that her symptoms and treatment at issue starting in October of 2001 are causally related to the accident that occurred on November 14, 2000.

In reaching this conclusion, I realize, as discussed above, that Dr. Watson drafted a letter in September of 2002 indicating that the claimant had experienced sharp pain and sternum popping since the automobile accident, and Dr. Hurley attributed all of the claimant's problems to her automobile accident in her 2003 letter.

However, I accord much greater weight to the history taken at Arkansas Heart on November 15, 2001 which instead

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<sup>1</sup> The claimant's automobile accident was actually in November of 2000.

indicates that the claimant's intermittent chest discomfort only had a history of two months, and this did not date back a year to the time of the automobile accident as the claimant now contends and as the later 2002 and 2003 letters indicated. I accord significantly greater weight to Dr. Das' history recorded at Arkansas Heart because the history provided to Arkansas Heart was for a possible heart related condition.

Dr. Watson did refer the claimant for diagnostic tests in 2001 including a CT of the chest for sternal pain on October 2, 2001, then a heart evaluation on November 15, 2001, and then an ultrasound of the gall bladder in 2002. Based on the medical records before me, however, neither Dr. Watson or Dr. Hurley have opined that the symptoms associated with these diagnostic tests were actually symptoms of a rib that pops out, as the claimant suggested at the hearing.

In reaching this conclusion, I am also persuaded by the fact that Dr. Watson's contemporaneous medical reports between March of 2001 and October of 2001 indicate that he treated the claimant on March 22, 2001; April 20, 2001; July 23, 2001; and August 11, 2001 without reports of stabbing sternal pain. Because I find that a preponderance of the

evidence establishes that the claimant's stabbing chest pains at issue began approximately ten months after the accident in November of 2000, I find that the claimant has failed to establish by a preponderance of the credible evidence that her symptoms at issue arose out of injuries sustained in her accident on November 14, 2000.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

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

2. The employ-employee-carrier relationship existed on November 14, 2000.

3. The claimant sustained a compensable injury on November 14, 2000.

4. The claimant's average weekly wage was \$221.60; her temporary total disability rate is \$148.00.

5. The respondents have controverted further medical benefits not already paid.

6. The change of physician rules would not prevent the respondents from being liable for Dr. Hurley's chiropractic treatment beginning in May of 2002, since this treatment was provided during a controverted period.

7. The claimant has failed to establish that the

medical treatment which she received beginning in October of 2001 is causally related to injuries she sustained in a work related automobile accident on November 14, 2000.

**Order**

This claim for additional medical benefits is respectfully denied and dismissed.

IT IS SO ORDERED.

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MARK CHURCHWELL  
Administrative Law Judge