

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. E904373

WAYNE WILLIAMS

CLAIMANT

MULBERRY SANITATION

RESPONDENT

RELIANCE NATIONAL,
INSURANCE CARRIER

RESPONDENT

OPINION FILED JULY 3, 2003

Hearing before ADMINISTRATIVE LAW JUDGE MICHAEL L. ELLIG in Fort Smith,
Sebastian County, Arkansas.

Claimant represented by EDDIE WALKER, JR., Attorney, Fort Smith, Arkansas.

Respondents represented by CAROL WORLEY, Attorney, Little Rock, Arkansas.

STATEMENT OF THE CASE

A hearing was held in the above styled claim on April 22, 2003, in Fort Smith, Arkansas. A pre-hearing order was entered in this case on March 11, 2003. This pre-hearing order set out the stipulations offered by the parties, and outlined the issues to be litigated and resolved at the present time. Prior to the commencement of the hearing and by agreement of the parties, a date contained in the stipulations and issues was amended to reflect September 12, 2002, rather than December 6, 2002. A copy of the pre-hearing order with this amendment noted thereon, was made Commission's Exhibit No. I to the hearing.

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

1. On March 24, 1999, the relationship of employee-employer-carrier existed between the parties.
2. The appropriate weekly compensation rates are \$375.00 for total disability and \$281.00 for permanent partial disability.
3. On March 24, 1999, the claimant sustained a compensable injury to his lower back.
4. All appropriate benefits have been paid through September 12, 2002.

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

1. The claimant's entitlement to additional medical services after September 12, 2002.
2. Appropriate attorney's fees

In regard to these issues, the claimant contends that he is entitled to reasonable and necessary medical treatment. However, the respondents have arbitrarily advised him that they will not pay for any additional medical treatment regarding his admittedly compensable injury. The claimant also contends that his attorney is entitled to an appropriate attorney's fee in regard to any benefits not previously paid.

In regard to these issues, the respondents contend that additional medical treatment is not reasonable and necessary. Further, the respondents contend that claimant's current need for medical treatment may be associated with an independent intervening incident or cause.

DISCUSSION

The sole issue requiring discussion in this case is the question of whether the claimant is entitled to additional medical services after September 12, 2002. It appears from the record, that the only medical services has actually received, after September 12, 2002, was an evaluation by Dr. Jim Moore on December 5, 2002. Therefore, the burden rests upon the claimant to prove that the services provided him by Dr. Moore, on December 5, 2002, represent "reasonably necessary medical services" for his compensable injury of March 24, 1999.

In order to constitute "reasonably necessary medical services", as that term is used in Ark. Code Ann. §11-9-508, the claimant must first prove that the disputed medical services were necessitated by or connected with his compensable injury. He must then prove that the disputed medical services have a reasonable expectation of accomplishing

the purpose or goal for which they are intended. However, it must be noted that this purpose or goal is not limited to the actual treatment of the physical damage caused by the physical injury. The purpose for which the medical services are intended to accurately ascertain the nature and extent of the injury, to maintain the level of healing achieved or to provide merely symptomatic relief of the distress produced by the compensable injury (including chronic symptoms or distress).

In the present case, the medical evidence shows that the claimant's compensable injury took the form of a herniated lumbar disc. This is clearly a permanent injury. This permanent injury has resulted not only in a permanent loss of function or permanent physical impairment of a portion of the claimant's body, but has also resulted in chronic symptoms. It is apparent from the reports and records of Dr. Moore, that in his opinion the claimant will indefinitely require continued medical services. These continued services are in the form of periodic evaluations and testing, to ensure that the actual physical damage produced by the compensable injury has not deteriorated or progressed to the point where surgical intervention is now necessary, together with continued conservative treatment to maintain the level of actual physical healing achieved and to maintain the claimant's chronic symptoms at a tolerable level.

The office notation of Dr. Moore, dated December 5, 2002, shows that the services he provided the claimant, on that date, consisted of a follow up examination primarily to evaluate the success of the lumbar epidural steroid injection (LESI) performed on September 10, 2002. This injection was performed by Dr. Moore was necessitated by a flare-up or increase in the claimant's back symptoms that apparently had occurred spontaneously. The purpose of this LESI was to return the claimant's back symptoms to their chronic but acceptable level.

The prior medical records reveal that since the claimant's compensable injury he has experienced these periodic flare-ups or increases in the magnitude of his back

symptoms and has required brief periods of conservative treatment to reduce these symptoms to their usual chronic state. These flare-ups or increases in his back symptoms appear to have occurred either spontaneously or following the relatively minor stress from more or less normal day to day activities. The records and reports of Dr. Moore indicate that these flare-ups or increases in the magnitude of symptoms are a common consequence of permanent injuries, such as that experienced by the claimant.

The respondents have raised the defense that the claimant's difficulties, which required the medical services after September 12, 2002, were the result of an independent intervening cause. The evidence presented totally fails to support this argument. As previously stated, these periodic flare-ups and increases in the magnitude of the claimant's symptoms have occurred either spontaneously or as the result of minor stress produced by the claimant's normal day to day activities. There is no evidence, whatsoever, to show that there was any corresponding "new injury". There is no evidence of any increase in the physical damage or any change in the claimant's lumbar spine that would correspond with these periodic flare-ups or increases in the magnitude of his symptoms. There is not even any evidence of any change in the nature or location of these symptoms. Most importantly, the reports and records of Dr. Moore show that it is his expert opinion that these repeated periodic flare-ups or increases in symptoms, as well as the claimant's continuing chronic symptoms, continued to be related to the claimant's compensable injury of March 24, 1999.

It is my finding that the expert opinions of Dr. Moore are credible and are amply supported by the other evidence presented. Dr. Moore is not only the claimant's primary treating physician, he is also a highly competent neurosurgeon with a great deal of expertise in the area of medicine associated with the claimant's compensable injury. I find his expert opinions to be persuasive and controlling in regard to the foregoing matters.

Therefore, after consideration of all the evidence presented, it is my opinion that the claimant has proven that the medical services rendered him by Dr. Jim Moore after

September 12, 2002, were necessitated by and related to his compensable injury of March 24, 1999. The evidence presented fails to establish that these medical services were in any way necessitated by or related to any independent intervening cause, sufficient to relieve the respondents from continued liability for the expense of these services. Thus, the claimant has met the first requirement for proving that the services of Dr. Moore constitute “reasonably necessary medical services” within the meaning of Ark. Code Ann. §11-9-508.

The claimant must next prove that these service had a reasonable expectation of accomplishing the purpose or goal for which they were intended. A review of Dr. Moore’s office notation of December 5, 2002, indicates that the services he rendered to the claimant on that date were medically appropriate. These services were of a type and nature well recognized by the general medical community as being proper and accepted treatment for injuries such as the compensable injury experienced by the claimant. The services provided by Dr. Moore, on December 5, 2002, were no different from the services he had previously provided the claimant on several prior occasions following the compensable injury. I would also note that Dr. Moore’s actual furnishing of these services was tantamount to him giving his expert medical opinion that these services were medically appropriate and necessary to monitor the claimant’s permanent injury. It cannot be assumed that Dr. Moore would provide services, which he personally, felt to be unreasonable or unnecessary.

It is therefore my finding that the claimant has proven that the medical services provided him for his back complaints by Dr. Moore, on December 5, 2002, were medically appropriate and had a reasonable expectation of accomplishing the purpose for which they were intended. This satisfies the second requirement for these services to constitute “reasonably necessary medical services”, within the meaning of Ark. Code Ann. §11-9-508.

In summary, I find that the claimant has proven by the greater weight of the credible evidence that the medical services rendered him for his back complaints by Dr. Jim Moore,

on December 5, 2002, constitute “authorized medical services”, within the meaning of Ark. Code Ann. §11-9-508. Pursuant to the provisions of this subsection, the respondents are liable for the expense of the services, subject to the medical fee schedule established by this Commission.

FINDINGS OF FACT & CONCLUSIONS OF LAW

1. The Arkansas Workers' Compensation Commission has jurisdiction of this claim.
2. On March 24, 1999, the relationship of employee-employer-carrier existed between the parties.
3. On March 24, 1999, the claimant earned wages sufficient to entitle him to weekly compensation benefits of \$375.00 for total disability and \$281.00 for permanent partial disability.
4. On March 24, 1999, the claimant sustained a compensable injury to his lower back in the form of a herniated lumbar disc.
5. All appropriate benefits have been paid through September 12, 2002.
6. The additional medical services provided the claimant for his chronic back difficulties by Dr. Jim Moore, on December 5, 2002, constitute “reasonably necessary medical services” as that term is used in Ark. Code Ann. §11-9-508. Pursuant to the provisions of this subsection, the respondents are liable for the expense of these services, subject to the medical fee established by this Commission.
7. The respondents have controverted the claimant’s entitlement to any medical services after September 12, 2002.
8. A reasonable fee for the claimant’s attorney is the maximum statutory attorney’s fee on all controverted medical services herein awarded.

ORDER

The respondents shall be liable for the expense incurred by the claimant as a result of medical services rendered him for his compensable lumbar injury by Dr. Jim Moore on December 5, 2002. This liability shall be subject to the medical fee schedule established by this Commission.

The respondents shall pay to the claimant's attorney one-half of the maximum statutory attorney's fee on the medical expenses herein awarded. The claimant's attorney is hereby authorized to receive from any benefits which may hereinafter become due and payable to the claimant, the remaining one-half of this maximum statutory attorney's fee.

All benefits herein awarded have heretofore accrued and are payable in a lump sum without discount.

This award shall bear the maximum legal rate of interest until paid.

IT IS SO ORDERED.

MICHAEL L. ELLIG
Administrative Law Judge