

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

WCC NO. F201228

KATHY GOFORTH, Employee	CLAIMANT
HATFIELD LUMBER, Employer	RESPONDENT
COMPENSATION MANAGERS INC., Carrier	RESPONDENT

OPINION FILED JULY 15, 2004

Hearing before ADMINISTRATIVE LAW JUDGE GREGORY K. STEWART in Fort Smith, Sebastian County, Arkansas.

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

Respondents represented by ROBERT L. HENRY, III, Attorney, Little Rock, Arkansas.

STATEMENT OF THE CASE

On June 21, 2004, the above captioned claim came on for a hearing at Fort Smith, Arkansas. A pre-hearing conference was conducted on May 17, 2004, and a pre-hearing order was filed on May 19, 2004. A copy of the pre-hearing order has been marked Commission's Exhibit #1 and made a part of the record without objection.

At the pre-hearing conference the parties agreed to the following stipulations:

1. The Arkansas Workers' Compensation Commission has jurisdiction of the within claim.
2. The claimant sustained a compensable injury to her low back and coccyx on January 18, 2002.

At the pre-hearing conference the parties agreed to litigate the following issues:

1. Whether claimant is entitled to a change of physician to Dr. Rogers as ordered by the Commission's Medical Cost Containment Unit.
2. Attorney fee.

The claimant contends she is entitled to a change of physician to Dr. Rogers as ordered by the Commission.

The respondents contend they do not object to claimant having a change of physician and have not objected to a change of physician, but do object to the change being to a physician other than an appropriate specialist.

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 witness and to observe her demeanor, the following findings of fact and conclusions of law are made in accordance with A.C.A. §11-9-704:

FINDINGS OF FACT & CONCLUSIONS OF LAW

1. The stipulations agreed to by the parties at the pre-hearing conference conducted on May 17, 2004, and contained in a pre-hearing order filed May 19, 2004, are hereby accepted as fact.

2. Claimant is entitled to a change of physician to Dr. James Rogers.

3. Respondent has controverted claimant's entitlement to claimant's change of physician to Dr. Rogers; therefore, claimant's attorney is entitled to an attorney fee in the amount of \$200.00 pursuant to A.C.A. §11-9-715(c)(1).

FACTUAL BACKGROUND

The parties have stipulated that claimant suffered a compensable injury to her low back and coccyx when she fell while working for respondent on January 18, 2002. Following that injury the claimant was taken by ambulance to the Mena Medical Center where she received treatment in the emergency room. Claimant was instructed by the emergency room physician to seek medical treatment from her family physician. Accordingly, claimant sought medical treatment from Dr. Rogers, her family physician, on two occasions. Claimant testified that Dr. Rogers took her off work and prescribed medication.

After claimant's second visit with Dr. Rogers, claimant was instructed by the workers' compensation carrier to receive medical treatment from Dr. Young, an orthopaedic surgeon. Dr. Young ordered an MRI scan and sent claimant to physical therapy. Claimant's condition did not improve and Dr. Young referred claimant to Dr. Reginald Rutherford in Little Rock for pain management. Claimant testified that Dr. Rutherford's treatment did not improve her condition and that he subsequently referred her to Dr. Krishnan who performed spinal blocks. Claimant testified that the spinal blocks did provide some temporary relief which lasted some six to eight months. However, the pain eventually returned and she sought medical treatment from Dr. Rogers, her family physician. It appears that claimant sought medical treatment from Dr. Rogers on one or two occasions before filing a request to change physicians to Dr. Rogers.

On April 19, 2004, a change of physician order was signed by Pat Capps Hannah, the administrator of the Commission's Medical Cost Containment department allowing claimant to change physicians to Dr. Rogers. The order notes that the employer does not have a contract with a managed care organization and that Dr. Rogers is a member of a managed care organization certified by the Commission. Respondent has appealed this order allowing claimant to change physicians to Dr. Rogers. Respondent does not contend that claimant is not entitled to a change of physician, but instead contends that the physician should be an appropriate specialist, not Dr. Rogers, an osteopath.

ADJUDICATION

As previously noted, the change of physician order entered by Pat Capps Hannah on April 19, 2004 indicates that the employer did not have a contract with a managed care organization. This finding has not been challenged by either party. The law governing a change of physician when an employer does not have a contract with a managed care organization is codified at A.C.A. §11-9-514(a)(3)(A)(iii) which states as follows:

Where the employer does not have a contract with a managed care organization certified by the commission, the claimant employee, however, shall be allowed to change physicians by petitioning the commission one (1) time only for a change of physician to a physician who must either be associated with any managed care entity certified by the commission or be the regular treating physician of the employee who maintains the employee's medical records and with whom the employee has a bona fide doctor-patient relationship demonstrated by a history of regular treatment prior to the onset of the compensable injury, but only if the primary care physician agrees to refer the employee to a physician associated with any managed care entity certified by the commission for any specialized treatment, including physical therapy, and only if the primary care physician agrees to comply with all the rules, terms, and conditions regarding services performed by any managed care entity certified by the commission.

Claimant testified that Dr. Rogers had been her family physician for some seven to nine years. Despite that fact, the order allowing claimant to change physicians cited as its reason the fact that Dr. Rogers was a member of a managed care organization certified by the Commission, not that Dr. Rogers was claimant's family physician. As previously noted, it is the respondent's contention that while claimant is entitled to a change of physician that the physician chosen by the Commission should be an appropriate specialist, not Dr. Rogers, the physician selected by the claimant.

I note that the Commission addressed this issue in *Rogers v. Chrisman Ready Mix, Inc.*, Full Commission Opinion filed November 20, 2002 (F100985). In that particular case the claimant filed a change of physician request asking the Commission to designate one of two physicians as her treating physician. Respondent stated that it did not object to the claimant's petition for the change of physician, but wanted the administrative law judge to choose the physician, not the claimant. The administrative law judge chose a third physician and the claimant filed a motion with the Full Commission to remand the case back to the administrative law judge. The Commission in granting the claimant's motion stated:

When a claimant petitions for his or her one-time change of physician, the Administrative Law Judge or the Medical Cost Containment Division cannot ignore the claimant's choice of physician. If claimant's choice is not selected, the decision maker must set forth the reason for choosing a physician other than the one favored by claimant.

In this particular case, I see no reason to choose a physician other than Dr. Rogers, the physician chosen by the claimant. While Dr. Rogers might not be a specialist, the law does not require change to specialists only. Restricting a change of physician only to a specialist would be reading a requirement into the law which is not present.

Furthermore, I believe it is important to note that claimant has undergone treatment and evaluation by specialists at the request of the workers' compensation carrier and those specialists have afforded claimant little relief. The only relief given to claimant was the result of the spinal blocks from Dr. Krishnan which were temporary in nature. On the other hand, claimant testified that the medication provided by Dr. Rogers has provided her with some relief. I also note that no evidence has been presented indicating that Dr. Rogers is not qualified to treat the claimant and her compensable injury.

Accordingly, for the foregoing reasons, I find that claimant is entitled to a change of physician to Dr. Rogers. According to the decision in *Rogers v. Chrisman Ready Mix, Inc.*, *supra*, the Commission cannot ignore a claimant's choice for her change of physician. If the claimant's choice is not selected, the reason for choosing another physician must be set forth. In this particular case, I find no reason for choosing a physician other than the one chosen by the claimant. Dr. Rogers is a member of an MCO recognized by the Commission. Furthermore, according to claimant's testimony, Dr. Rogers' treatment has provided her with some relief. While respondents argue that treatment by a specialist is more appropriate than treatment by Dr. Rogers, there is no requirement in the statute that a change of physician must only be to specialists.

While respondent did not controverted claimant's entitlement to a change of

physician, respondent did controvert claimant's entitlement to a change of physician to Dr. Rogers. Accordingly, pursuant to A.C.A. §11-9-715(c)(1), I find that claimant's attorney is entitled to a fee in the amount of \$200.00.

AWARD

Claimant is entitled to a change of physician to Dr. James Rogers. Claimant's attorney is entitled to a fee in the amount of \$200.00.

IT IS SO ORDERED.

GREGORY K. STEWART
ADMINISTRATIVE LAW JUDGE