

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. E309628

SANDRA PEACOCK, EMPLOYEE

CLAIMANT

LOMAS FINANCIAL CORPORATION, EMPLOYER

RESPONDENT

**AETNA CASUALTY AND SURETY COMPANY,
INSURANCE CARRIER**

RESPONDENT

OPINION FILED AUGUST 6, 2003

Hearing before Administrative Law Judge Dail Stiles on June 5, 2003, in Little Rock, Pulaski County, Arkansas.

Claimant represented herself Pro Se.

Respondents represented by Ms. Betty J. Demory, Attorney at Law, Little Rock, Arkansas.

A hearing was held on June 5, 2003, to determine the claimant's entitlement to additional benefits.

It was stipulated that the claimant sustained a compensable injury on May 25, 1993. The claimant was earning sufficient wages to entitle her to weekly indemnity benefits of \$252.30 for temporary total disability benefits and \$189.23 for permanent partial disability benefits. It was stipulated that the claimant was paid temporary total disability benefits until January 10, 1995. It was further stipulated that the claimant received a fifteen percent whole body physical impairment rating on January 10, 1995, and that permanent partial disability benefits were paid pursuant to that rating from January 10, 1995 through March 20, 1996. It was stipulated that the last indemnity of any type was paid to the claimant on March 20, 1996.

The claimant contends that she is entitled to approximately three weeks reimbursement or, specifically, \$756.88 in either unpaid temporary total disability or permanent partial disability benefits. The claimant contends she is

entitled to reimbursement for mileage, traveling to and from various medical providers, as well as unpaid medical bills which she contends are related and reasonable and necessary for treatment of her May 25, 1993 compensable injury. The claimant contends that her treatment by Dr. Harold Chakales commencing in August 2001 was an authorized referral, and that Dr. Chakales' treatment is reasonable and necessary as it relates to her compensable injury of May 25, 1993. The claimant contends as a result of her compensable injury of May 25, 1993, she has been rendered permanently and totally disabled.

The respondents controvert the claim for any unpaid amounts of temporary total disability or permanent partial disability benefits contending that they had paid appropriate periods of temporary total and have paid permanent partial disability benefits pursuant to a fifteen percent whole body physical impairment rating given January 10, 1995. The respondents controvert the treatment by Dr. Harold Chakales contending that Dr. Chakales is an unauthorized physician and that any treatment he has rendered is not related to the May 25, 1993 compensable injury nor would it be deemed to be reasonable and necessary treatment as it relates to the May 25, 1993 compensable injury. Respondents controvert the claimant's claim for permanent and total disability contending that the claimant is not entitled to any permanent disability benefits in excess of the fifteen percent whole body physical impairment rating which respondents have accepted and paid.

STATEMENT OF THE CASE

In May of 1993, the claimant worked for the respondent employer in a capacity of appraising, assessing and inspecting properties for the respondent.

The claimant stated she was working some properties in Missouri on May 25, 1993, and that she was on the porch of a house when the decking gave way under her, which caused her to fall backwards some six or eight feet landing

on her back. The claimant stated that she heard her back and hip pop. The claimant testified that she was sufficiently injured and experiencing considerable pain to the extent that within thirty minutes of the injury, she could not walk.

The injury was reported and accepted as compensable by the respondents and medical benefits and temporary total disability benefits were instituted.

The claimant's temporary total disability benefits and all medical benefits continued to be paid by the respondent employer until January 10, 1995. On January 10, 1995, Dr. Ted Saer, who had performed surgery on the claimant's low back, assessed the claimant as having a permanent physical impairment rating to the body as a whole of fifteen percent. The respondents accepted the impairment rating and instituted permanent disability benefits on January 10, 1995. Respondents continued to pay that rating until they paid it out on March 20, 1996.

By January of 1995, the claimant had changed doctors from Dr. Saer to Dr. Kevin Collins.

The claimant stated that shortly after January 10, 1995, as she attempted to get prescriptions filled and had appointments with various medical providers, she discovered that some of those bills were not being authorized for payment by the respondent carrier. She stated that all her bills from Dr. Kevin Collins were paid in full, and that she continued to receive permanent disability checks.

The claimant testified that after January of 1995, physicians or hospitals or other medical providers were being advised by the respondent carrier that the charges would not be paid. The claimant testified that adjusters for the respondent carrier named Kathy Santos and Betty Castle were advising medical providers that the bills would not be paid. The claimant stated that Ms. Castle

specifically told her that her medical bills would no longer be paid by Aetna workers' compensation, and that the claimant would need to file those claims for medical treatment under her accident and health insurance through the respondent employer. The claimant's accident and health insurance carrier for Lomas Financial Corporation, the employer, also happened to be Aetna Casualty and Surety Company.

The respondents introduced into evidence a computer generated payment document which indicates that Aetna in its role as the workers' compensation carrier in this case, paid all bills submitted by medical providers under the workers' compensation policy.

The claimant demonstrated through documentary evidence which she had compiled, that these bills were in fact not paid by the workers' compensation carrier but were partially paid by Aetna, presumably on the accident and health insurance side of the ledger. The claimant demonstrated through her documentary exhibits from various medical providers that, with the exception of Dr. Kevin Collins' bills, she was, after January of 1995, consistently balance billed. The claimant also introduced copies of cancelled checks which clearly demonstrated that she had paid on numerous occasions the balance billing from physicians, radiologists, pharmacies, and other medical providers. A review of the medical exhibits reveal that all of these charges appear to be related to the claimant's workers' compensation injury of May 25, 1993.

The claimant has been treated for this injury by several different physicians. She was initially treated by Dr. Ted Saer, who performed surgery on her low back. She was then seen by Dr. Ron Williams, a neurosurgeon. She then came under the treatment of Dr. Kevin Collins and was also seen and treated by Dr. Scott Bowen.

On July 31, 2001, in an office note signed by Dr. Kevin Collins, he stated under the Assessment and Plan section of that note, the following:

At this point, we will go forward with an evaluation of her hip by Dr. Bowen to see if there is anything we can do surgically to decrease the chronic pain. I suspect some fibrotic change possibly. I will defer to Dr. Bowen and hold off on any injections.

Dr. Bowen saw the claimant on August 16, 2001. In Dr. Bowen's report of initial history and physical examination, he states, "Dr. Collins asked me to see her about her hips." Under the section of his report of August 16, 2001, entitled Plan, he states:

1. No surgical intervention from my standpoint.
2. I recommend a physical therapy program as tolerated.
3. I will see if I can get her in to see either Dr. Chakales, Chuck Shock or someone at UAMS.

The claimant was first seen by Dr. Harold Chakales on August 29, 2001. In Dr. Chakales' report of August 29, 2001, at the bottom of that report he notes, "Letter to Scott Bowen, M.D." On that same day, there is a letter from Dr. Chakales to Dr. Bowen stating simply that Dr. Chakales had seen the claimant in his office for evaluation; that he was enclosing a copy of his initial history and physical examination and that he would keep Dr. Bowen posted as to what his findings were.

In November of 2001, Dr. Chakales performed a fusion on the claimant from L-3 to the sacrum. On December 28, 2001, in an office note, Dr. Chakales noted that the claimant had come to see him, and that she was doing well from her surgery. He noted that her pain was not as bad, and that he felt the surgery had been of a benefit to her.

At the hearing, the claimant stated that Dr. Chakales had informed her that he intended to perform two additional surgeries.

FINDINGS OF FACT

1. The claimant does not meet her burden of proving by a preponderance of the evidence of record that respondents are liable for approximately three weeks of unpaid temporary total disability or permanent partial disability benefits in the amount of \$756.88.

2. The claimant has demonstrated by a preponderance of the evidence of record that she is entitled to reimbursement for unpaid medical benefits going back to January of 1995. The claimant has also demonstrated by a preponderance of the evidence that she is entitled to be reimbursed for mileage for trips made to various medical providers. The amount of reimbursement for unpaid medical bills and mileage is documented in the claimant's exhibit introduced at the hearing of June 5, 2003.

3. The claimant has demonstrated by a preponderance of the evidence of record that her treatment with Dr. Harold Chakales commencing in August of 2001, is an authorized referral made by an approved physician in the authorized chain of treating physicians, and that Dr. Chakales' treatment since August of 2001, constitutes related, reasonable and necessary treatment to the claimant as it relates to her compensable injury of May 25, 1993.

4. The claimant does not show by a preponderance of the evidence that she has been rendered permanently and totally disabled as a result of her compensable injury of May 25, 1993. The issue of permanent and total disability is not ripe for decision.

DISCUSSION

Unpaid Temporary Total Disability or Permanent Partial Disability

The claimant stated at hearing that she has compared the records she has kept on payments made to her with the payment record furnished to her by the

respondent carrier. The claimant stated at the hearing, "I'm not saying they didn't pay it or whatever, I'm saying total amounts of checks I received and cashed are \$756.88 short of their total that they say they gave me." The claimant's assertion that the respondents underpaid her by \$756.88 either in temporary total disability payments or permanent partial disability payments simply does not rise above a contention. There is no demonstrative proof that these payments were not made by the respondent.

Unpaid Medical Treatment

The claimant has graphically demonstrated in the exhibits she introduced at hearing that going back to 1995, she has been subjected to balance billing for treatment received by various providers. In reviewing the medical, I cannot determine that any charges which the claimant has incurred since 1995 are for treatment other than complaints related to her compensable injury of May 25, 1993. It is unclear to this examiner exactly what transpired between the workers' compensation carrier and claimant on or about January of 1995, but the fact is that about that time, claimant began being subjected to balance billing. The claimant states that two separate adjusters for the respondent but specifically, Betty Castle, told her that all medical bills other than those generated by Dr. Kevin Collins would not be paid by the compensation carrier but rather would be paid under Aetna's accident and health policy with the respondent employer.

Arkansas Workers' Compensation Rule 30 controls in this fact situation and states in pertinent part under Part I, section J, entitled Reimbursement for Employee-Paid Services:

Notwithstanding any other provision of this rule, if an employee has personally paid for a health care service and at a later date a carrier is determined to be responsible for payment, then the employee shall be fully reimbursed by the carrier.

Part II, section A, entitled Carrier's Dispute of a Bill, subsection 4 states:

The carrier shall notify the Medical Cost Containment Division when a provider attempts to balance bill or attempts to bill when a dispute exists between a carrier and a provider regarding services. . . .

Again, I am uncertain as to what factually transpired between the claimant and the respondent compensation carrier in January 1995, but I do not lack certainty in finding that the claimant was indeed subjected to balance billing starting around January of 1995 and continuing on through the date of the June 5, 2003 hearing.

Reasonable and Necessary Medical Treatment

What constitutes reasonable and necessary treatment under the workers' compensation statute obligating the employer to provide such medical services "as may be reasonably necessary" for an injured employee is a question of fact for the Workers' Compensation Commission. Ark. Code Ann. §11-9-508(a); Georgia-Pacific Corp. v. Dickens, 58 Ark. App. 266, 950 S.W.2d 463 (1997).

In the instant case, in reviewing the medical reports, the evidence reflects that a referral was made from Dr. Scott Bowen to Dr. Harold Chakales. Dr. Scott Bowen was a physician in the authorized chain of treating physicians, thus, his referral of the claimant to Dr. Harold Chakales is a legitimate referral. There is nothing in the medical evidence that suggests that the claimant was attempting a self-referral, but that rather Dr. Bowen felt that the claimant might benefit from being seen by either Dr. Harold Chakales or by Dr. Charles Schock.

I cannot find from reviewing the evidence that the prescribed course of treatment Dr. Chakales has undertaken for the claimant since his initial examination of her in August of 2001, constitutes unreasonable or unnecessary medical treatment.

Permanent and Total Disability Benefits

The issue of permanent and total disability in this case is simply not ripe for determination. Wage loss disability considerations are given only after it is clear that the claimant has reached maximum medical improvement and is not likely to receive any additional treatment which would improve the claimant's condition. In this case, the claimant testified at hearing that Dr. Chakales has advised her that he contemplates two more surgical procedures in addition to the one he has previously performed. That being the case, a consideration of claimant's entitlement to wage loss disability cannot be entertained.

AWARD

Respondents are directed to reimburse the claimant for mileage she has accumulated traveling to and from various medical providers who rendered treatment connected with her compensable injury of May 25, 1993.

Respondents are directed to reimburse the claimant for all out-of-pocket expenses the claimant has incurred as a result of balance billing from various medical providers which commenced on or about January of 1995 and continued through the date of hearing.

Respondents are directed to pay all authorized related, reasonable and necessary medical benefits associated with this claim in full, including those charges which have been incurred as a result of treatment by Dr. Harold Chakales, whose treatment began in August of 2001.

IT IS SO ORDERED.

DAIL STILES
Administrative Law Judge