

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION**

**CLAIM NO. F207426**

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| <b>CATHY JO WILSON, EMPLOYEE</b>           | <b>CLAIMANT</b>   |
| <b>P.L.S. &amp; ASSOCIATES, EMPLOYER</b>   | <b>RESPONDENT</b> |
| <b>FARMERS INSURANCE EXCHANGE, CARRIER</b> | <b>RESPONDENT</b> |

**OPINION FILED DECEMBER 1, 2004**

Hearing before Administrative Law Judge J. Mark White on September 28, 2004, in Little Rock, Pulaski County, Arkansas.

Claimant represented by Mr. Donald C. Pullen, Attorney at Law, Hot Springs, Arkansas.

Respondents represented by Ms. Carol Worley, Attorney at Law, Little Rock, Arkansas.

**STATEMENT OF THE CASE**

On September 28, 2004, the above-captioned claim came on for a hearing in Little Rock, Arkansas. A pre-hearing conference was conducted on August 23, 2004, and a Prehearing Order was entered that same day. A copy of the August 23, 2004, Prehearing Order has been marked as Commission Exhibit No. 1 and made a part of the record herein without objection. At the hearing, the parties confirmed that the stipulations, issues and respective contentions, as amended, were properly set forth in the Prehearing Order.

The parties stipulated that the Arkansas Workers' Compensation Commission has jurisdiction of this claim; that the employee-employer-carrier

relationship existed at all relevant times, including May 21, 2002; that on May 21, 2002, the claimant sustained a compensable injury to her neck; that respondents accepted the May 21, 2002, injury as compensable and paid benefits, including a 12% permanent impairment rating to the body as a whole; and that the claimant earned an average weekly wage of \$442, entitling her to a compensation rate of \$295 for total disability benefits and \$221 for permanent partial disability benefits.

The parties agreed that the sole issue to be presented was whether additional medical treatment is reasonably necessary in connection with the compensable injury.

The claimant contends that she sustained an injury to her neck while working for respondents on May 21, 2002; that she has been treated by Dr. Reza Shahim, Dr. Edward H. Saer, and Dr. Wilbur Giles, who performed a fusion surgery at C3-4 and C5-6 on September 10, 2002; that Dr. Saer has requested physical therapy and a cervical MRI, which has been denied by the respondents; and that she is in need of additional medical treatment, including MRI, physical therapy or other referrals by Dr. Saer.

Respondents contend that all appropriate benefits have been and are continuing to be paid with regard to the claimant's compensable injury; and that the claimant is now seeking treatment for conditions that are unrelated to her workers'

compensation claim.

### **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

After reviewing 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 hereby made in accordance with Ark. Code Ann. § 11-9-704:

1. The Arkansas Workers' Compensation Commission has jurisdiction of this claim.
2. The stipulations agreed to by the parties are reasonable and are hereby accepted as fact.
3. The claimant has proven by a preponderance of the evidence that additional medical treatment, including the MRI exam recommended by Dr. Edward Saer, is reasonably necessary in connection with the compensable injury.

## DISCUSSION

### I. History

The claimant sustained a compensable injury to the left side of her neck on May 21, 2002, while moving some file cabinets. The respondents accepted the injury as compensable and paid benefits. An MRI performed July 9, 2002, revealed “moderately severe compression of the nerve root sheath” at C3-4 and “moderate bulging” at C5-6 and C6-7. When conservative treatment failed, the claimant underwent an anterior cervical fusion at C3-4 and C5-6 by Dr. Wilbur Giles on September 10. Dr. Giles’ subsequent notes reflect that the claimant experienced significant relief from the surgery.

The claimant testified that after her surgery, she continued to experience stiffness in her left neck and shoulder. She also began to experience problems in the right side of her neck. The parties agree that these right-side complaints are not related to the compensable injury. She returned for follow-up treatment by Dr. Giles’ partner Dr. Reza Shahim, who noted “right shoulder and right arm pain.” He recommended physical therapy and medication, and a second MRI was obtained on December 19, revealing a small herniation at C6-7 on the left.

When Dr. Giles retired, the claimant began treating with Dr. Edward Saer, whom she first saw on January 30, 2003. Dr. Saer noted the claimant was having

“some persistent neck and left shoulder and arm symptoms” and “aching on the left side of her neck that radiates to the scapula when she is writing.” He referred her to Dr. William Ackerman for an epidural steroid injection which relieved some of her arm pain. On March 27, Dr. Saer concluded that surgery was not indicated and that the claimant had reached maximum medical improvement. He assigned her a permanent impairment rating of 12% to the body as a whole, which the respondents accepted and paid.

The claimant returned to Dr. Saer in December 2003 with renewed complaints of pain; Dr. Saer specifically opined that these renewed problems were related to the compensable injury. He recommended another cervical MRI, as well as EMG/NCV studies to rule out carpal tunnel syndrome. The EMG/NCV tests were performed and proved negative, but the respondent-carrier denied the MRI. The claimant saw Dr. Saer again in March 2004 with continued symptoms in the left side of her neck, and Dr. Saer again recommended another cervical MRI, which the respondents again denied.

The respondents sent the claimant to Dr. William Blakeship for an independent medical evaluation on September 20, 2004. Dr. Blakeship opined that the claimant’s neck complaints were “at least 51% related to the work-related injury” and that the compensable injury had “aggravated” the pre-existing

degenerative changes in her neck. Yet, Dr. Blakenship opined that there was no “objective evidence” to corroborate the claimant’s continued left-side complaints, nor was there an “objective basis” for additional left-side treatment.

The claimant testified that her left arm has gotten “steadily worse” though her right-side complaints have improved. She continues to experience pain, spasms, tingling and numbness in her left shoulder and neck. She described her current pain as follows:

Well, it seems like it’s got worse on the left side. It’s still in my neck and shoulders, but it -- it’s almost like sometimes that someone’s sitting on my arm. It’s just like a -- not really electrical current, but it’s just -- it’s just an aching numbness. It goes into my fingers. I’m still having the numbness and tingling in my left hand. And sometimes if I -- I don’t think, and someone says something, and I turn a certain way, I’ll have a shooting pain either go up the back of my head or down my arm. And it’s just -- it never -- it just never lets up.

## **II. Adjudication**

An employer must promptly provide for an injured employee such medical treatment as may be reasonably necessary in connection with the injury received by the employee. ARK. CODE ANN. § 11-9-508(a). What constitutes reasonably necessary medical treatment is a question of fact. *Ark. Dept. of Correction v. Holybee*, 46 Ark. App. 232, 878 S.W.2d 420 (1994).

Dr. Saer has opined that the claimant is in need of additional treatment, specifically an MRI exam. He has opined that the claimant's continued left-side problems are causally related to her compensable injury, as has Dr. Blakenship. Given this evidence, I find that the claimant has proven by a preponderance of the evidence that additional medical treatment, including the MRI recommended by Dr. Saer, is reasonably necessary in connection with the compensable injury.

In making this finding, I note Dr. Blakenship's opinion that there is no "objective basis" for continued treatment. The law does not require a claimant to establish her entitlement to additional medical treatment with objective medical findings. *Williams v. Prostaff Temporaries*, 64 Ark. App. 128, 979 S.W.2d 911 (1998). Though Dr. Blakenship's opinion may have some probative value, it is not dispositive. Moreover, Dr. Blakenship plainly states that the claimant's continued left-side problems are related to her compensable injury. No doctor has opined that an MRI is not reasonably necessary.

#### **AWARD**

The claimant has proven by a preponderance of the evidence that additional medical treatment, including an MRI exam as recommended by Dr. Saer, is reasonably necessary in connection with the compensable injury. The respondents

are hereby directed and ordered to pay benefits in accordance with the findings of fact and conclusions of law set forth herein. The respondents remain liable for continued reasonably necessary medical treatment, including the MRI recommended by Dr. Saer.

No indemnity benefits have been awarded herein. An attorney's fee may be awarded only on indemnity benefits owed and controverted. ARK. CODE ANN. § 11-9-715. Therefore, no attorney's fees are awarded herein.

All accrued sums shall be paid in a lump sum without discount, and this award shall earn interest at the legal rate until paid pursuant to Ark. Code Ann. § 11-9-809.

**IT IS SO ORDERED.**

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**HON. J. MARK WHITE**  
Administrative Law Judge