

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. E304025

WILLIAM D. COTHREN, EMPLOYEE

CLAIMANT

**INTERNATIONAL PAPER COMPANY,
SELF-INSURED EMPLOYER**

RESPONDENT

OPINION FILED APRIL 7, 2004

Submitted on the record, in lieu of a full hearing before HONORABLE ELIZABETH W. HOGAN, Administrative Law Judge on January 8, 2004..

Claimant represented by the HONORABLE SILAS H. BREWER, JR., Attorney at Law, Little Rock, Arkansas.

Respondents represented by the HONORABLE MICHAEL J. DENNIS, Attorney at Law, Pine Bluff, Arkansas.

ISSUES

This case was submitted on the record, in lieu of a full hearing on the issues of payment of medical expenses and attorney's fees.

At issue is whether or not the type of hearing aid requested by the claimant is reasonable and necessary pursuant to Ark. Code Ann. §81-1311 (Repl. 1976).

After review, I find the evidence preponderates in favor of the claimant.

STATEMENT OF THE CASE

The parties stipulated to an employer-employee-carrier relationship since July 1, 1958 during which time the claimant was exposed to excessive industrial noise resulting in hearing loss and tinnitus. This claim was filed in March, 1993. This claim has been the subject of a previous hearing with opinions entered by Judge Curdie on October 5, 2000, by the Full Commission on December 19, 2001, and by the Court of Appeals on October 30, 2002.

The claimant seeks payment of digital in-canal hearing aids as recommended by Dr. John Dickins, otolaryngologist, (see his letter of August 21, 2003).

The respondents contend the hearing aids requested by the claimant are too costly. They are however, willing to pay for conventional hearing aids.

The following were submitted without objection and comprise the evidence of record: the parties' prehearing questionnaires and exhibits including the deposition of Dr. Joseph Sataloff and a portion of a deposition with Dr. Daniel Orchik along with Dr. Dickins' report of August 21, 2003, the deposition of Mr. Frank Pamplin (taken November 19, 2003) and briefs submitted by the parties in January, 2004.

In previous decisions, it was determined that hearing aids were reasonably necessary to treat the claimant's hearing loss despite the fact that he was assessed 0% anatomical impairment under the AMA Guidelines. The claimant's physician, otolaryngologist, Dr. Dickins and audiologist, James Rippy, have recommended Widex Diva hearing aids to address the following problems:

- 1) Noise reduction system: digital technology analyses sound to reduce background noise while amplifying speech
- 2) Digital feedback cancellation technology reduces feedback and whistling from the high volume required by the claimant's condition

Dr. Dickins' Letter of August 21, 2003:

Mr. William Cothren has been diagnosed with a bilateral noise-induced sensorineural hearing loss. This type of loss will cause significant hearing problems, especially in noisy listening environments. Our office recommends hearing products that will help restore as much hearing ability as possible when this type of handicapping condition occurs.

We recommended and fit Mr. Cothran with Widex Diva hearing aids. The Widex Diva noise reduction system analyzes incoming sounds in order to distinguish between speech and noise in order to preserve speech intelligibility while minimizing the detrimental effects of background noise. This results in improved listening comfort in everyday situations, while emphasizing speech over background noise. In addition, Mr. Cothran needs a significant amount of volume from his hearing aids to help restore high frequency consonant sounds to near normal levels. This amount of volume from hearing aids can cause a significant amount of feedback or whistling from the hearing aids. To help overcome this problem, Mr. Cothran needs the digital feedback cancellation technology in the Widex Diva hearing aids to prevent feedback.

This technology is not available in less expensive hearing aids.

In summary, the type of digital hearing aid technology in Mr. Cothran's hearing aids is necessary to help him overcome his hearing handicap.

Audiologist Frank Pamplin III, authored a letter dated September 24, 2003 recommending the Siemens In-the-Ear Infinity 3 hearing aids for the claimant. In his deposition, he testified the claimant could hear enough with the aids to perform everyday activities such as driving, ordering a meal in a restaurant, and attending church. However, to talk on the telephone a tele-coil switch might be needed and if the claimant worked in a hot, sweaty environment it might be advisable to choose a water-proof model. Another model might be required if feedback "could not be overcome."

Mr. Pamplin conceded that:

"there's so many different brands and types out there now that most audiologists get real comfortable with one or two, maybe three brands, and kind of stick with that... At one time we were doing probably around 200 Infinity hearing aids per year, giving us a real good feel for what they could and could not do. We are not doing quite as many these days because it seems like, you know, patients are picking more expensive hearing aids.

The Siemens hearing aid costs the consumer \$850.00, but Mr. Pamplin has a special arrangement with International Paper Company and charges them only \$750.00.

Mr. Pamplin was "somewhat familiar" with the Widex digital model of hearing aids, fitting some patients with them when they first came on the market. He "didn't have real good luck with Widex." It is unknown how long Widex has been in existence or what changes if any, have been made in Widex hearing aids during the course of their existence.

Mr. Pamplin stated that International Paper asked him to fit the claimant with hearing aids in September 2003, but he was not provided with Dr. Dickens' records.

Mr. Pamplin agreed that hearing aids were necessary to treat the claimant's hearing loss but he felt the Widex brand was unreasonable because of the cost, even though he personally would choose a more expensive brand over the Siemens model if he needed a hearing aid.

On cross-examination by Attorney Brewer, Mr. Pamplin did not seem well-versed in the features offered by the Widex model:

MR. BREWER:

Is it true that the only clinically proven technology which the FDA has approved to help reduce background noise is duo-directional microphone technology?

MR. PAMPLIN:

I'm not really sure... I agree that directional microphones... improve signal-to-noise ratio... which can help one understand better in the presence of noise.

ATTORNEY BREWER:

Do you know that the Widex Diva hearing aids have this automatic directionality?

MR. PAMPLIN:

I'm not aware of that, but all top-of-the-line hearing instruments have that technology...

MR. BREWER:

...hearing aid feedback is... a problem... with hearing impaired people, particularly higher frequency ranges?

MR. PAMPLIN:

It can be a problem... (but) with (the claimant's) hearing loss...the amount of high frequency amplification I would be able to give him and that he would accept, I don't think feedback would be a problem...when you do give a patient an extremely high amount of high frequency amplification...speech...discrimination can actually deteriorate.

In his deposition, Dr. Joseph Sataloff, an otologist with 35 years of experience, specializing in occupational hearing loss and consultant to the Navy, OSHA, NIOSH, AMA impairment guide and the American College of Occupational Medicine , explained the mechanics of hearing loss.

Dr. Sataloff did not specifically address the different types of hearing aids but he did testify that noise-induced hearing loss does not affect speech discrimination until the loss is severe. Loss of sensitivity in the higher frequencies may level off while hearing loss continues to worsen in the lower frequencies. With significant hearing loss in the high frequencies, important speech information is often inaudible and background noise (other interfering sounds, competing

voices, reverberation) further reduces a hearing impaired listener's receptive communication ability. (Depo. p. 40-42).

Dr. Sataloff testifies primarily for the defense and he has a long association with HCNC Hearing Conservation Noise Control and International Paper.

DISCUSSION

Employers must promptly provide medical services which are reasonably necessary for treatment of compensable injuries. 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, February 17, 1989 (Claim No. D612291). What constitutes reasonable and necessary medical treatment is a fact question for the Commission, and the resolution of this issue depends upon the sufficiency of the evidence. Gansky v. Hi-Tech Engineering, 325 Ark. 163, 924 S.W.2d 790 (1996). In assessing whether a given medical procedure is reasonably necessary for treatment of the compensable injury, it is necessary to analyze both the proposed procedure and the condition it is sought to remedy. Deborah Jones v. Seba, Inc., Full Workers' Compensation Commission, December 13, 1989 (Claim No. D511255).

The evidence of record shows that the respondents' audiologist Mr. Pamplin has recommended a less costly hearing aid than the one prescribed by the claimant's treating otolaryngologist Dr. Dickins and audiologist, Mr. Rippy. Mr. Pamplin has a long association with International Paper, admitted he was accustomed to using the less expensive Siemens model, and did not seem to have much experience with the Widex model recommended by Dr. Dickins. The respondents' consultant, Dr. Sataloff, who also has a long association with International Paper conceded that hearing loss is progressive.

The claimant's physician feels the Widex hearing aid offers superior digital technology to lessen feedback and improve speech discrimination, both of which are factors to be considered in the claimant's high frequency hearing loss and need for increased volume.

The issue of costs associated with prosthetic devices or “other apparatus” needed to restore an injured employee as closely as possible to his physical condition prior to the injury has been addressed by the Court of Appeals in the cases of Sword v. Air Compressor Equipment, 69 Ark. App. 162, 11 S.W.3d 1 (2000) and Liberty Mutual Insurance company and Film Transit v. Chambers, 76 Ark. App. 286, 64 S.W.3d 775 (2002). With advances in technology there will always be improvements in prosthetic devices and changes in the ways medical providers have always done things in the past.

Although there is evidence that the claimant could hear with the less expensive hearing aid, Dr. Dickins feels the more advanced digital hearing aid would provide significant benefits with the claimant’s specific type of hearing loss and help restore him to his pre-injury condition as much as possible. Based on Dr. Dickins’ and Mr. Rippy’s opinion, I find the claimant has met his burden of proof.

FINDINGS AND CONCLUSIONS

1. The Arkansas Workers’ Compensation Commission has jurisdiction of this claim in which the relationship of employer-employee-carrier existed among the parties during which time the claimant developed compensable hearing loss, rated at 0%.
2. As a result of previous hearings and appeals, the claimant was awarded hearing aids as a reasonable and necessary medical expense.
3. The claimant has proven by a preponderance of the credible evidence of record that he is entitled to the Widex-Diva hearing aids recommended by his treating physician Dr. Dickins, as reasonable and necessary medical treatment for his compensable injury.
4. This claim has been controverted and claimant’s attorney is entitled to the maximum attorney’s fee to be paid in accordance with Ark. Code Ann. §11-9-715.

AWARD

The respondent is ordered to pay expenses and fees in accordance with the Findings of Fact above.

All accrued sums shall be paid in a lump sum without discount and this Award shall earn interest at the legal rate until paid.

IT IS SO ORDERED.

ELIZABETH W. HOGAN
Administrative Law Judge