

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION**

**CLAIM NO. F301592**

<b>KIMBERLY L. JONES, EMPLOYEE</b>	<b>CLAIMANT</b>
<b>BEVERLY HEALTH CARE-CAMDEN, EMPLOYER</b>	<b>RESPONDENT</b>
<b>AMERICAN HOME ASSURANCE CO., CARRIER</b>	<b>RESPONDENT</b>

**OPINION FILED OCTOBER 18, 2004**

Opinion on the record before Administrative Law Judge Andrew L. Blood, on October 18, 2004, at Little Rock, Arkansas.

Claimant represented by the Honorable Gregory R. Giles, Attorney-at-Law, Texarkana, Arkansas.

Respondents represented by the Honorable Michael E. Ryburn, Attorney-at-Law, Little Rock, Arkansas.

**STATEMENT OF THE CASE**

The above-referenced was submitted for a ruling on the record for a ruling of claimant's entitlement to additional medical benefits. Specifically the issue in dispute centers on a change of treating physician pursuant to a February 11, 2004, order filed by the Medical Cost Containment Division.

On April 21, 2004, a pre-hearing conference was conducted in this claim, from which a Pre-hearing Order of April 22, 2004, was filed. The Pre-hearing Order reflects that the parties have made responsive filings to the pre-hearing questionnaire; the disputed issue to be addressed by the Commission; the parties' contentions relative to the issue; and that the matter would be submitted to the Commission on a stipulated record and briefs of the parties. Finally, the Pre-

hearing Order set forth a briefing schedule, to include the date that agreed stipulations and designation of record would be submitted as well as the dates that the parties' brief would be submitted.

### **DISCUSSION**

Kimberly L. Jones, the claimant, with a date of birth of July 23, 1978, resides in Magnolia, Arkansas. Claimant commenced her employment with respondent as a CNA on January 8, 2003. On January 27, 2003, claimant sustained a compensable injury to her back. Respondent-employer is located in Camden, Arkansas.

The medical in the record reflects that claimant received initial medical treatment relative to her January 27, 2003, compensable injury under the care of Dr. John Holleran at the emergency room of Ouachita County Medical Center on January 29, 2003. Thereafter, claimant followed up with Dr. W. A. Daniel, at Ouachita Valley Family Clinic, for treatment of compensable injury, from January 31, 2003, through February 10, 2003. Following a February 18, 2003, visit to Dr. Daniel, a MRI was schedule for February 24, 2003. The medical records of Dr. Daniel reflect that an appointment was scheduled for the claimant with Dr. Jay Lipke, following the MRI.

On March 4, 2003, claimant was evaluated by Dr. Jay M. Lipke, a Little Rock, orthopedic physician, pursuant to the referral of Dr. Daniel, relative to her January 27, 2003, compensable injury. Claimant remained under the care and treatment of Dr. Lipke subsequent to the initial March 4, 2003, evaluation. Following a May 13, 2003, visit of the claimant, Dr. Lipke recommended a myelogram followed with CT, however the procedural was denied by respondents. Dr. Lipke continued to provide medical treatment to the claimant subsequent to the

May 22, 2003, denial of respondents of the recommended diagnostic procedural.

On June 19, 2003, claimant was referred by Dr. Lipke to Dr. Lon Burba, at Arkansas Neurodiagnostic Center, relative to her compensable January 27, 2003, compensable injury. Dr. Burba conducted EMG/NCV studies relative to the claimant. Claimant was returned to the care of Dr. Lipke by Dr. Burba following the afore diagnostic studies, which were within normal limits with some reservations.

During a July 1, 2003, follow-up visit of the claimant, Dr. Lipke's clinic note reflects that he remained of the opinion that the myelogram followed by CT was indicated. The July 1, 2003, clinic note further reflects plans of Dr. Lipke to refer the claimant to Dr. Ted Saer, an orthopedic spine specialist, for further evaluation and treatment.

On September 9, 2003, claimant was initially evaluated by Dr. Edward H. Saer, III, pursuant to the recommendation of Dr. Lipke. Following his evaluation Dr. Saer referred the claimant to Dr. Brent Sprinkle, D.O., for nonoperative management relative to the January 27, 2003, compensable injury. In responsive correspondence of December 12, 2003, Dr. Saer concluded that he did not feel that a myelogram was "likely to be all that helpful" in the claimant's case/treatment.

Dr. Brent Sprinkle conducted his initial evaluation of the claimant on October 6, 2003, pursuant to the referral of Dr. Saer. Among the recommendations of Dr. Sprinkle following his evaluation of the claimant was that of a functional capacity evaluation, a continuance of claimant's exercise program, and follow-up visit after the FCE. The medical evidence reflects that claimant was last seen by Dr. Sprinkle on November 3, 2003, at which time he concluded from his perspective, aside from the RS Medical sequential muscle stimulator, she had reached

MMI.

The evidence reflects that claimant requested a change of treating physician relative to her January 27, 2003, compensable injury. Claimant specifically requested treatment under the care of Dr. Thomas Hart, a Little Rock pain management specialist, relative to her compensable injury as her authorized treating physician. In a February 11, 2004, Change of Physician Order, entered by the administrator of the Medical Cost Containment Department of the Arkansas Workers' Compensation Commission, Dr. Hart was designated the claimant's treating physician relative to her January 27, 2003, compensable injury, pursuant to Act 1167, Sec. 1 (a) (3)(A)(iii) of 1999, effective July 30, 1999.

Claimant contends that she is entitled to a one time change of physician to a physician of her choice. According, she maintains that the selection of Dr. Hart as her authorized treating physician relative to the January 27, 2003, compensable injury is appropriate; that respondents are liable for the cost of same; and that respondents must comply with the February 11, 2004, Change of Physician Order, filed by the Medical Cost Containment administrator.

Respondents argue that there is no recommendation that the claimant see a pain specialist, and that it is not reasonable to allow a claimant the unfettered discretion to change a physician to any speciality without consideration of the nature of her injury. Respondents also assert that it is unreasonable for the claimant to be allowed to change physicians to a physician located in Little Rock in light of her residence.

After a through consideration of all the evidence in this record, to include the briefs of the parties, review of the medical reports, application of the appropriate statutory provisions and case law, I make the following:

## **FINDINGS**

1. The Arkansas Workers' Compensation Commission has jurisdiction of this claim.
2. At all times relevant, the employee-employer-carrier relationship existed among the parties.
3. On January 27, 2003, the claimant sustained an injury to her low back arising out of and in the course of her employment.
4. Pursuant to Ark. Code Ann. § 11-9-514 (a) (3) (ii), a one-time change of physician is mandatory, relative to a claimant having sustained a compensable injury, upon request of same.
5. On February 11, 2004, the Administrator of the Medical Cost Containment Department of the Arkansas Workers' Compensation Commission entered a Change of Order, relative to the claimant's compensable January 27, 2003, injury, designating Dr. Thomas Hart, a physician selected by the claimant, as her authorized treating physician, pursuant to Ark. Code Ann. § 11-9-514 (a) (3) (ii).
6. The respondents shall pay all reasonable hospital and medical expenses arising out of the injury of January 27, 2003.
7. Respondents have controverted claimant's entitlement to a change of treating physician relative to her January 27, 2003, compensable injury.

## **CONCLUSIONS**

On January 27, 2003, claimant sustained an injury to her low back arising out of and in the course of her employment with respondent. The injury was accepted as compensable and appropriate medical benefits on behalf of the claimant. Pursuant to claimant's request for a

change of treating physician, relative to her compensable injury, from Dr. Brent Sprinkle to Dr. Thomas Hart, on February 11, 2004, an order was filed by the Administrator of the Medical Cost Containment Department of the Arkansas Workers' Compensation Commission effectuating the change. The present claim is governed by the provisions of Act 796 of 1993, in that claimant asserts entitlement to additional workers' compensation benefits as a result of an injury having been sustained subsequent to the effective date of the afore provision.

Respondents assert that the claimant is not entitled to select a specific specialty for her change of physician, noting that in the instant claim, claimant has selected a pain management physician as her choice for change of treating physician. A clear reading of the provisions in question fail to reflect the presence of limitations on the claimant in making her selection of her one-time change of treating physician, nor is such restriction imposed of the Administrator of the Medical Cost Containment Department by statute or rule of the Commission. The case law is clear however, that pursuant to Ark. Code Ann. § 11-9-514 (a) (3) (A) (ii), a one-time change of physician is mandatory. *Collins v. Lennox Industries, Inc.*, 77 Ark. App. 303, 75 S.W. 3d 204 (2002). Further, the afore provision places the responsibility for the payment of the one-time change physician on the employer once the right is exercised. *Wal-Mart Stores, Inc. v. Brown*, 82 Ark. App. 600, 120 S.W. 3d 153 (2003).

Respondents' arguments relative to claimant's selection of a Little Rock physician as her one-time change of treating physician lacks consistency. In the instant claimant, other than the initial treating physicians at the emergency room and Dr. Daniel, the medical rendered to the claimant relative to the compensable injury, has been provided by Little Rock physicians. The last treating physician sanctioned by respondents, Dr. Sprinkle, was located in Little Rock, as

was Dr. Saer, and Dr. Lipke. Dr. Burba is located in Sherwood.

The fact that the claimant selected Dr. Thomas Hart, a pain management specialist, as her requested one-time change of physician, and that the Change of Physician Order entered by MCCD, is not inconsistent with the nature of the claimant's compensable injury. Indeed, in his final report of November 3, 2003, Dr. Sprinkle listed as the "only other additional therapeutic option" relative to the claimant's compensable injury, "a trial with an RS Medical neurostimulator". Selection of a pain management specialist as the choice of treating physician is neither unreasonable or unnecessary relative to the claimant's compensable injury. Respondents have controverted the claimant's entitlement to a change of treating physician.

#### **AWARD**

Respondents are herein ordered and directed to pay the cost of claimant's one-time change of treating physician under the care of Dr. Thomas Hart relative to the claimant's January 27, 2003, compensable injury, pursuant to Ark. Code Ann. § 11-9-514, and, in accordance with the February 11, 2004, Change of Physician Order entered by the Administrator of the Medical Cost Containment Department of the Arkansas Workers' Compensation Commission.

Respondents are further ordered and directed to pay all reasonable related medical, hospital, nursing and other apparatus expenses arising out of the January 27, 2003, compensable injury of the claimant, to include medical related mileage.

It is further ordered that Dr. Thomas Hart is designated the claimant's authorized treating physician relative to the January 27, compensable injury.

An attorney fee in the amount of \$200.00, is herein awarded to the claimant's attorney, the Honorable Gregory R. Giles, pursuant to Ark. Code Ann. § 11-9-715, to be paid by

respondents.

This award shall bear interest at the legal rate, pursuant to Ark. Code Ann. § 11-9-809, until paid.

Matters not addressed herein are expressly reserved.

**IT IS SO ORDERED.**

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**Andrew L. Blood, Administrative Law Judge**