

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F409198

RUBY L. BLEVINS, EMPLOYEE

CLAIMANT

CITY OF HOPE, EMPLOYER

RESPONDENT

MUNICIPAL LEAGUE WC TRUST, CARRIER

RESPONDENT

OPINION FILED AUGUST 3, 2005

Hearing before Administrative Law Judge J. Mark White on July 14, 2005, in Texarkana, Miller County, Arkansas.

Claimant appeared *pro se*.

Respondents represented by Mr. J. Chris Bradley, Attorney at Law, North Little Rock, Arkansas.

STATEMENT OF THE CASE

On July 14, 2005, the above-captioned claim came on for a hearing in Texarkana, Arkansas. A pre-hearing conference was conducted on May 23, 2005, and a Prehearing Order was entered that same day. A copy of the May 23, 2005, 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 June 2003; that in June 2003 the claimant sustained a compensable injury in the form of bilateral carpal tunnel syndrome; that respondents accepted the June 2003 injury as compensable and paid benefits; that the Commission granted a change of physician to Dr. Robert Brewer on October 6, 2004; and that the claimant earned wages sufficient to entitle her to a compensation rate of \$231 for total disability benefits.

The parties agreed that the issues to be presented were payment of outstanding medical bills, specifically those of Dr. Brewer; and whether the respondents should be estopped from denying liability for the bills incurred for treatment with Dr. Brewer.

The claimant contends that the respondents are liable for the bills incurred for treatment with Dr. Brewer; and that the respondents verbally granted her a change of physician and did not ask for a written change of physician request.

The respondents contend that the claimant is not entitled to medical expenses for treatment of pre-existing Reiter's syndrome; and that the claimant is not entitled to medical treatment from Little Rock Diagnostic Clinic prior to a change of physician authorized by the Commission.

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 failed to prove by a preponderance of the evidence that the treatment rendered by Dr. Brewer was authorized, or that the respondents should be estopped from denying liability for Dr. Brewer's bills.
4. The respondents have controverted all benefits sought herein.

DISCUSSION

In June 2003 the claimant sustained a compensable injury to her hands in the form of bilateral carpal tunnel syndrome. The respondents accepted this injury as compensable and paid benefits. The claimant initially treated with Dr. Bud Dickson, and Dr. Dickson eventually released her from care. Unsatisfied with Dr. Dickson's treatment and release, the claimant desired to see another doctor, Dr. Robert Brewer. The claimant testified that she called the offices of the respondent-carrier and spoke with someone named either Cheryl or Sherry to inquire as to her rights to a change of physician:

I asked them specifically, because someone at work, I believe it was the Human Resources Director at work told me that I could have a change of physician, that I was allowed one. I called them to verify that and they said yes, that I could. They did not elaborate on anything else so I assumed that it was all right.

The claimant later described the conversation in more detail:

A. Like I always tell them, I explained to them who I am and this was probably what I would have said. Okay? My name is Ruby Blevins and I understand that I can have a change of physician for my carpal tunnel. And the person on the other end told me, yes, you are allowed one change of physician.

Q. And then what did you say?

A. I said, okay, thank you. I just wanted to make sure that I could do this.

The claimant admitted she did not ask any other questions of the person she spoke with. After this phone call, the claimant set an appointment with Dr. Brewer and saw him in August 2004. Dr. Brewer performed some tests and eventually referred her to Dr. Marcia Hixson. Dr. Hixson's bills are not in dispute herein. The claimant testified that in her second visit with Dr. Brewer, she was informed that the respondent-carrier was denying Dr. Brewer's treatment. She testified that she called the respondent-carrier again the next day, and that she was told she must submit her request for a change of physician in writing. She faxed a written request later that day. The respondent-carrier evidently forwarded the request to the Commission, and the Commission entered a change-of-physician order several weeks later.

Jamie Starr, a claims examiner for the respondent-carrier, testified that the claimant called her on August 26, 2004, asking why Dr. Brewer's bills were being denied. Starr testified that she advised the claimant that a change of physician request had to be made in writing, and that the claimant promptly faxed such a request. Starr denied talking to the claimant at any point prior to this conversation, and she denied being the individual to whom the claimant says she spoke with originally regarding change of physician. She testified that the carrier has no record of any such conversation.

It appears undisputed that the treatment with Dr. Brewer was unauthorized. Ordinarily, an employer or its insurance carrier cannot be held liable for unauthorized treatment. ARK. CODE ANN. § 11-9-514. The question is whether or not the respondents should be estopped from denying liability for Dr. Brewer's bills, in light of the conversation testified to by the claimant.

Estoppel is proven by the establishing of four elements: (1) the party to be estopped must know the facts; (2) he or she must intend that his or her conduct shall be acted upon or must act so that the party asserting the estoppel has a right to believe the other party so intended; (3) the party asserting the estoppel must be ignorant of the true facts; and (4) the party asserting the estoppel must rely on the other party's conduct to his or her injury. *Thompson v. Washington Reg. Med. Ctr.*, 71 Ark. App. 126, 27 S.W.3d 459 (2000).

There is no evidence whatsoever to show that the respondent-carrier or its agents intended that their conducted be acted upon – that is, that they intended for the claimant to see Dr. Brewer without written authorization. Based on the evidence before me, I am not convinced that the claimant had the right to believe the respondent-carrier so intended.

The respondents submitted into evidence a Form AR-N signed by the claimant. The back of the form includes the following language:

1. Your employer shall have the right to select the initial primary care physician from among those associated with certified MCOs.
2. You may request a change-of-physician. You should initially request a change from the insurance carrier or employer. Within five business days of your initial request for a change-of-physician, the insurance carrier or employer should notify you of its decision to grant or deny the change-of-physician.
3. If your request for change of physician is denied you may send a petition to the Clerk of the Arkansas Workers' Compensation Commission for a one (1) time only change-of-physician.

Given this language, I must find that the claimant was aware that the respondent-carrier had the option of denying her change-of-physician request, and that the carrier had the right to take up to five days to make its decision. Even though I take the claimant's testimony as entirely accurate, I do not think it was reasonable for the claimant to assume from her limited conversation with the carrier that she could simply change doctors on her own. By her own testimony, she asked only if she was allowed a change of physician, a question that could reasonably be taken as entirely theoretical. If she had asked, "May I change my treatment from Dr. Dickson to Dr. Brewer," then a "yes" answer would have been clear grounds for estoppel. But she did not ask a question that detailed, and the question she asked was simply too vague to be reasonably relied upon.

AWARD

The claimant has failed to prove by a preponderance of the evidence that the treatment rendered by Dr. Brewer was authorized, or that the respondents should be estopped from denying liability for Dr. Brewer's bills. Therefore, this claim for benefits must be, and it hereby is, denied and dismissed.

IT IS SO ORDERED.

HON. J. MARK WHITE
Administrative Law Judge