

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION**

**CLAIM F113937**

**CODY WARD,  
EMPLOYEE**

**CLAIMANT**

**CITY OF MAUMELLE, ARKANSAS,  
EMPLOYER**

**RESPONDENT**

**ARKANSAS MUNICIPAL LEAGUE  
WORKERS' COMPENSATION TRUST,  
INSURANCE CARRIER**

**RESPONDENT**

**OPINION FILED MAY 25, 2004**

Hearing conducted May 12, 2004, before Administrative Law Judge Richard B. Calaway in Little Rock, Pulaski County, Arkansas, with

Mr. George Bailey, Attorney at Law, Little Rock, Arkansas, appearing for the claimant and

Mr. J. Chris Bradley, Attorney at Law, North Little Rock, Arkansas, appearing for the respondents.

**STATEMENT OF THE CASE**

This is a dispute over the claimant's request for an MRI scan in connection with his admittedly compensable back injury.

The claimant contended that an MRI scan requested by his neurosurgeon, Dr. Patrick Chan, was reasonably necessary in connection with his compensable injury and should be performed at the expense of the respondents. An attorney's fee for controversion was also requested. Other possible issues were reserved.

The respondents contended that the requested MRI scan was not reasonably necessary in connection with the claimant's compensable injury because it was for the purpose of ruling out adjacent disc disease at levels others than that which was injured in the compensable accident.

Based upon the record as a whole, and without giving the benefit of the doubt to any party, as required by the Act, the following findings of fact and conclusions of law are hereby made:

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

1. The Arkansas Workers' Compensation Commission has jurisdiction of the parties and subject matter of this claim.

2. Pursuant to the stipulations of the parties and the record, the employment relationship existed at all pertinent times; the claimant sustained a compensable low back injury October 2, 2001; his average weekly wage was \$363.00; as a result of the injury, surgery was performed December 13, 2001, by Dr. Patrick Chan; and the respondents have accepted the claim and paid benefits, including benefits for permanent impairment in an amount equal to 10% to the body as a whole.

3. The preponderance of the evidence shows that the MRI scan requested by the claimant is reasonably necessary in connection with his compensable injury and should be performed at the expense of the respondents.

4. The respondents have controverted the payment of benefits hereinafter awarded and the claimant's attorney is entitled to the maximum statutory attorney's fee thereon, payable one-half by the claimant and one-half by the respondents.

**DISCUSSION**

At the time of the hearing, counsel for the parties announced that, although the claimant was unable to attend, the hearing could be conducted without his testimony, based upon the medical record and the agreement and stipulations of counsel, in light of the limited issue to be addressed.

The October 3, 2001, medical record shows that on October 2 the claimant injured his low back while collecting yard waste during his employment for the city, when he stepped down off a

truck. His initial symptoms included pain in the right side of his lower back going down his right leg into his ankle, as well as pain in his upper inner thigh and groin. The treating physician, Dr. Jeff Carfagno, assessed low back pain with radiation and a suspected herniated nucleus pulposus.

The claimant's symptoms continued and, on October 22, 2001, an MRI scan, taken at the request of Dr. Dewey McAfee, showed a disc herniation at L4-5 with impingement and compression of the exiting nerve rootlet at that level. Thereafter, on December 13, 2001, neurosurgeon Dr. Patrick Chan performed surgery, an L4-5 decompression, stabilization, and fusion, based on his diagnosis of L4-5 foraminal stenosis and L4-5 grade 1 spondyloisthesis secondary to bilateral L5 pars defect/fracture.

The subsequent medical record shows that the claimant's symptoms were not relieved by the surgery. For example, on February 5, 2002, he was seen in followup by Dr. McAfee whose notes indicated that the claimant was still in a lot of pain with muscle spasms in the left side and legs and was staying constipated and had the sensation of needles sticking in his leg. The claimant returned February 27 and again March 27 with similar symptoms and was referred to a pain clinic. The record shows that he also continued to see Dr. McAfee during 2002 and 2003. In July, 2003, he was again seen by his surgeon, Dr. Chan. By this time, the claimant had been treated with injection therapy, medication, rest, and Dr. Chan suggested physical therapy. In a letter dated December 9, 2003, he wrote to claimant's counsel that the claimant still had low back pain that failed further non-operative treatment and he therefore decided to order a new MRI to rule out adjacent disc disease, which may be the source of his ongoing pain.

Previously, Ark. Code Ann. §11-9-508 required the employer promptly to provide an injured employee with such medical and related services as may be reasonably necessary "for the treatment

of” the compensable injury. However, Section 18 of Act 796 of 1993 changed this language so that the provision currently requires the employer to provide such medical and related services as may be reasonably necessary “in connection with” the compensable injury. Thus, medical services need not be limited to the direct treatment of the compensable injury but are appropriate if reasonably necessary in connection with the injury.

Here, the claimant’s debilitating symptoms have continued following his surgery and his treating physician has requested the MRI scan to assist in determining the possible source of these symptoms, information that will be of assistance to him and the parties in dealing with this claim. Indeed, Dr. Chan has not opined whether or not fusion surgery, such as the claimant’s, might have some relation to the development of symptoms related to adjacent disc disease. Nevertheless, under the current law, the MRI scan requested by the claimant should be performed at the expense of the respondents.

### **AWARD**

Pursuant to the foregoing opinion and the law, the respondents are ordered and directed to pay benefits on behalf of the claimant.

This award has been controverted as stated above, and the claimant’s attorney is entitled to the maximum statutory attorney’s fee on the controverted portion. Pursuant to Coleman v. Holiday Inn, Ark. WCC No. D708577 (November 21, 1990), the claimant’s portion of the controverted attorney’s fee is to be withheld from, and paid out of, indemnity benefits, and remitted by separate check by the respondents directly to the claimant’s attorney.

Accrued benefits hereinabove awarded shall be paid in lump sum without discount. This award shall bear interest at the maximum legal rate until paid.

**IT IS SO ORDERED.**

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RICHARD B. CALAWAY  
Administrative Law Judge