

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F214107

RHONDA G. CORBIN

CLAIMANT

**BRYANT SCHOOL DISTRICT
(SELF-INSURED)**

RESPONDENT EMPLOYER

ORDER AND OPINION FILED SEPTEMBER 23, 2004

Hearing before Administrative Law JUDGE LINDA K. MARSHALL.

Claimant represented by the HONORABLE TERENCE C. JENSEN, Attorney at Law, Benton, Arkansas.

Respondents represented by the HONORABLE CAROL LOCKARD WORLEY, Attorney at Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

The above claim came on for a hearing in Little Rock, Arkansas on August 26, 2004. A prehearing conference was held on June 30, 2004 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 to the following stipulations:

1. There was a compensable specific incident injury on December 12, 2002.
2. The claimant is entitled to the maximum temporary total disability and permanent partial disability rates for a 2002 injury.

The claimant contends she is entitled to additional medical treatment, specifically with Dr. Ackerman and Dr. Saer. Alternatively, the claimant requests a change of physician.

The respondents rely on Dr. Earl Peeples' July 17, 2003, report which indicates that the claimant's current need for medical treatment is unrelated to her compensable work-related injury. The respondents do not object to a change of physician in its network of doctors. Medical was controverted as of July 17, 2003.

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 compensable specific incident injury on December 12, 2002.
2. The claimant is entitled to the maximum temporary total disability and permanent partial disability rates for a 2002 injury.
3. The claimant has proven by a preponderance of the evidence that the additional medical treatment with Dr. William Ackerman and the referral by the authorized physician to Dr. Ted Saer is reasonable and necessary and the responsibility of respondents.

DISCUSSION

The claimant, 49 years old, hit some food in the cafeteria and slipped and fell, injuring her back. The claimant sustained herniated disks at L4-5, T8-9, and T11-12. The claimant has treated with Dr. Lowry Barnes and Dr. Kent Davidson. Dr. Davidson referred the claimant to Dr. William Ackerman who administered two steroid injections.

According to the claimant, Dr. Ackerman has recommended facet injections but these have been denied by the insurance company. Dr. Davidson next referred the claimant to Dr. Saer but, again, the insurance company denied that referral. The claimant has been denied treatment with any of the authorized treating physicians or referrals since September 2003. The claimant described her current problems as a heavy hurt underneath her shoulder blades with pulls and jerks and a feeling of carrying a backpack. The lower back hurts when the claimant bends over to do even simple chores with pain radiating down her buttocks into the legs with numbness and a crawling sensation.

The claimant testified that she has been prescribed steroids and Celebrex for her lupus condition and this has helped her back problems. With being weaned off the steroids, the claimant found her back condition had worsened. The claimant confirmed that she had recently seen Dr. Earl Peeples at the request of respondents but he had provided no help for her.

Under cross examination, the claimant confirmed that she had previously had some treatments for her neck and her left hip. The claimant confirmed that she returned to work full time the last couple of weeks in April 2003 and worked until school was out; however, she did not renew her contract for the current year.

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.

Treatment intended to reduce or enable a claimant to cope with chronic pain attributable to a compensable injury may constitute reasonably necessary medical treatment within the meaning of Ark. Code Ann. §11-9-508(a). See, *Chronister v. Lavaca Vault*, Full Workers' Compensation Commission, June 20, 1991 (D704562). An employer may also remain liable for medical treatment reasonably necessary to maintain a claimant's condition after the healing period ends. *Artex Hydroponics, Inc. v. Pippin*, 8 Ark. App. 200, 649 S.W.2d 845 (1983).

In the present case, I find the claimant has proven by a preponderance of the evidence that she is entitled to additional medical treatment at the recommendation of her authorized treating physician. Dr. Kent Davidson has been treating the claimant

since her compensable injury and he has referred the claimant to Dr. William Ackerman for some pain management. Facet joint injections were recommended by Dr. Ackerman in July 2003, following his examination. Dr. Davidson also, on September 23, 2003, recommended that the claimant see a spine surgeon for another opinion. Dr. Davidson noted that the MRI has demonstrated central disc herniation at L4-5 and L5 nerve root involvement and the claimant continues to complain of pain after receiving some conservative care, including physical therapy, medication and epidural steroid injections.

The respondents sent the claimant to their choice of physician for a second opinion and Dr. Earl Peeples saw the claimant on July 17, 2003. Dr. Peeples did not see any indications for a need for bilateral facet joint injections but did see a need for the claimant to have an MMPI. Dr. Peeples' assessment of the MRI readings differs from Dr. Robert Laakman's assessment. Dr. Peeples' opinion of the MRI findings are there is a lack of signal change and that the vertebral wedging is a developmental rather than fracture problem falling in the non-traumatic, degenerative or developmental area. Dr. Laakman's January 21, 2003, radiology report indicates there is signal loss of the intervertebral disk and notes herniations at T8-9, T10-11 and L4-5 with both L5 roots appearing to abut the central disk herniations. I give greater weight to the opinions of the treating physicians, Dr. Kent Davidson, Dr. William Ackerman and Dr. Robert Laakman than the one-time evaluation and opinion of Dr. Earl Peeples. Dr. Peeples was selected by the respondents not to treat the claimant but to provide a one-time review and opinion. I find the treatment the claimant has requested is both reasonable and necessary and again conservative treatment for a compensable injury.

The claimant has alternatively requested a change of physician for which the respondents do not contest. I find the claimant's requested medical treatment is reasonable and necessary and the result of authorized referrals; therefore, a change of physician is not required. Further, respondents have not denied a one-time change of physician if the additional treatment by Dr. Ackerman and evaluation by Dr. Saer were denied; it has only requested any change be made to a network of doctors in its managed care organization.

ORDER

The claimant has proven by a preponderance of the evidence that the additional medical treatment with Dr. William Ackerman and the referral by the authorized physician to Dr. Ted Saer is reasonable and necessary and the responsibility of respondents.

IT IS SO ORDERED.

**LINDA K. MARSHALL
ADMINISTRATIVE LAW JUDGE**