

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NUMBER F113652

**LETITIA DENISE TIPTON,
EMPLOYEE**

CLAIMANT

**SALINE MEMORIAL HOSPITAL,
EMPLOYER**

RESPONDENT

**RECIPROCAL OF AMERICA,
INSURANCE CARRIER**

RESPONDENT

OPINION FILED AUGUST 1, 2003

Hearing conducted May 6, 2003, before Administrative Law Judge Richard B. Calaway in Little Rock, Pulaski County, Arkansas, with

Mr. J. Gary Davis, Attorney at Law, Little Rock, Arkansas, appearing for the claimant; and

Mr. Mr. Gail O. Matthews , Attorney at Law, Little Rock, Arkansas, appearing for the respondents.

STATEMENT OF THE CASE

This is a dispute over the claimant's request for additional benefits for temporary total disability and medical care for her admittedly compensable low back injury.

The claimant contended that she should be awarded additional temporary total disability benefits from November 4, 2002, until a date to be determined and additional benefits for medical care recommended by Dr. Andrew Prychodko, including physical therapy, MRI scans, and discogram testing. An attorney's fee for controversion was also requested. Other possible issues were reserved.

The respondents contended that additional medical care was not reasonably necessary in connection with the claimant's compensable injury and that she is not entitled to additional temporary total disability because she has reached the end of her healing period.

Based upon the record as a whole, and without giving the benefit of the doubt to any party, as required by the Act, the following findings of fact and conclusions of law are hereby made:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The Arkansas Workers' Compensation Commission has jurisdiction of the parties and subject matter of this claim.

2. Pursuant to the stipulations of the parties and the record, the employment relationship existed at all pertinent times; the claimant suffered a compensable back injury November 2, 2001; and her average weekly wage was \$265.03.

3. The preponderance of the evidence shows that the claimant is entitled to additional medical benefits for care recommended by Dr. Andrew Prychodko, including physical therapy, pain management and medication management by Dr. Thomas Hart, and an evaluation for a discogram.

4. The preponderance of the evidence shows that as a result of her compensable injury the claimant remained in a healing period and was totally incapacitated to earn wages from November 4, 2002, until a date to be determined, for which she is entitled to additional benefits for temporary total disability.

5. The respondents have controverted the payment of benefits hereinafter awarded and the claimant's attorney is entitled to the maximum statutory attorney's fee thereon, payable one-half by the claimant and one-half by the respondents.

DISCUSSION

In May, 2000, the claimant went to work in the housekeeping department of the respondent employer's hospital. On November 2, 2001, she was cleaning a large restroom and had climbed on top of a vanity in order to clean the mirror. During that process, she fell backward onto the floor and was knocked unconscious.

She was first treated at the employer's emergency room and, thereafter, at the direction of the emergency room personnel, she consulted her family doctor, Dr. Mark Albey. She also began treatment with Dr. Riley, a chiropractor, but ended that treatment at the direction of the respondent's medical case manager who directed her to other physicians for additional care. During this period, her work hours were reduced and she received temporary partial disability benefits. On October 4, 2002, in response to the claimant's petition to change physicians, the administrator of the Medical Cost Containment Department of the Commission changed her treating physician from Dr. Bruce Safman to Dr. Andrew Prychodko. The benefits requested by the claimant relate to Dr. Prychodko's treatment, which began November 4, 2002.

In his deposition testimony of February 11, 2003, Dr. Prychodko recommended additional care for the claimant including physical therapy, pain management and medication management by Dr. Thomas Hart, and an evaluation for a discogram. He explained that the claimant had injured the sacroiliac joint and that objective diagnostic tests are not precise enough to see the inflammation of the ligaments or even tears of the ligaments in that region. He further stated that this is the kind of injury that "doesn't necessary lend itself real well" to x-ray, MRI scan, or myelogram detection. He also testified that the claimant had the kind of injury that can often involve the sacroiliac joint. He explained that with ligament problems and disc problems, the patient can have referred pain down to the thigh, as the claimant had reported. He also stated that the MRI scan showed a bulging disc at L4-5 and confirmed that discs have live nerve endings so you can have tears through these outer annulus layers and have pressure coming through without full extrusion to the point it will show up on a myelogram. Because of the problem with the claimant's disc and her continuing symptoms, he

recommended that she be evaluated for a discogram. Dr. Prychodko also testified that the claimant continued in her healing period and needed additional treatment to improve.

The claimant's previous care included treatment or evaluation by Dr. Jerry Lorio, Dr. William Ackerman, Dr. Jim J. Moore, and Dr. Bruce Safman. Dr. Moore and Dr. Safman opined that the claimant could return to work, had reached the end of her healing period, and did not need the treatment recommended by Dr. Prychodko. However, the claimant's testimony and the medical reports and deposition testimony of Dr. Prychodko indicate that the claimant's attempt to return to work was unsuccessful and she continues in the healing period and needs additional treatment as stated above. The opinions of Dr. Prychodko are entitled to greater weight than the opposing opinions of the physicians selected by the respondents because of his more recent experience with the claimant's medical condition.

It should also be noted that on November 4, 2002, Dr. Prychodko indicated that the claimant was unable to work and attempted to refer her to pain management and physical therapy. On December 23, 2002, he again indicated that the claimant was unable to work and attempted to refer her to Dr. Thomas Hart. His notes in January, 2003, indicated that the claimant was continuing to have a great deal of pain and that her TENS Unit was not helping. The testimony of a long time friend was consistent with the claimant's continuing disability and pain. The records also shows that the claimant was motivated to return to work, especially by financial needs of her family.

When the record is reviewed, the preponderance of the evidence shows that the claimant is entitled to the requested medical care and additional benefits for temporary total disability since she remained in a healing period and was totally incapacitated to earn wages from November 4, 2002, until a date to be determined.

AWARD

Pursuant to the foregoing opinion and the law, the respondents are ordered and directed to pay benefits on behalf of the claimant.

This award has been controverted as stated above, and the claimant's attorney is entitled to the maximum statutory attorney's fee on the controverted portion. Pursuant to Coleman v. Holiday Inn, Ark. WCC No. D708577 (November 21, 1990), the claimant's portion of the controverted attorney's fee is to be withheld from, and paid out of, indemnity benefits, and remitted by separate check by the respondents directly to the claimant's attorney.

Accrued benefits hereinabove awarded shall be paid in lump sum without discount. This award shall bear interest at the maximum legal rate until paid.

IT IS SO ORDERED.

RICHARD B. CALAWAY
Administrative Law Judge