

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F403358

NANCY K. CAPPS

CLAIMANT

ARKANSAS HEALTH CENTER

RESPONDENT EMPLOYER

PUBLIC EMPLOYEE CLAIMS

RESPONDENT CARRIER

ORDER AND OPINION FILED APRIL 11, 2005

Hearing before Administrative Law JUDGE LINDA K. MARSHALL.

Claimant represented by the HONORABLE TERENCE C. JENSEN, Attorney at Law, Benton, Arkansas.

Respondents represented by the HONORABLE RICHARD S. SMITH, Attorney at Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

The above claim came on for a hearing on March 10, 2005, in Little Rock, Arkansas. A prehearing conference was held on January 26, 2005 and a prehearing order was filed the same date. A copy of the prehearing order was marked as Commission Exhibit No. 1 and made a part of the record without objection.

At the prehearing conference, the parties agreed to the following stipulations:

1. There was a March 12, 2004, specific incident compensable injury.
2. The compensation rates are \$230/172.

The claimant contends that she is entitled to additional temporary total disability benefits from August 30, 2004, to a date to be determined and is entitled to additional medical treatment as prescribed by Dr. Thomas Ward, her authorized treating physician.

Respondents contend that all benefits to which the claimant is entitled have been paid. Respondents contend that the claimant has reached maximum medical improvement for her compensable injury and she does have pre-existing degenerative arthritis in the spine and other medical problems which contribute to her ongoing condition. Respondents are not aware of any reasonably necessary treatment by Dr. Thomas Ward that has been controverted.

ISSUES TO BE LITIGATED

1. Additional medical.
2. Additional temporary total disability benefits.
3. Attorney's fees.

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 witnesses and to observe their 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. There was a March 12, 2004, specific incident compensable injury.
2. The compensation rates are \$230/172.
3. The claimant has proven by a preponderance of the evidence that additional medical treatment is reasonable and necessary for treatment of her compensable injury.

4. The claimant has proven by a preponderance of the evidence that she remained in her healing period and unable to earn wages from August 30, 2004, through a date to be determined.

DISCUSSION

The claimant, 47 years old, was working as an activity leader for the respondent employer in March 2004. This job involved providing activities for residents at a nursing home setting. On March 12, 2004, the claimant was assisting a resident in sitting in a chair in the resident room when he sat down really hard. The claimant felt her back pop and pain began immediately. She sought medical treatment immediately at the emergency room. The claimant was given some pain pills and advised to follow up with the company doctor. The claimant first treated with Dr. Brian Sudderth and was taken off work for a period. The claimant had physical therapy and was referred to Dr. Brent Sprinkle. After seeing Dr. Sprinkle for a period, the claimant asked for a change of physician and Dr. Thomas Ward became her authorized treating physician.

The claimant has had one injection in her back from Dr. Ward but has been unable to receive further treatment from Dr. Ward. The claimant understood a series of injections were recommended. The claimant stated that the one injection did help her pain; however, it did wear off. According to the claimant, Dr. Ward placed her on light-duty status of no more than 10 pounds lifting effective mid-February 2005. The claimant's employer has now terminated her. The claimant stated that she did not feel capable of performing her job now.

The claimant described her pain as beginning in her low back and going into her hips and her right leg goes numb down to her feet and toes. Standing causes the

claimant's leg to go numb and her leg buckles if she walks a lot. Sitting with the right leg propped up keeps the leg from being numb. The claimant denied having any low back or right leg problems between January 2001 until March 12, 2004.

The claimant has a heart attack in July 2004, requiring stents to be inserted. The claimant also had a previous work injury in 2000, where she was attempting to get some boxes of cups and twisted her back.

The claimant was paid temporary total disability benefits from March 13, 2004 through June 13, 2004 and from July 1, 2004 through August 30, 2004. The claimant was terminated from her job in July 2004 and last saw Dr. Thomas Ward on January 2, 2005.

Employers must promptly provide medical services which are reasonably necessary for treatment of compensable injuries. Ark. Code Ann. §11-9-508(a)(Repl. 2002). However, injured employees have the burden of proving by a preponderance of the evidence that medical treatment is reasonable and necessary. *Wal-Mart Stores, Inc. v. Brown*, 82 Ark. App. 600, 120 S.W.3d 153 (2003). In assessing whether a given medical procedure is reasonably necessary for treatment of the compensable injury, we analyze both the proposed procedure and the condition it is sought to remedy. *Deborah Jones v. Seba, Inc.*, Full Workers' Compensation Commission Opinion filed December 13, 1989 (Claim No. D511255). Also, respondents are only responsible for medical services which are causally related to the compensable injury.

In the present case, the claimant presented credible testimony about her continued need to seek medical attention. There was no dispute that Dr. Thomas Ward was the authorized treating physician and some epidural injections were being

recommended. The claimant testified that she had received one epidural injection and it had provided some relief; however, she was unable to get the other injections because Dr. Ward believed the respondents would not pay for such. Respondents have supplemented the record with some additional information, indicating that Dr. Ward's reasonable and necessary medical treatment had not been controverted. Respondents had requested a supporting report for the doctor's visits on October 26, 2004 and February 14, 2005, before payment could be processed and Dr. Ward had not provided these reports. Certainly, the medical evidence indicates that some additional medical treatment is recommended; however, the authorized treating physician has an obligation to provide the necessary medical reports.

The claimant next contends that she is entitled to temporary total disability benefits from August 30, 2004, to a date to be determined. In order to be entitled to temporary total disability benefits, the claimant must remain in her healing period and be totally unable to earn wages. *Ark. State Hwy. & Transp. Dept. v. Breshears*, 272 Ark. 244, 613 S.W.2d 392 (1981).

In the present case, the claimant has proven that she remains in her healing period and unable to earn wages from August 30, 2004, to a date to be determined. The latest medical report in evidence is the November 22, 2004, report from Dr. Thomas Ward. In that report, Dr. Ward indicated that the claimant had not reached maximum medical improvement and was incapable of working at that time. The claimant also presented credible testimony about her ongoing problems and need for additional medical treatment.

ORDER

The claimant has proven by a preponderance of the evidence that additional medical treatment is reasonable and necessary for treatment of her compensable injury. The claimant has proven by a preponderance of the evidence that she remained in her healing period and unable to earn wages from August 30, 2004, through a date to be determined.

The claimant's attorney is entitled to the maximum statutory attorney's fee on benefits awarded herein, one-half of which is to be paid by claimant and one-half to be paid by respondents in accordance with Ark. Code Ann. §11-9-715 and Arkansas Workers' Compensation Rules and Regulations, Rule 10.

All sums herein accrued are payable in a lump sum without discount and this award shall bear interest at the maximum legal rate until paid.

IT IS SO ORDERED.

LINDA K. MARSHALL
ADMINISTRATIVE LAW JUDGE