

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. E712614

MARCIA BARNES

CLAIMANT

BT OFFICE PRODUCTS

RESPONDENT

TRAVELERS INS. CO.  
INSURANCE CARRIER

RESPONDENT

OPINION FILED DECEMBER 9, 2004

Hearing before ADMINISTRATIVE LAW JUDGE ELIZABETH DANIELSON in Fort Smith, Sebastian County, Arkansas.

Claimant represented by J. LESLIE EVITTS, III, Attorney, Fort Smith, Arkansas.

Respondents represented by PHILLIP CUFFMAN, Attorney, Little Rock, Arkansas.

STATEMENT OF THE CASE

A hearing was held on September 23, 2004, in Fort Smith, Arkansas.

A pre-hearing conference was held in this claim, and as a result a pre-hearing order was entered in the claim on March 29, 2004. This pre-hearing order set forth the stipulations offered by the parties, the issues to litigate and the contentions thereto.

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

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

2. Prior opinions are res judicata and the law of this case.

3. The respondents accepted a 15 percent whole body impairment for the claimant's low back problem.

By agreement of the parties the issues to litigate are limited to the following:

1. Additional temporary total disability from September 7, 2000, to a date to be determined.

2. Additional medical to include unpaid medical.

3. Attorney's fees.

All other issues are being reserved by the claimant.

In regard to the foregoing issues the claimant contends that the administrative law judge and the Full Commission found that the claimant's need for treatment for temporomandibular joint syndrome, headaches and cervical problems were compensable consequences of the claimant's surgery for her compensable low back injury. Accordingly, the respondents were ordered and directed to pay for the costs of the claimant's medical treatment for her compensable low back injury, as well as treatment for her cervical problems, headaches and TMJ syndrome. Notwithstanding the order to the Full Commission, the respondents have failed and refused to pay the claimant's outstanding medical expenses, and the claimant has been forced to submit outstanding medical expenses to Medicare and Prudential Healthcare, the claimant's former health insurance provider. Additionally, the Full Commission found that the claimant was entitled to additional temporary total disability benefits from January 28, 1998, until a date yet to be determined. Subsequent to the Full Commission's opinion, the respondents paid temporary total disability benefits to the claimant for a period of time. However, the respondents have wholly disregarded the Commission's previous order and unilaterally decided that the claimant had reached the end of her healing period, at which point

they ceased paying temporary total disability benefits; they have failed to pay for the claimant's authorized, reasonable and necessary medical expenses; they have refused to allow the claimant to be seen by her medical providers; and they have unilaterally and without justification denied and refused the claimant access to her prescription medications. The claimant contends that she is entitled to reinstatement of her temporary total disability benefits from the date the respondents unilaterally terminated those benefits, until a date to be determined. The respondents have also refused to authorize continuing medical treatment, to include refilling of the claimant's prescriptions, notwithstanding the order to the Full Commission. The claimant is entitled to additional reasonable and necessary medical treatment. The claimant is also entitled to a statutory attorney's fee. Finally, the Commission's prior orders entered in this case are now res judicata and constitute the law of the case.

In regard to the foregoing issues the respondents contend that the claimant is not entitled to additional temporary total disability benefits. Moreover, respondents have been furnished no medical records which address the claimant's continuing pharmacy needs.

The documentary evidence submitted in this matter consists of the Commission's pre-hearing order marked Commission's Exhibit No. 1. The claimant submitted documentary evidence marked Claimant's Exhibit No. 1. The parties submitted additional medical documentation marked Joint Exhibit No. 1, the deposition of Dr.

Tarleton marked Joint Exhibit No. 2 and the deposition of Dr. Wilgarde marked Joint Exhibit No. 3. All these exhibits were admitted without objection.

#### DISCUSSION

The claimant testified that subsequent to the last hearing she has remarried and her current last name now is Hendrick. The claimant agreed that at the time of her last hearing on September 17, 1998, she was being treated by doctors in California, specifically Dr. Wilgarde, an orthopedic physician, and Dr. Reinhart who is a pain management specialist. The claimant again agreed that both of these doctors were treating her for her workers' compensation injuries. The claimant agreed that there was a skip in her medical treatment from August 1998 until January 1999 due to the respondent refusing to authorize medical treatment while her case was on appeal. The claimant testified that during this period of time her independent insurance carrier paid for some of her medical treatment. The claimant testified that in 1999 she was authorized to be seen by Dr. Reinhart but that when the bills were filed with the workers' compensation carrier they would be denied and, as a result, she had to file some of these medical bills under her health insurance. The claimant testified that Dr. Reinhart referred her to Dr. Tarleton because her insurance changed and Dr. Reinhart was no longer authorized. The claimant testified that up until then she had been treated by Dr. Reinhart, Dr. Nazemi, a neurologist and Dr. Wilgarde but that her health insurance changed and Dr. Wilgarde and Dr. Reinhart were not approved to continue

treatment. The claimant agreed that the Full Commission entered their opinion in August 1999 and that in March 2000 the respondent was still not paying for her medical treatment.

The claimant testified that she was first seen by Dr. Tarleton on May 23, 2000, and recently has been referred to Dr. Wilgarde. The claimant agreed that she first saw Dr. Wilgarde on June 14, 2004. The claimant indicated that while she was being treated by Dr. Tarleton he ordered, in addition to medication, that she participate in pool and spa therapy and physical therapy. The claimant agreed that the respondent did not approve any of this therapy. The claimant testified that she put a pool in at her home and she has included a statement of the cost of this pool since she has used it for her spa therapy, noting that this therapy "keeps me going." The claimant testified that in April 2002 while she was being seen by Dr. Tarleton he ordered a repeat of her cervical MRI and recommended physical therapy, all of which the respondent refused to authorize. The claimant testified that Dr. Tarleton gave her a referral to Dr. Edgar Dawson at the Spine Clinic at St. Elsewhere located in Los Angeles. The claimant testified that she never told Dr. Tarleton that she wanted her bills paid under Medicare because Medicare does not want to pay for workers' compensation related problems. The claimant agreed that there were notes in the record from Dr. Tarleton's nurse that indicated that they were not authorized to treat and that everything had to be under Medicare. The claimant agreed that some of her work related injury treatment has been paid by Medicare. The claimant testified

that she has never told Dr. Tarleton that she wanted her bills paid under Medicare and not under workers' compensation. The claimant testified that she was never authorized to be seen by Dr. Dawson because the respondent's carrier would not approve this referral and Medicare would not authorize it since it was a workers' compensation problem.

The claimant testified that she was seen by Dr. Wilgarde on June 14, 2004, at his pain clinic. The claimant testified that Dr. Wilgarde prescribed Ultram, Neurotin and Zenical. The claimant explained that now Dr. Tarleton's office had referred her to Dr. Wilgarde for additional treatment. The claimant testified that the respondent would only pay for her prescription of Ultram and explained that the other medications were for problems related to her workers' compensation injuries. The claimant explained that the Zenical is for constipation caused by her pain medications which she takes for her compensable injury. The claimant testified that she has been prescribed another medication for her stomach which is needed due to the medications she takes. The claimant testified that she is continuing to be seen by Dr. Wilgarde and he is continually prescribing her medications which the respondent refuses to authorize. The claimant agreed that Dr. Wilgarde also has her placed on an off work status and he has recommended physical therapy which again has not been approved. The claimant testified that Dr. Wilgarde has referred her back to Dr. Reinhart for another cervical facet injection which the claimant stated have helped her in the past. The claimant testified that besides all

the drugs formerly listed she also is being prescribed Ambien in order to help her sleep. The claimant explained that she is up and down two or three times a night due to discomfort in her back and she often ends up sleeping in a chair. The claimant testified that she still cannot get approval to have her pharmacist fill her various prescriptions.

The claimant testified that she continues to have pain in her low back as well as in her neck. The claimant stated that she will have numbness in her arms and that she cannot turn her neck to the right. The claimant stated that she has spasms in her legs causing her to have to get up and walk during the night. The claimant testified that she is some bit better than she was at the first hearing in September 1998, noting that she will have a few days that are better but she still has days when she is unable to get out of bed. The claimant testified that her goal is to get regular medical treatment in hopes of improving to the point of being able to return to the work force. The claimant stated that due to her various problems, she is unable to work a regular job.

The claimant testified that her private pay insurance carrier has taken care of some of the medical bills for her compensable injury and that she has had to make a co-pay on several of these bills. The claimant agreed that Respondents' Exhibit No. 1 pages 1 through 8 set forth the medical bills paid by this private pay provider. The claimant testified that Dr. Reinhart prescribed for her an extra firm mattress which she purchased in the amount of \$537.67. See Respondents' Exhibit No. 1 page 12. The claimant

testified that in lieu of the spa and pool therapy which the respondents would not pay for, she built a swimming pool at her home. The cost of this pool is set forth in Claimant's Exhibit No. 1 page 13. The claimant testified that the respondents did pay for her mileage while she was in Arkansas but that they have not paid for any of the mileage which she has had to drive for her medical treatment while she has been in California. See Claimant's Exhibit No. 1, pages 26 through 37 for her California mileage which totals to be 5,678 miles.

On cross examination, the claimant agreed that her current physicians are Dr. Reinhart, Dr. Wilgarde and Dr. Tarleton. The claimant agreed that Dr. Tarleton has been her primary care physician over the last three to four years but has occasionally sent her to another doctor for treatment. The claimant indicated that no doctor is currently recommending additional surgery for her. The claimant explained that her eye treatment was a result of the anesthetic which she was given during her back surgery resulting in her being unable to see for months following this surgery. The claimant indicated that these eye problems were as a result of the trauma she experienced during the surgery. The claimant testified that she has not sought any type of vocational rehabilitation because her doctor has not recommended she do so. The claimant testified that in the past when she received physical therapy as well as injections she felt as though these helped but it was not lasting. The claimant testified that she was approved

for social security disability benefits in the year 2000 and has been drawing \$757.00 a month.

The medical records set forth that the claimant was seen by Dr. Reinhart initially on August 14, 1998, and after examination, he administered a cervical epidural steroid injection and a second injection on September 4, 1998. Dr. Reinhart writes on January 18, 1998, that she has been experiencing a recurrence of pain in her low back with radiation down the posteriolateral leg all the way to the foot. It is noted that the claimant also reports having intermittent numbness and that a few days earlier her pain was so severe she was unable to walk. The doctor writes that the claimant is having what seems to be migraine headaches affecting the right side of her head. The claimant underwent an MRI of her thoracic and lumbar spine on January 18, 1999. The MRI findings reveal that the claimant has post operative changes consistent with a right hemilaminectomy at the L5-S1 level and there is scar tissue/granulation tissue that simulates the appearance of a recurrent or residual right para central disc protrusion. On April 5, 1999, the claimant was seen by Dr. Reinhart who administered an epidural steroid injection into her cervical spine. Dr. Reinhart writes on May 24, 1999, that following the claimant's cervical epidural steroid injection she had a tremendous response of 100 percent improvement, however, she has had a gradual increase of her pain and symptoms. After examination, Dr. Reinhart administered another injection. Dr. Reinhart writes on September 22, 1999, that he has been treating the claimant for her complaints of neck pain,

numbness and tingling of the upper extremities and headaches since June 1998. Dr. Reinhart writes that the claimant's diagnosis include cervical radiculopathy, muscle spasm and headache. The doctor writes that it is difficult to predict when the claimant will be able to return to work on a part or full time basis or if she will be permanently and totally disabled. Dr. Reinhart recommended that the claimant continue with her pain management therapies. On September 27, 1999, Dr. Reinhart recommended pool and spa therapy for the claimant's chronic pain syndrome and muscle spasms.

The claimant was seen by a neurologist, Reza Nazemi, on October 4, 1999. Dr. Nazemi sets forth a history of the claimant's injuries as well as present complaints and after examination, the doctor recommended that she undergo an MRI of her brain as well as her cervical spine and to have an electromyography examination of the upper extremities. Dr. Nazemi writes on November 4, 1999, that the claimant's MRI of her brain was normal and that the MRI of her cervical spine showed mild multilevel spondylosis from C2 through C7, with mild spinal stenosis without foraminal stenosis at C3-4 through C5-6 and that the claimant's EMG and nerve conduction studies of her upper extremities were normal. The doctor writes that visual evoked response was abnormal on the right suggestive of a defect of the optic pathway. Dr. Nazemi referred the claimant to a Dr. Arnold for evaluation of her diminished visual acuity and medications were recommended. The claimant was seen on December 27, 1999, by Dr. Nazemi for complaints of dizziness and light

headedness as well as persistent visual problems. The doctor scheduled an EEG, echocardiogram and a Holter monitoring. Dr. Nazemi notes that he is concerned about thyroid dysfunction and scheduled tests as well as a thyroid ultrasound. Dr. Nazemi writes on January 17, 2000, that essentially the claimant's various tests were normal. On March 23, 2000, Dr. Nazemi referred the claimant to Dr. Reinhart for another cervical epidural block and noted that she is to continue her current regime of Elavin and Ultram.

Dr. Reinhart writes on April 28, 2000, that the claimant reports that following the May 1999 epidural steroid injections she was 50 percent better in her pain management for two to three weeks but was unable to return due to insurance problems. Dr. Nazemi notes that the claimant is complaining of pain in the base of her skull, cervical spine pain, radicular pain to her hands bilaterally and pain to her hands bilaterally and throughout the thoracic paraspinal muscles on the right. She also complains of pain in her right lower extremity from the right lower back with the radicular component into her right calf and an anterior component from her right thigh to her right shin. On examination, Dr. Reinhart notes that the claimant has tenderness in her cervical spine with tight ropy trapezius muscles and decreased sensation in her hands bilaterally. Dr. Reinhart writes that the claimant has cervical radiculopathy post laminectomy syndrome with complaints of lumbosacral radiculopathy. Dr. Reinhart notes that he thinks that she is in the early stages of rheumatoid arthritis and suggested a referral to check this out. The doctor recommended an epidural

steroid injection which the claimant preferred to wait on since she had an appointment with Dr. Wilgarde and Dr. Tarleton that week. Medications were prescribed by Dr. Reinhart.

Dr. David Wilgarde writes an evaluation letter on May 12, 2000, concerning the claimant. Dr. Wilgarde goes extensively into the claimant's history of her injury as related to him by the claimant as well as a review of her various test results and he performed an orthopedic examination. Dr. Wilgarde diagnosed the claimant with having chronic pain syndrome, chronic bilateral cervical and lumbar sacral radiculopathy and chronic myalgia. The doctor notes that the claimant is totally temporarily disabled at this time and made recommendations that the claimant be considered for a chronic pain management program at the Ballard Center, noting the Center's various chronic pain management approaches. Dr. Wilgarde writes that he does not believe that a standard course of additional physical therapy and or spinal injections are warranted at this time but that the claimant should continue with her pain medications. On May 23, 2000, Dr. Tarleton takes a brief history of the claimant's injuries as well as her various treating physicians. After examination, Dr. Tarleton recommended that the claimant have the recommended therapy noting that he will obtain the records from Dr. Wilgarde, Dr. Reinhart, Dr. Nazemi and Dr. Schwarts. Dr. Tarleton continued to see the claimant throughout June and July of 2000 and writes on July 14, 2000, that some two and a half to three years ago the claimant underwent surgical manipulation for discogenic disease involving the lumbar spine and

following surgery she developed a CSF leak requiring additional surgery. The doctor notes that the claimant developed chronic pain syndrome that, in his opinion, is a sequel of adhesive arachnoiditis. Dr. Tarleton writes that the claimant suffers from headaches, neck pain, low back disability with radicular symptoms into the lower extremities. The doctor writes that in his estimation the claimant is not competent to be gainfully employed due to the physical limitations imposed by the above depicted disease process. Dr. Roland Reinhart writes on August 21, 2000, concerning the claimant and her extensive medical treatment for her chronic bilateral cervical, lumbar radiculopathy, spasms and headaches, noting that she suffers from neck pain, lower back disability with radicular symptoms into the lower extremities and headaches. Dr. Reinhart writes that, in his opinion, the claimant should remain off work while she continues to undergo treatment, noting that it would be difficult to predict if she will be able to return to work on a part time or full time basis or if, in fact, she is permanently disabled. Dr. Reinhart writes that at this time it is his recommendation that the claimant continue with her pain management therapist. Dr. Tarleton continued to treat the claimant for her headaches, neck and leg pain from September 2000 to February 26, 2001, primarily with medications. On February 26, 2001, Dr. Tarleton recommended that the claimant participate in spa and pool physical therapy. During the first part to the middle of 2001 the claimant was treated for neck and thyroid problems as well as in June 2001 she had an episode of cellulitis in her left foot.

Dr. Harold Tarleton writes on September 20, 2001, that the claimant suffers from chronic retractile arachnoiditis involving the cervical and lumbar spine. Dr. Tarleton notes that the claimant's disability is incapacitating, rendering her ineffective in any sort of work source or participating in any sort of rehabilitation program. The claimant was seen by Mark Larson, a physician's assistant, on April 30, 2002, for reoccurrence of her cervical radiculopathy noting that it started after she ran out of her medications. It was suggested that they have a repeat MRI and medications were prescribed. Dr. Tarleton writes on October 18, 2002, that the claimant presents with pain in her left shoulder for which he injected medications. The doctor prescribed medication as well as home exercises for the claimant. Dr. Tarleton writes on May 19, 2003, that the claimant needs a referral to the spine clinic at St. Elsewhere. This same date, the claimant was treated for pain in her left shoulder and was prescribed medications and physiotherapy treatment was recommended. It is noted that on June 18, 2003, the claimant called Dr. Tarleton's office to report that she had physical therapy and now is having neck pain and facial numbness from the physical therapy treatments on her shoulder. On May 20, 2003, the claimant underwent an MRI of her left shoulder which revealed that she had a Type II curvature of the acromion process with a lateral down sloping present mild to moderate anatomical predisposition toward rotator cuff impingement syndrome and fluid in the subacromial and subdeltoid bursal spaces is consistent with active bursitis and minimal signal changes of

tendinitis are shown and no tear is shown. Dr. Tarleton writes on June 13, 2003, that the claimant suffers from chronic intractible arachnoiditis involving the cervical and lumbar spine. The doctor notes that the claimant is rendered ineffective in the work force in the rehabilitation program and that there has been failure to effectively respond to various physiotherapeutic treatments, analgesics, anti-inflammatory agents and epidural steroids. Dr. Tarleton concludes by writing that the claimant's disability is persistent and incapacitating. The claimant saw Dr. Tarleton on June 20, 2003, with complaints of pain in the right side of her neck with radiation in a cephalad fashion associated with stiffness and tenderness along the posterior elements of the lower cervical spine. Medications were recommended by the doctor and she was to continue her therapy. The medical records set forth that the claimant continued to be treated for her left shoulder problems by Dr. Tarleton in 2004 and on May 24, 2004, Mike Larson, a physician's assistant with Dr. Tarleton, notes that the claimant is suffering an exacerbation of her lower back pain. It was recommended that the claimant repeat her MRI and she was referred to Dr. Wilgarde as well as given a medro dose pack and to continue her medical regime. The claimant underwent an MRI of her lumbar spine on May 26, 2004. This test revealed that the claimant had a broad based posterior disc bulge at L5-S1 with potential for impingement on the S1 nerve left greater than right. There is also revealed a mild right L5-S1 neuroforaminal encroachment. This test also revealed mild degenerative disc disease noted from L1-L2 with

a posterior disc bulge without evidence of impingement. On June 1, 2004, the claimant was seen at Dr. Tarleton's office for her continued problems with constipation. Tests were ordered as well as medications. The CT of the claimant's abdomen and pelvis done on June 2, 2004, revealed that she had no bowel obstructions. On September 17, 2004, Dr. Wilgarde completed a work status form indicating that the claimant was temporarily totally disabled. On this same date, Dr. Wilgarde administered cervical ESIS to the claimant's facets and physical therapy as well as medications were prescribed. Dr. Wilgarde writes on September 17, 2004, that he has seen the claimant for her continued complaints of increasing neck pain, headaches, left shoulder pain, numbness and tingling of her hands, chronic back pain and right leg pain. Dr. Wilgarde notes that the claimant uses a TENS unit as well as takes medication for her discomfort and that she takes medication for her constipation due to her medications. It is also noted that the claimant's reflux syndrome is a result of her many prescribed medications which she takes for her pain syndrome. After a complete review of the claimant's medical history and an examination, Dr. Wilgarde writes that the claimant has chronic neck pain, chronic cervical radiculopathy, chronic myalgia, left rotator cuff syndrome secondary to bursitis and tendinitis, chronic low back and right leg pain and status post lumbar surgery times 2. Dr. Wilgarde recommended that the claimant be referred to Dr. Reinhart for epidural steroid injections as well as to physical therapy and

prescribed medications. Dr. Wilgarde notes that the claimant's disability status is that of being temporarily totally disabled.

Dr. David Wilgarde testified by way of deposition that he initially saw the claimant on June 19, 1998, as a referral from Dr. Reinhart. Dr. Wilgarde goes through a very thorough explanation and description of the physical examination which he subjected the claimant to at this first meeting. Dr. Wilgarde agreed that the electrodiagnostic testing which he ordered for the claimant revealed chronic bilateral C-7, C-8 and T-1 radiculopathy. The doctor testified that he saw the claimant approximately six times in 1998 and then did not see her again until 2004 and has seen her now approximately four or five times for her various problems. Dr. Wilgarde was asked about the claimant's currently left shoulder pain as to if he related it back to her original injury of 1996. Dr. Wilgarde responded that he did not think that her shoulder problems were a direct result of her surgery but it was more likely due to an overuse syndrome. Dr. Wilgarde stated that physical therapy would be helpful to the claimant and that it would help control or alleviate flare ups she would have with her pain. The doctor stated that he did not think that it would be beneficial for her to be going on for years and years continually with physical therapy but it is beneficial in terms of getting her back on track from a significant flare of her symptoms. Dr. Wilgarde stated that he thinks the claimant has chronic pain syndrome and that if there is not going to be any additional surgeries for the claimant, he feels that pain medications, physical therapy, injections as well

as a functional restoration program would be helpful to the claimant. Dr. Wilgarde explained that a functional restoration program does not rid a patient of their pain but it does help them have a more functional life in spite of their pain. Dr. Wilgarde was asked concerning the claimant's medications. Dr. Wilgarde testified that the claimant is taking pain medications, medications for her constipation brought on by her various medications, sleep enhancing medications due to her pain syndrome and medications for her stomach due to the various medications which she takes.

On cross examination, Dr. Wilgarde stated that it was his understanding that the reason he did not see the claimant from August 1998 until August 2004 was due to his treatment not being authorized by the claimant's insurance carrier. Dr. Wilgarde testified that he did not know if the claimant would be able to reenter the workforce but that a functional restoration program to address the claimant's pain syndrome would be a step toward getting the claimant ready to go back to work. Dr. Wilgarde agreed that he had recommended in a report dated May 12, 2000, that the claimant be considered for a chronic pain management program at the Ballard Center in San Bernadino. Dr. Wilgarde testified that in his medical opinion a pain management program could possibly benefit the claimant and move her toward getting out of a disabled status and possibly back into the workforce. Dr. Wilgarde agreed that in his 2004 report he sets forth that the claimant remains temporarily totally disabled but that he is not saying that she is permanently disabled because there are some treatment programs out there which

might be very beneficial to her where she might be able to improve her condition and return to work. The doctor agreed that the prescriptions which he has previously gone over with the respondents' attorney are medications for the claimant's work related medical condition and the side affects from these medications. Dr. Wilgarde indicated that if the claimant is not receiving the medications as prescribed for her work related injury she is not getting the correct medical treatment for her various medical problems.

Attached as an exhibit to the deposition is a letter dated September 17, 2004, from Dr. Wilgarde to the claimant's attorney. This letter sets forth the claimant's medical history as well as symptoms and complaints from the time she first saw Dr. Wilgarde to present. At the conclusion of this letter, Dr. Wilgarde indicates that he has referred the claimant for additional physical therapy as well as recommended that she return to Dr. Reinhart for cervical epidural and facet injections as well as prescribed her various medications. Dr. Wilgarde states that he believes the claimant remains temporarily totally disabled at this time as a result of her work related injuries and he does not believe that she can return to the workforce at this time.

Dr. Harold Tarleton, in his deposition, stated that he first began to encounter the claimant on May 23, 2000. Dr. Tarleton testified that when he first interviewed the claimant she reported that she had back and eye problems. Dr. Tarleton testified that he examined the claimant and subsequently ordered a series of tests.

Among other things, Dr. Tarleton testified that her tests revealed that she had nothing to indicate that she had an arthritic problem. Dr. Tarleton explained that the letter he wrote on July 14, 2000, setting forth that he did not feel that the claimant was able to be gainfully employed was based on her complaints of pain and the types of medications she was taking. The doctor testified that on September 7, 2000, he diagnosed the claimant with having adhesive arachnoiditis which is somewhat of a "waste-can" diagnosis of chronic back pain post operatively that cannot be explained by any other means. Dr. Tarleton testified that the claimant's problem is not just located in her low back but also include headache and disability related to her cervical spine. Dr. Tarleton testified that there really is no way to objectively confirm arachnoiditis. Dr. Tarleton explained that he had not recommended rehabilitation for the claimant because of her chronic pain and the medications she is prescribed. Dr. Tarleton stated that he did not see any potential for overcoming these problems with rehabilitation efforts. Dr. Tarleton testified that when he saw the claimant on October 18, 2002, she was complaining of left shoulder pain which was a new complaint. Dr. Tarleton testified that the claimant did not relate this problem to any injury and that he injected it and recommended physical therapy. Dr. Tarleton testified that the claimant continued to complain about her neck, back, headaches as well as her left shoulder and that on May 19, 2003, he recommended that she undergo an MRI of her shoulder. The doctor stated that these test results reveal that the claimant has an anatomical

predisposition for potentially tearing her rotator cuff. The doctor stated that over the several years which he has been seeing the claimant, he has never had the feeling that she was magnifying her symptoms and when asked if the symptoms the claimant as expressed over these past several years are proportionate or disproportionate to his actual physical findings, Dr. Tarleton responded, "I think they are proportionate to the physical findings." Dr. Tarleton reviewed the claimant's May 26, 2004, lumbar MRI and noted that this test shows that she has some bulging of a disc with some potential for impingement on the nerves as they exit the spinal column. The doctor agreed that this test does not show that there was any impingement just that there could be. The doctor was asked if there are any surgical procedures that would improve the claimant's problems and Dr. Tarleton indicated that there was no absolute surgical remedy for any of her problems with the exception of the findings on her latest MRI which showed a potential for possible back surgery. Dr. Tarleton stated that, in his opinion, the claimant's condition has not changed since he first saw her in 2000 to present and that, in his opinion, she was at maximum medical improvement from her 1997 surgery. Dr. Tarleton stated, "I don't think she's changed significantly from 1997 until my last office visit. I think her complaints have been relatively constant." Dr. Tarleton testified that he did not think the claimant was ever going to be pain free or would ever realize any potential for returning to the active workforce. The doctor testified that he thinks that she is going to experience remissions

and exacerbations for which she will need continuing medical care. Dr. Tarleton testified that at some point the claimant may require some sort of surgical intervention for her low back but that to his knowledge there is nothing surgical that would benefit her as to her cervical spine problems.

On cross examination by the claimant's attorney, Dr. Tarleton restated that normally you only find arachnoiditis in connection with surgery. The doctor stated that, "as a chronic event, the only time I've seen it is just post operatively." Dr. Tarleton agreed that the arachnoiditis would explain the claimant's headaches, neck pain and continued chronic low back pain. Dr. Tarleton again agreed that the claimant basically has remained the same since he first began to treat her although he has periodically referred her to physical therapy and tried other methods to improve her condition. The doctor testified that he regularly prescribes spa and pool therapy for people with chronic low back pain and that he has no doubt that he had done this for the claimant. Dr. Tarleton explained that he makes this recommendation in hopes of relieving the pain and strengthening the areas without a lot of weight bearing.

After a complete review of this case, I find that the claimant has proven by a preponderance of the evidence that she is entitled to additional medical treatment as prescribed by her various doctor's for her compensable injuries. The payment of these medical bills should include the treatments and office visits as well as prescriptions which are for the claimant's compensable

injuries which have not previously been paid by the respondent but, in fact, have been paid by the claimant when these treatments were not authorized. Each one of the claimant's physicians continually recommend ongoing treatment primarily in the form of medications and therapy and indicate that these methods of treating the claimant's compensable injury are needed as well as ongoing. These medical expenses should also include the cost of a mattress as recommended by Dr. Reinhart, see Claimant's Exhibit No. 1, page 11, and the receipt for the cost of the claimant's mattress set in the total amount of \$537.67 as set forth on page 12 of Claimant's Exhibit No. 1. In addition, the respondents should reimburse the claimant for the mileage which she has experienced in her various trips to the doctor, therapy and the pharmacy. It was indicated in discussions by the parties that the claimant had previously been reimbursed for her mileage while in Arkansas but that the respondent had not reimbursed her mileage while she is in California. It is noted that the total of the miles experienced by the claimant for her medical treatment in California totals up to 5673 miles which the respondent should reimburse, see Claimant's Exhibit No. 1, pages 26 through 37. The respondent will not be responsible for the cost of the claimant building a swimming pool. Pool and spa therapy has been recommended for this claimant but there is nothing in this record to indicate that she is in need of building a swimming pool at her home. The respondent should, however, pay for recommended pool and spa therapy if and when this type of treatment is recommended again by her treating physicians.

The claimant has also proven by a preponderance of the evidence that she is entitled to additional temporary total disability from September 7, 2000, to a date to be determined. Each of the claimant's treating physicians have indicated that she is temporarily totally disabled and not able to be employed. Dr. Tarleton does not even recommend rehabilitation at this time due to her chronic pain and medications which she is prescribed. Dr. Wilgarde, in his deposition, recommended several treatment options to improve the claimant's condition in hopes of returning her to the work force. This recommendation indicates that the claimant's physical condition is not stable and could be improved with proper regular treatment.

#### FINDINGS & CONCLUSIONS

1. The Arkansas Workers' Compensation Commission has jurisdiction of this claim.
2. Prior opinions are res judicata and the law of this case.
3. The respondents accepted a 15 percent whole body impairment for the claimant's low back problem.
4. The claimant has proven by a preponderance of the evidence that she is entitled to additional medical treatment for her compensable injuries and the consequences resulting from those compensable injuries. These additional meds should include those unpaid medical bills as well as the bills paid by the claimant for her medical treatment for her compensable injuries. These should include a reimbursement in the amount of \$573.67 for a prescribed extra firm mattress and reimbursement for the 5678 miles which the

claimant has driven to her medical appointments, pharmacies and treatment while in California. This additional medical treatment will not include the reimbursement to the claimant for the building at a pool at her home. Also see discussion above.

5. The claimant has proven by a preponderance of the evidence that she is entitled to additional temporary total disability from September 7, 2000, to a date to be determined. Each of the claimant's various treating physicians have indicated that she is temporarily totally disabled and not able to enter the workforce during this period of time. See discussion above.

6. The respondents have controverted this claimant's claim for additional benefits.

7. The claimant's attorney is entitled to the maximum statutory attorney's fee based on the benefits awarded herein.

#### ORDER

The claimant has proven by a preponderance of the evidence that she is entitled to additional medical treatment for her compensable injury to include medical treatment which the claimant has paid herself and also to include reimbursement for a extra firm mattress in the amount of \$537.67 as well as reimbursement for 5678 miles which the claimant has driven for her various appointments and pharmacies when in California.

The claimant also has proven by a preponderance of the evidence that she is entitled to additional temporary total disability from September 7, 2000, to a date to be determined.

The respondents shall pay to the claimant's attorney the maximum statutory attorney's fee on the additional benefits awarded herein, with one half of said attorney's fee to be paid by the respondents in addition to such benefits and one half of said attorney's fee to be withheld by the respondents from such benefits.

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

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

IT IS SO ORDERED.

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ELIZABETH DANIELSON  
ADMINISTRATIVE LAW JUDGE