

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F109056

CONNIE GLISSON,  
EMPLOYEE

CLAIMANT

U OF A COMMUNITY COLLEGE BATESVILLE,  
EMPLOYER

RESPONDENT

PUBLIC EMPLOYEE CLAIMS,  
INSURANCE CARRIER

RESPONDENT

**OPINION FILED AUGUST 19, 2004**

Hearing conducted before ADMINISTRATIVE LAW JUDGE MARK CHURCHWELL, in Batesville, Independence County, Arkansas.

The claimant was represented by HONORABLE KEITH BLACKMAN, Attorney at Law, Jonesboro, Arkansas.

The respondents was represented by HONORABLE RICHARD S. SMITH, Attorney at Law, Little Rock, Arkansas.

**STATEMENT OF THE CASE**

A hearing was held in the above-styled claim on June 23, 2004 in Batesville, Arkansas. A prehearing order was entered in this case on April 2, 2004. A copy of this prehearing order set out the stipulations offered by the parties and outlined the issues to be litigated and resolved at the present time. A copy of this prehearing order was made Commission's Exhibit No. 1 to the hearing record.

The following stipulations were submitted by the parties either in the prehearing order or during the course of the hearing and are hereby accepted:

1. Employer/employee/carrier relationship on 6/25/01.

2. The claimant suffered a compensable injury on or about 6/25/01.

3. AWW = \$265.00

4. WCR for TTD = \$177.00 and for PPD = \$154.00.

5. All treatment received by the claimant by authorized treating physicians through March 13, 2003 has been paid for by the respondents.

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

Claimant:

1. Continuing medical expenses.
2. Attorney's fees.
3. Additional temporary total disability (after October 24, 2001).
4. All other issues are reserved.

Respondents:

1. Uncertain. Respondents are continuing to pay for claimant's authorized medical treatment. Respondents are unaware of additional benefits due. Claimant had previously mentioned a claim for PPD benefits, which respondents have denied.

The record consists of the June 23, 2004 hearing transcript and the exhibits contained therein.

At the start of the hearing the parties agreed to reserve the issue of additional temporary total disability compensation. Further, during the course of the hearing, the respondents' attorney checked his files and indicated that his prehearing statement that the respondents are continuing to pay for claimant's authorized medical treatment is inaccurate. The respondents' attorney agreed that the respondents have refused any additional testing recommended by Dr. Rosenzweig and the respondents' attorney indicated that he could not dispute the claimant's testimony that Public Employee Claims Division also refused to pay for physical therapy recommended by Dr. Rosenzweig.

#### **DISCUSSION**

The employer must promptly provide for an injured employee such medical treatment as may be reasonably necessary in connection with the injury received by the employee. Ark. Code Ann. § 11-9-508(a). The claimant must prove by a preponderance of the evidence that she is entitled to medical treatment. Dalton v. Allen Eng'g Co., 66 Ark. App. 201, 989 S.W.3d 543 (1999). What constitutes reasonably necessary medical treatment is a question of fact

for the Commission. Wright Contracting Co. v. Randall, 12 Ark. App. 358, 676 S.W.2d 750 (1984).

In the present case, the claimant experienced a fall at work in June of 2001 and since then has reported persistent back or hip symptoms. The claimant came under the care of Dr. James Harbin, D.O. His impressions at various times have included low back pain, sciatica, right hip pain, tenderness in the right leg, low back pain, and fibromyalgia.

Dr. Harbin ordered an MRI on July 18, 2001 which indicated only degenerative disc disease of the lumbar spine. Nevertheless, Dr. Harbin appears to have prescribed the claimant hydrocodone, in addition to other medications, at least through the date of his last recorded treatment on March 13, 2003.

When the claimant's condition did not improve, the claimant began seeking a change of physician from Public Employee Claims in approximately September of 2002 without the assistance of an attorney. The Commission eventually awarded the claimant a change of physician to Dr. Rosenzweig, and Dr. Rosenzweig saw the claimant on two occasions in March of 2003. Dr. Rosenzweig ordered an MRI which again indicated approximately the same degree of

degenerative disc disease indicated in the 2001 study. In addition, Dr. Rosenzweig proposed a period of physical therapy and medication for inflammation and spasm to determine whether these treatments might improve the claimant's current symptomology, and if it did not, then further evaluation through additional diagnostic testing to potentially include a bone scan, CT scan, discogram, myelogram, etc.

As indicated above, the respondents' attorney indicated during the course of the prehearing conference that occurred approximately one year after Dr. Rosenzweig's March 2003 recommendations that the respondents are unaware of additional benefits due, and that the respondents are continuing to pay for claimant's authorized medical treatment. The respondents' attorney acknowledged during the course of the hearing that these statements on his part are clearly false, and after acknowledging during the course of the proceedings that the respondents have refused to pay for Dr. Rosenzweig's proposed conservative treatment and possible additional diagnostic testing, the respondents' attorney summarized at the end of the hearing his proposed contentions as to why the additional treatment is not reasonably necessary:

MR. SMITH: Your Honor, our problem with paying for additional treatment was that Ms. Glisson had an MRI shortly after the injury, which was pretty normal except for degenerative disc disease. Two years later or thereabouts, she had another one in March of '03. And the only change appeared to be some bulge at the disc at L-5, S-1 which wasn't there before. We don't think there's any way to attribute this, to know, to attribute this reasonably to our incident. Because the, she has degenerative disease. Immediately following or almost immediately following the incident, she didn't have this bulge. Over a two year period it's there. We don't know if this is a result of arthritis, the aging process.

...  
So our problem is that we don't think that the, given her other problems, and I think at one point Doctor Harbin, I believe it was Doctor Harbin, said in his report that he couldn't reconcile her complaints with the objective findings she had. We just don't think there's evidence to support - - we don't doubt that she's having the discomfort, but that, or some degree of discomfort, that it's attributable to our injury. That's the problem.

At the close of the hearing, the parties agreed with my recommendation that I limit the specific findings at this time to whether or not the additional medication and period of physical therapy that Dr. Rosenzweig proposes is or is not reasonably necessary for the claimant's compensable injury. [p. 47-48]. After reviewing the entire record, I find that the claimant has proven by a preponderance of the credible evidence that the course of medication and physical therapy recommended by Dr. Rosenzweig is reasonably necessary medical treatment for her compensable injury. In

reaching this conclusion, I conclude from the claimant's testimony and her medical reports submitted into the record that (1) the claimant sustained an admittedly compensable low back injury in June of 2001 (2) the claimant was experiencing no low back problems prior to the incident in June of 2001 (3) the claimant has experienced persistent low back pain since the injury occurred which has not resolved or relinquished in any way through the period of rest and/or narcotic medication which she underwent for a majority of the period between June of 2001 and March of 2003.

Furthermore, I interpret from Dr. Rosenzweig's report that he does not attribute the claimant's persistent symptoms to any abnormality indicated on either MRI already performed, because if he was able to do so, he would not now be proposing the possibility of additional diagnostic testing such as a bone scan, CT scan, discogram, myelogram, etc.

Moreover, I interpret from Dr. Rosenzweig's reports that it is precisely because the degenerative disc disease indicated by MRI cannot account for the claimant's persistent symptoms that Dr. Rosenzweig has determined that a period of intense conservative effort with a formal course of physical therapy and medication for inflammation and spasm, as a diagnostic tool, is required to help determine the precise nature of

the claimant's work related back injury which has persisted now for three years.

In short, I do not find on this record that the claimant's work related injury ever resolved or that the symptoms she is currently experiencing are due to any type of independent intervening cause or in any other way are unrelated to the fall sustained in June of 2001, as the respondents' attorney seemed to argue at the end of the hearing. In light of the persistent nature of the claimant's symptoms, Dr. Hardin's extensive course of narcotic pain medication, and the lack of any evidence whatsoever in the record to suggest that the additional course of diagnostic treatment proposed by Dr. Rosenzweig is in any way unrelated to the work related injury or inappropriate in nature or scope, I find that the claimant has proven by a preponderance of the evidence that she is entitled to the period of additional physical therapy and medication purposed by Dr. Rosenzweig in order to determine what, if any, additional diagnostic testing is required to determine the anatomic abnormality which has caused her persistent work related injury to remain so painful.

With regard to the claimant's attorney's fee, the respondents' prehearing contentions notwithstanding, I find

that the respondents controverted the claimant's entitlement to additional treatment when they refused to provide the physical therapy and medication proposed by Dr. Rosenzweig in order to determine whether or not additional diagnostic testing is required. Since the claimant's injury occurred prior to July 1, 2001, I find that the claimant's attorney's controverted attorney's fee is governed by the provisions of Ark. Code Ann. § 11-9-715 as it existed prior to the Amendments of Act 1281 of 2001. I find that the claimant's attorney is entitled to the maximum statutory attorney's fees on the additional medical benefits specifically awarded herein and on any additional medical treatment to which the claimant may become entitled after completion of the physical therapy and course of medication proposed by Dr. Rosenzweig.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

1. Employer/employee/carrier relationship on 6/25/01.
2. The claimant suffered a compensable injury on or about 6/25/01.
3. AWW = \$265.00
4. WCR for TTD = \$177.00 and for PPD = \$154.00.
5. All treatment received by the claimant by

authorized treating physicians through March 13, 2003 has been paid for by the respondents.

6. The claimant has proven by a preponderance of the credible evidence that the period of additional therapy and medication proposed by Dr. Rosenzweig on March 10, 2003 is reasonably necessary medical treatment for her work related injury.

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

**ORDER**

The respondents are directed to pay benefits in accordance with the findings of fact set forth herein.

The claimant's attorney is entitled to the maximum statutory attorney's fee on benefits awarded herein, one-half of which is to be paid by the claimant and one-half to be paid by the respondent in accordance with Ark. Code Ann. § 11-9-715 (Repl. 1996); and Death & Permanent Total Disability Trust Fund v. Brewer, 76 Ark. App. 348, 65 S.W.3d 463 (2002).

IT IS SO ORDERED.

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MARK CHURCHWELL  
Administrative Law Judge