

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F200789

HORICE J. SHEARD

CLAIMANT

ROSE CARE, INC.

RESPONDENT EMPLOYER

FIRSTCOMP INSURANCE CO.

RESPONDENT CARRIER

ORDER AND OPINION FILED OCTOBER 20, 2003

Hearing before Administrative Law JUDGE LINDA K. MARSHALL.

Claimant represented by the HONORABLE R. THEODOR STRICKER, Attorney at Law, Jonesboro, Arkansas.

Respondents represented by the HONORABLE WILLIAM C. FRYE, Attorney at Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

The above claim came on for a hearing in Jonesboro, Arkansas on September 4, 2003. A prehearing conference was held on January 9, 2003 and a prehearing order was filed the same date. A copy of the prehearing order was marked as Commission Exhibit No. 1 and made a part of the record without objection.

At the prehearing conference, the parties agreed there was a specific incident injury on December 22, 2001. The parties also agreed that the temporary total disability rate was \$201 and the permanent partial disability rate was \$154.

The claimant contends that she is entitled to additional medical benefits; specifically, a MRI of the thoracic spine, as suggested by Dr. Kenneth Eubanks.

The respondents contend that the claimant has been evaluated by an orthopedic surgeon, Dr. Ron Schechter, who ordered a MRI, and Dr. Ashley Park performed an

extensive evaluation. Dr. Park ordered an FCE. The claimant next requested a change of physicians to Dr. Eubanks and he has now ordered a thoracic MRI. The respondents contend additional medical is not reasonable and necessary.

From a review of the record as a whole, to include medical reports, documents and other matters properly before the Commission, and having had an opportunity to hear the testimony of the witnesses and to observe their demeanor, the following findings of fact and conclusions of law are made in accordance with Ark. Code Ann.

§11-9-704:

**FINDINGS OF FACT
AND
CONCLUSIONS OF LAW**

1. There was a specific incident injury on December 22, 2001.
2. The compensation rates are \$201/154.
3. The Commission did order Dr. Kenneth Eubanks as the claimant's one-time change of physician on August 19, 2002.
4. The claimant has proven by a preponderance of the evidence that the MRI of the thoracic spine as recommended by Dr. Kenneth Eubanks is reasonable and necessary.

DISCUSSION

The claimant, 40 years old, worked as a certified nurse's assistant. The claimant began her employment in April 2001. On December 22, 2001, the claimant sustained a compensable injury when she was assisting a patient from her room to the dining room. The patient went down to the floor and the claimant was trying to assist her with a girth

belt and the claimant sustained a back injury. The claimant reported the injury and was sent to the Regional Medical Center and saw Dr. James Murrey next and was referred to Dr. Schechter, an orthopedic surgeon. The claimant was also referred to Dr. Ashley Park and the claimant requested a change of physician to Dr. Kenneth Eubanks, an orthopedic surgeon. According to the claimant, Dr. Eubanks has requested she have a thoracic MRI and she desires to pursue this diagnostic test.

Under cross examination, the claimant confirmed she is working for Ridgecrest Rehabilitation Center now as a certified nurse's assistant and has worked there a couple of weeks at the time of the hearing. According to the claimant, she went to work at Lake City and worked there from July 17, 2002 until May 2003, working two days a week as a nurse's assistant. The claimant testified that she only worked part time because of back pain in the center upper part of her back. The claimant testified that she had missed work because of back pain and that she took Tylenol Extra Strength and Aleve. The claimant left her employer, Lake City, because she needed more hours. According to the claimant, she went to work for Beverly and worked there three months as a certified nurse's assistant, working about 75 hours every two weeks. According to the claimant, she left Beverly because the work involved too much lifting. The claimant then went to work for Ridgecrest Rehabilitation Center, her present employer.

The claimant sought emergency medical room treatment initially, later was seen by Dr. Murrey who prescribed some diagnostic studies for the lumbar spine. The claimant confirmed she began having right leg problems about January 9, 2002, and she was referred to Dr. Schechter, an orthopedic surgeon. Dr. Schechter ordered some

studies and physical therapy but did not find anything from an objective standpoint. The claimant was referred to Dr. Park and the claimant saw him on a couple of occasions. Dr. Park ordered the FCE.

The claimant testified that she still has numbness in her legs and she has the pins and needles sensation coming from her neck and going down the right arm with numbness in the hand. The claimant testified that she has the pins and needles sensation going down her buttock areas and in the back part of her right thigh and going down her leg into her toes. The claimant testified that when she was first injured, she had this burning sensation in the center of her back which has not stopped; however, the pain also went to the lower part of her back. The claimant has not seen a doctor for her back since Dr. Eubanks in September 2002.

Employers must promptly provide medical services which are reasonably necessary for treatment of compensable injuries. Ark. Code Ann. §11-9-508(a)(Repl. 1996). However, injured employees have the burden of proving by a preponderance of the evidence that medical treatment is reasonably necessary for treatment of the compensable injury. *Norma Beatty v. Ben Pearson, Inc.*, Full Workers' Compensation Commission Opinion filed February 17, 1989 (Claim No. D612291). In assessing whether a given medical procedure is reasonably necessary for treatment of the compensable injury, we analyze both the proposed procedure and the condition it is sought to remedy. *Deborah Jones v. Seba, Inc.*, Full Workers' Compensation Commission Opinion filed December 13, 1989 (Claim No. D511255). Also, respondents are only responsible for medical services which are causally related to the compensable injury.

In the present case, the claimant saw Dr. Eubanks on September 19, 2002 and he took a history and performed a neurological examination. Dr. Eubanks, in his deposition on March 5, 2003, explained that the claimant complained of mid to lower thoracic pain and that led him to order a thoracic MRI. Dr. Eubanks stated that the claimant had decreased pin prick in the medial lateral aspect of the right leg as well as the calf and top and bottom of the foot. Dr. Eubanks opined that the claimant could have a thoracic disc herniation or something else in the thoracic spine. Dr. Eubanks was unequivocal in his opinion that a thoracic MRI was needed. Dr. Eubanks was questioned about the claimant having seen two orthopedic specialists and neither diagnosed a thoracic disc back problem and Dr. Eubanks stated that he sees many patients with missed diagnoses. Dr. Eubanks stated that sometimes people have problems that are not run of the mill. Dr. Eubanks opined that the thoracic MRI would provide the diagnostic test that would provide guidance as to whether the claimant had a herniation in the thoracic spine or if the pain was in her head.

After considering the claimant's testimony and the medical records and especially the deposition of Dr. Kenneth Eubanks, the claimant's most recent treating physician and her change of physician specialist, I find the claimant has proven by a preponderance of the evidence that a MRI of the thoracic spine is reasonable and necessary. Dr. Eubanks provided a good explanation of why he wanted to pursue this study based on the claimant's complaints and after looking at her other studies. I found the claimant to be a credible witness who has continued to find employment that would be appropriate for her limitations now. She has continued to work and has demonstrated motivation to work in spite of her physical problems. I found her

testimony to be credible and her explanation of pain and problems to be believable. The claimant's attorney pointed out that the claimant had complained of mid back problems early on and the AR-3 revealed a thoracic muscle strain and not a lumbar muscle strain and this is consistent with the claimant's testimony at the hearing. The respondents are liable for the diagnostic MRI of the thoracic spine, as recommended by Dr. Kenneth Eubanks, the authorized treating physician.

ORDER

The claimant has proven by a preponderance of the evidence that the MRI of the thoracic spine, as recommended by Dr. Kenneth Eubanks is reasonable and necessary.

The claimant's attorney is entitled to the maximum statutory attorney's fee on benefits awarded herein, one-half of which is to be paid by claimant and one-half to be paid by respondents in accordance with Ark. Code Ann. §11-9-715 and Arkansas Workers' Compensation Rules and Regulations, Rule 10.

All sums herein accrued are payable in a lump sum without discount and this award shall bear interest at the maximum legal rate until paid.

IT IS SO ORDERED.

**LINDA K. MARSHALL
ADMINISTRATIVE LAW JUDGE**