

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F203387

ANNE McSWEENEY, EMPLOYEE

CLAIMANT

**ADDUS HEALTHCARE, INC. d/b/a
CARE NETWORK OF LITTLE ROCK,
EMPLOYER**

RESPONDENT

**AMERICAN CASUALTY CO. OF
READING, PENNSYLVANIA,
INSURANCE CARRIER**

RESPONDENT

OPINION FILED FEBRUARY 18, 2004

Hearing before Administrative Law Judge Dail Stiles on January 22, 2004, in Little Rock, Pulaski County, Arkansas.

Claimant represented by Mr. Ray Baxter, Attorney at Law, Benton, Arkansas.

Respondents represented by Mr. Frank B. Newell, Attorney at Law, Little Rock, Arkansas.

A hearing was held on January 22, 2004, to determine the claimant's entitlement to additional medical benefits.

It was stipulated that the claimant sustained a job related motor vehicle accident on August 15, 2001 and again in May of 2003.

The claimant contends that she is entitled to ongoing medical benefits, specifically, treatment recommended by Dr. Thomas Hart, which includes a repeat of some radio frequency rhizotomies and physical therapy at Arkansas Spine and Sport.

The respondents controvert any continuing treatment and recommendations made by Dr. Hart. The respondents stated at hearing they will, however, pay for treatment recommended by Dr. Scott Schlesinger in a report of January 5, 2004.

STATEMENT OF THE CASE

The claimant works for the respondent as a home health physical therapist. The claimant visits people in their home to treat them.

As the claimant was proceeding to a client's house on August 15, 2001, she was struck from the rear by a pickup truck causing her to sustain injuries, particularly, to her cervical and thoracic spine. The claimant was in a similar job related motor vehicle accident in May of 2003.

The claimant reported her injury in August of 2001, and it was accepted as compensable. The claimant stated that after the injury in August of 2001, she had pain in her neck, pain in her thoracic spine, pain in her chest on the right side and low back pain. The claimant said she also developed some numbness in her hands and severe headaches.

The claimant stated that after being treated conservatively for a while, she ultimately came under the care of Dr. Thomas Hart, a pain specialist. Dr. Hart performed facet joint injections and also radio frequency rhizotomies.

The claimant testified that after the rhizotomies, the debilitating headaches she was suffering completely disappeared. The claimant said that her headaches had become so intense, prior to the rhizotomies, that at times she would experience nausea and vomiting. The claimant said that after the rhizotomies, her neck and back pain resolved to a degree that she could comfortably perform her job. The claimant said that after the rhizotomies had worn off, that she has constant pain and has gotten to the point recently that she is in pain to the extent that she cannot clean her own house.

In a September 15, 2003 letter to the claimant's attorney, Dr. Hart stated that the claimant was not a surgical candidate, but she was in a chronic pain situation. Dr. Hart explained in that letter that the epidural injections and the radio

frequency rhizotomies were employed to reduce pain to the extent that the claimant could continue to be actively employed as opposed to becoming disabled from doing her work. Dr. Hart explained that the rhizotomies worked only on a temporary basis and had to be repeated from time to time. Dr. Hart is of the opinion that this treatment constitutes reasonable medical treatment to effectively manage the claimant's pain to keep her working as opposed to becoming disabled.

Dr. Hart reiterated those opinions in his deposition, which was taken on December 15, 2003 and introduced into evidence at the hearing.

In his deposition, Dr. Hart said, relative to the claimant undergoing the radio frequency rhizotomies again:

. . . I think that would be appropriate and medically necessary to get her neck tuned back up as much as we can so she can continue to function and so she doesn't become disabled and quit her employment.

Dr. Hart also stated that he felt the claimant:

. . . would get some significant improvement if she was at Arkansas Spine and Sport, where they have this Medex equipment.

There are only two places that I know of in this area that have it. And it's been very beneficial for rehabilitation of the neck, strength in the neck and the lower back. . . .

The claimant was seen by Dr. Scott Schlesinger for purposes of an independent medical evaluation on January 5, 2004. In a letter to the respondents' attorney dated January 5, 2004, Dr. Schlesinger stated that he did not believe the claimant to be a surgical candidate, and that he did not believe that the radio frequency rhizotomy treatments were appropriate, and that he did not feel they would benefit her in any way and so advised the claimant.

FINDINGS OF FACT

- I. The claimant is entitled to ongoing medical treatment recommended by Dr. Thomas Hart, including the repeat radio frequency rhizotomies and follow-up physical therapy at Arkansas Spine and Sport.
2. Respondents have controverted the additional treatment with Dr. Hart.

DISCUSSION

Employers must promptly provide medical services which are reasonably necessary for treatment of compensable injuries. Ark. Code Ann. §11-9-508(a) (Repl. 1997). 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 (D612291). In assessing whether a certain medical procedure is reasonably necessary for treatment of the compensable injury, the Commission analyzes both the proposed procedure and the condition it is sought to remedy. Deborah Jones v. Seba, Inc., Full Workers' Compensation Commission, December 13, 1989 (D511255).

What constitutes reasonable and necessary treatment under the workers' compensation statute obligating the employer to provide such medical services "as may be reasonably necessary" for an injured employee is a question of fact for the Workers' Compensation Commission. Ark. Code Ann. §11-9-508(a); Georgia-Pacific Corp. v. Dickens, 58 Ark. App. 266, 950 S.W.2d 463 (1997). Moreover, the Commission has the authority to accept or reject medical opinions, and its resolution of the medical evidence has the force and effect of a jury verdict. McClain v. Texaco, Inc., 29 Ark. App. 218, 780 S.W.2d 34 (1989).

In the instant case, this examiner chooses to place the greater weight of the evidence on the opinion expressed by Dr. Hart in his deposition as opposed to that opinion expressed by Dr. Schlesinger, who saw the claimant on a one-time basis only.

Dr. Schlesinger's comment that the rhizotomies do not benefit the claimant are at odds with the claimant's testimony at hearing that she received a significant benefit from the rhizotomies. The claimant's testimony coupled with that of Dr. Hart leads this examiner to the conclusion that the claimant has established by a preponderance of the evidence that the treatment she seeks from Dr. Hart is reasonable and necessary as it relates to her compensable injuries.

AWARD

Respondents are directed to pay for treatment prescribed by Dr. Thomas Hart, including the radio frequency rhizotomies and follow-up physical therapy at Arkansas Spine and Sport.

Respondents are directed to pay the claimant's attorney, Mr. Ray Baxter, the maximum attorney's fee on this award pursuant to Ark. Code Ann. §11-9-715.

IT IS SO ORDERED.

DAIL STILES
Administrative Law Judge