

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F113618

SHEILA R. MILNER, EMPLOYEE

CLAIMANT

**ST. BERNARDS REGIONAL
MEDICAL CENTER, EMPLOYER**

RESPONDENT

**RISK MANAGEMENT RESOURCES,
INSURANCE CARRIER/TPA**

RESPONDENT

OPINION FILED APRIL 29, 2004

Hearing before Chief Administrative Law Judge David Greenbaum on March 12, 2004, at Jonesboro, Craighead County, Arkansas.

Claimant represented by Mr. Ralph Theodor Stricker, Attorney-at-Law, Jonesboro, Arkansas.

Respondents represented by Mr. S. Shane Baker, Attorney-at-Law, Jonesboro, Arkansas.

STATEMENT OF THE CASE

A hearing was conducted in this claim on March 12, 2004, to determine whether the claimant was entitled to additional workers' compensation benefits.

A prehearing conference was conducted in this claim on January 21, 2004, and a Prehearing Order was filed on said date. At the hearing, the parties announced that the stipulations, issues, as well as their respective contentions were properly set out in the Prehearing Order. A copy of the Prehearing Order was introduced "Commission's Exhibit 1" and made a part of the record without objection.

It was stipulated that the employment relationship existed at all relevant times, including December 2, 2001; that the claimant sustained compensable injuries as the result of a motor vehicle accident on said date; that she earned sufficient wages to entitle her to a compensation rate of \$163.00 per week for temporary total disability; that the claimant returned to work for the employer herein on January 10, 2002; that respondents have paid appropriate temporary total disability, to date, as well as medical and related expenses through September 12, 2002, pursuant to an agreed order filed on that date; and that respondents have previously controverted the claim in its entirety for purposes of attorney's fees.

By agreement of the parties, the sole issue presented for determination concerns respondents' responsibility, if any, for additional medical treatment beyond the medical previously paid.

Claimant contended, in summary, that all of her ongoing medical treatment was directly and causally related to the December 2, 2001, admitted injury; that respondents remain responsible for any outstanding medical treatment, together with continued, reasonably necessary medical treatment; and that a controverted attorney's fee should attach to any additional benefits awarded.

The respondents contended that it had paid all appropriate benefits to which the claimant was entitled, and that claimant's current physical problems,

if any, were unrelated to the December 2, 2001, motor vehicle accident.

The claimant was the only witness to testify. The record is composed solely of the transcript of the March 12, 2004, hearing containing a joint medical exhibit consisting of seventy-six (76) pages, together with a Commission Form N, submitted subsequent to the hearing.

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 claimant and to observe her demeanor, the following findings of fact and conclusions of law are made in accordance with Ark. Code Ann. §11-9-704:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The Arkansas Workers' Compensation Commission has jurisdiction over this claim.
2. The stipulations agreed to by the parties are hereby accepted as fact.
3. The claimant has proven, by a preponderance of the credible evidence, that her ongoing medical treatment is reasonably necessary, as well as related to the December 2, 2001, admitted injury and, therefore, remains the responsibility of the respondents.
4. Respondents have previously controverted this claim in its entirety.

DISCUSSION

_____The facts in this case are basically undisputed. On and before December

2, 2001, the claimant was employed by the respondent as a home health, certified nursing assistant (CNA). The claimant was involved in a motor vehicle accident which arose out of and during the course of her employment on December 2, 2001, resulting in multiple, minor injuries. The claimant was initially sent to the emergency room of the St. Bernards Regional Medical Center in Jonesboro, Arkansas. The claimant underwent multiple x-rays which were normal. Claimant was prescribed Flexeril for muscle spasms and Darvocet for pain, and released to follow-up with her family physician, Dr. Danny Grubbs. (Jt. Ex. A, pp.73-75)

The claimant was next examined and treated by her family physician, Dr. Grubbs, at the Lawrence Memorial Hospital in Walnut Ridge, Arkansas. The claimant has continued under the care of Dr. Grubbs since that time. The medical record reflects that all of the claimant's work-related injuries as a result of the motor vehicle accident have resolved themselves, save, continued complaints of low back pain. Dr. Grubbs, as the claimant's primary care physician, has continued to treat the claimant for both her low back complaints, as well as for non-work related problems. After seeing Dr. Grubbs, the employer referred the claimant to its company doctor, Dr. Michael Lack, with Occupational Health Partners in Jonesboro, Arkansas. Dr. Lack, in turn, referred the claimant to Dr. Randall C. Bonfiglio, with Rehabilitation Medicine Associates, P.A. for a course of physical therapy. Dr. Bonfiglio released the

claimant to return to full-duty employment without restrictions on January 9, 2002. (Jt. Ex. A, pp.33-34)

As previously noted, the claimant has continued to receive follow-up treatment on an as needed basis from her initial treating physician and family doctor, Dr. Grubbs, since that time. For some unexplained reason, respondents initially controverted this claim in its entirety and a hearing was scheduled in this matter on August 23, 2002, to determine whether the claimant sustained a compensable injury; however, immediately prior to the hearing, respondents accepted the claim and the parties submitted a Consent Order agreeing to pay the claimant \$840.00, representing temporary total disability, as well as reimbursing any medical providers for accrued medical treatment, reasonably related to the injury. As reflected by the stipulations, aforementioned, respondents paid all medical and related expenses through September 12, 2002, when the Agreed Order was submitted while refusing to pay for any treatment after that date.

The Workers' Compensation Act requires employers to provide such medical services as may be reasonably necessary in connection with an employee's injury. A.C.A. §11-9-508; *American Greeting Corp. vs. Garey*, 61 Ark. App. 18, 963 S.W.2d 613 (1998). What constitutes reasonably necessary medical treatment under A.C.A. §11-9-508 is a question of fact for the Commission. *Gansky vs. Hi-Tech Engineering*, 325 Ark. 163, 924 S.W.2d

790 (1996); *Geo Specialty Chem., Inc. vs. Clingan*, 69 Ark. App. 369, 13 S.W.3d 218 (2000). Medical treatment which is required to stabilize and maintain an injured worker's status remains the responsibility of the employer. *Artex Hydroponics, Inc. vs. Pippin*, 8 Ark. App. 200, 649 S.W.2d 845 (1983).

The record reflects that the claimant has continued working for the employer herein since January 10, 2002. Although the claimant has remained gainfully employed, she is still required to follow-up with Dr. Grubbs every three (3) to four (4) months and obtains refills of prescription medications, including those necessary to treat her back injury.

I found the claimant to be a credible witness. I further find that she continues to require prescription medications which are the responsibility of the respondents. The record reflects that the claimant's medical treatment has been paid, in most part, through her health insurance. It is believed that the respondent is self-insured for both workers' compensation, as well as health insurance. In any event, respondents are entitled to an offset, dollar-for-dollar, the amount of benefits that the claimant has previously received under her health insurance policy pursuant to A.C.A. §11-9-411 which claimant's attorney does not dispute. (Tr.26)

At the conclusion of the hearing, this Administrative Law Judge requested that respondents furnish a Commission Form N, if one existed, because the claimant maintained that she was never advised of her right to

change treating physicians. Despite the fact that the claimant signed a Commission Form N, it appears that the change of physician rules do not apply in the instant case because, as previously pointed out, respondents initially controverted this claim in its entirety. A.C.A. §11-9-514(f).

AWARD

Respondent, St. Bernards Regional Medical Center, and Risk Management Resources, its TPA, is hereby directed and ordered to reimburse the claimant for any out-of-pocket expenses related to the treatment provided by Dr. Danny Grubbs, including, but not limited to reimbursement for prescription medications, and respondents remain responsible for continued, reasonably necessary medical treatment.

Additionally, claimant's attorney, Mr. Ralph Theodor Stricker, is hereby awarded the maximum statutory attorney's fee pursuant to, as limited by A.C.A. §11-9-715; *Coleman vs. Holiday Inn*, 31 Ark. App. 224, 792 S.W.2d 345 (1990); and *Chamness vs. Superior Industries and Sedgwick James of Arkansas, Inc., Arkansas Workers' Compensation Claim #E019760*, (March 5, 1992).

IT IS SO ORDERED.

DAVID GREENBAUM
Chief Administrative Law Judge

