

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. E904373

WAYNE WILLIAMS

CLAIMANT

MULBERRY SANITATION (WASTE MANAGEMENT)

RESPONDENT

RELIANCE NATIONAL,
INSURANCE CARRIER

RESPONDENT

OPINION FILED OCTOBER 29, 2004

Hearing before ADMINISTRATIVE LAW JUDGE MICHAEL L. ELLIG in Fort Smith, Sebastian County, Arkansas.

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

Respondents represented by MELISSA ROSS, Attorney, Little Rock, Arkansas.

STATEMENT OF THE CASE

A hearing was held in the above styled claim on August 31, 2004, in Fort Smith, Arkansas. A pre-hearing order was entered in this case on June 15, 2004. This pre-hearing order set out the stipulations offered by the parties and outlined the issues to be litigated and resolved at the present time. A copy of the pre-hearing order has been made Commission's Exhibit No. 1 to the hearing.

The following stipulation was offered by the parties and is hereby accepted:

1. The Opinion of July 3, 2003, has previously become final and is res judicata of all issues addressed therein.

By agreement of the parties, the issues to be litigate and resolved at the present time were limited to the following:

1. The claimant's entitlement to additional medical services by Dr. Moore after December 15, 2002.
2. Appropriate attorney's fees.

In regard to these issues, the claimant contends:

- (a) The claimant contends that in spite of the fact that a final Order has already determined that treatment by Dr. Moore that was previously disputed by the respondents constituted reasonably necessary medical services, the respondents have now again decided to challenge Dr. Moore's treatment. The claimant contends that he is entitled to treatment by or at the direction of Dr. Moore.

- (b) The claimant contends that his attorney is entitled to an appropriate attorney's fee.

In regard to these issues, the respondents contend:

“Respondents contend that pursuant to the terms of the Opinion filed July 3, 2003, claimant’s entitlement to medical treatment by Dr. Jim Moore on December 5, 2002, constituted reasonable and necessary medical services and were ordered paid by Judge Ellig. That is the only issue that was addressed at the hearing and the only award of medical treatment that was made. It was not determined in that Opinion that claimant was entitled to ongoing medical treatment with Dr. Moore beyond December 5, 2002. It is respondents’ position that additional medical treatment beyond that is not reasonable and necessary or the liability of the respondent carrier.”

DISCUSSION

_____The sole issue presented for resolution is the claimant’s entitlement to additional medical services by and at the direction of Dr. Jim Moore, after December 15, 2002. In order to be entitled to these medical services, at the respondents’ expense, the claimant must show that these medical services represent “reasonably necessary medical services” for his compensable lumbar injury of March 24, 1999.

Medical services are “reasonably necessary” when they are necessitated by or connected with the compensable injury and have a reasonable expectation of accomplishing the purpose or goal for which they are intended. “Reasonably necessary medical services” are not limited to only those medical services directed toward the actual resolution or improvement of the physical damage caused by the compensable injury. “Reasonably necessary medical services” also extend to those medical services intended to accurately diagnose the nature and extent of the compensable injury, to maintain the level of healing achieved, or to merely provide symptomatic relief of chronic symptoms resulting from the compensable injury. In order to constitute “reasonably necessary” medical services, the medical services provided need not actually accomplish the purpose or goal for which they are intended. The respondent cannot escape the liability for the expense of these services, merely because they do not actually achieve their desired result. It is only necessary that such medical services have a reasonable expectation of accomplishing their desired purpose or goal,

at the time that they are provided.

Throughout this case, the claimant's primary treating physician has been Dr. Jim Moore. Dr. Moore is a highly competent neurosurgeon and has a great deal of expertise in the area of medicine associated with the claimant's compensable injury. His diagnoses as to the nature of this compensable injury has consistently remained that of a herniated lumbar disc (HNP) on the left side. He has continued to treat this permanent injury by conservative means, primarily in the form of medication and occasional lumbar epidural steroid injections.

The previous hearing, on April 22, 2003, also concerned the claimant's entitlement to additional conservative treatment by Dr. Moore. Following this hearing, an Opinion was entered on July 3, 2003. This Opinion held that the claimant had proven his entitlement to the additional medical services provided him by Dr. Moore on December 5, 2002. This Opinion was not appealed and the respondent paid the expense for services rendered by Dr. Moore, on that date.

The record shows reveals that the claimant did not return for any further treatment by Dr. Moore until November 11, 2003. At that time, Dr. Moore noted an increase in the claimant's subjective complaints. On physical examination, the claimant's objective findings remained essentially unchanged from his previous visits (primarily an absent left Achille's reflex), but his subjective findings had also increased. He was now displaying a slightly positive straight leg raising test on the left (normal on the right). On this visit, Dr. Moore started a new oral medication (Neurontin) and resumed the use of Elavil. He further noted that the claimant might ultimately require a repeat lumbar epidural steroid injection, but did not specifically recommend it at that time (a previously epidural steroid injection in September of 2002, had provided the claimant with significant relief). Dr. Moore also directed the claimant to return for follow up in approximately one month.

However, this follow up visit did not actually take place until February 11, 2004. At that time, Dr. Moore records that the claimant is now experiencing new difficulties, in the form of occasional loss of urinary control. On physical examination, the claimant's objective findings still

remained essentially unchanged, but his subjective straight leg raising on the left was more pronounced. At this visit, Dr. Moore instituted the use of a new oral medication (Mobic). He also specifically recommended a repeat lumbar epidural steroid injection. The recommended repeat epidural steroid injection has not been performed, due to the respondents' refusal to accept liability for the expense of this treatment and the claimant's financial inability to otherwise obtain this treatment.

In his report of November 11, 2003, Dr. Moore expressed his expert medical opinion on the question of whether or not his continued medical services were necessitated by or connected with the claimant's compensable injury of March 24, 1999. He states:

"The patient was required to pay for this visit apparently because the carrier disapproved his return in spite of the fact that he was developing symptom complex that would be consisted with the industrial injury developed when I saw him for initial treatment (1999)."

After consideration of all the evidence presented, particularly the expert medical opinion of Dr. Moore, I find that the claimant has proven that the medical services he has received for his continuing low back complaints from Dr. Moore on November 11, 2003 and February 11, 2004, together with the continuing treatment recommended by Dr. Moore, was necessitated by and connected with his compensable injury of March 24, 1999. I would also note that there is no evidence of any independent intervening cause of the claimant's complaints, except the continuation and possible natural progression of his compensable permanent injury. Therefore, the claimant has satisfied the first requirement for these services to constitute "reasonably necessary medical services," within the meaning of the Act.

The medical services provided and recommended to the claimant by Dr. Moore are of a type and nature commonly used by the general medical community for the conservative treatment of injuries such as that experienced by the claimant on March 24, 1999. In light of the nature of the claimant's permanent compensable injury, the necessity of continuing services for the relief of his chronic symptoms for this length of time would not be unusual or unreasonable. It must also be

noted that the lumbar epidural steroid injection, recommended by Dr. Moore, has been proven to be successful in alleviating the claimant's complaints, in the past.

Therefore, I find that the claimant has proven that the medical services provided and recommended to him by Dr. Moore on and after November 11, 2003, have a reasonable expectation of accomplishing the purpose or goal for which they are intended (i.e. providing the claimant with symptomatic relief and maintaining the level of healing achieved). Thus, the claimant has satisfied the second requirement for these medical services to constitute "reasonably necessary medical services," as that term is used in the Act.

Therefore, the respondents are liable for the expense of medical services provided and recommended to the claimant for his continuing lumbar spine difficulties by and at the direction of Dr. Jim Moore, on and after November 11, 2003, pursuant to Ark. Code Ann. § 11-9-508. The respondents' liability for the expense of these services are subject to the medical fee schedule established by this Commission.

FINDINGS OF FACT & CONCLUSIONS OF LAW

1. The Arkansas Workers' Compensation Commission has jurisdiction of this claim.
2. On March 24, 1999, the relationship of employee-employer-carrier existed between the parties.
3. On March 24, 1999, the claimant sustained a compensable injury to his lower back and lumbar spine.
4. There is no dispute over the claimant's entitlement to the payment of expenses incurred for reasonably necessary medical services provided him for his compensable low back or lumbar spine injury by and at the direction of Dr. Jim Moore through December 15, 2002.
5. The medical services provided the claimant for his continuing low back or lumbar spine difficulties and the medical services recommended to the claimant for these continuing difficulties by and at the direction of Dr. Jim Moore, on and after

November 11, 2003, represent “reasonably necessary medical services “ for his compensable low back injury of March 24, 1999. Pursuant to Ark. Code Ann. § 11-9-508, the expense of these services is the liability of the respondents herein. This liability is limited by the medical fee schedule established by this Commission.

6. The respondents have controverted the claimant’s entitlement to any additional medical services, at their expense, after December 15, 2002.
7. A reasonable fee for the claimant’s attorney is the maximum statutory attorney’s fee on the additional controverted medical expenses herein awarded (this is a pre July 1, 2001 injury).

ORDER

The respondents shall be liable for the expense of the medical services rendered and recommended to the claimant for his compensable low back or lumbar spine injury by and at the direction of Dr. Jim Moore, on and after November 11, 2003. This liability is subject to the medical fee schedule established by this Commission.

The respondents shall pay to the claimant's attorney one-half of the maximum statutory attorney's fee on the controverted medical expenses herein awarded. The claimant’s attorney is hereby authorized to receive out of any benefits which may hereinafter become payable to the claimant the remaining one-half of this maximum statutory attorney’s fee

All benefits herein awarded, which have heretofore accrued, are payable in a lump sum without discount.

This award shall bear the maximum legal rate of interest until paid.

IT IS SO ORDERED.

MICHAEL L. ELLIG
Administrative Law Judge

