

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION**

**CLAIM NO. E804588**

**VENISA M. MACKEY**

**CLAIMANT**

**CITY OF NORTH LITTLE ROCK**

**RESPONDENT EMPLOYER**

**MUNICIPAL LEAGUE WCT**

**RESPONDENT CARRIER**

**ORDER AND OPINION FILED JANUARY 4, 2005**

Hearing before Administrative Law JUDGE LINDA K. MARSHALL.

Claimant represented by the HONORABLE EMILY S. PAUL, Attorney at Law, Little Rock, Arkansas.

Respondents represented by the HONORABLE J. CHRIS BRADLEY, Attorney at Law, North Little Rock, Arkansas.

**STATEMENT OF THE CASE**

The above claim came on for a hearing in Little Rock, Arkansas on November 17, 2004. A prehearing conference was held on October 19, 2004 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 compensable injury to the neck and back.
2. There was an employer/employee relationship on February 24, 1998.
3. The compensation rates are \$266/200.
4. A 4% body as a whole rating has been accepted and paid.

The claimant contends that she is entitled to additional reasonable and necessary medical treatment as recommended by her primary physician, Dr. Patricia

Knott. The respondents contend that it is not responsible for additional medical care, as claimant has a degenerative condition of fibromyalgia which was not brought about by her compensable injuries. Additional medical was controverted on May 11, 2004.

### **ISSUES TO BE LITIGATED**

1. Additional medical benefits.

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 compensable injury to the neck and back.
2. There was an employer-employee relationship on February 24, 1998.
3. The compensation rates are \$266/200.
4. A 4% body as a whole rating has been accepted and paid.
5. The claimant has proven by a preponderance of the evidence that the additional medical treatment is reasonable and necessary and related to her compensable injury.

### **DISCUSSION**

The claimant sustained a compensable injury in February 1998, which was accepted as compensable. The claimant has undergone some physical therapy, had a

steroid injection and trigger point injections for her neck and back. The claimant was seeing Dr. Knott in January 2004 and receiving medication; however, the claimant's condition was worsening. Dr. Knott recommended some physical therapy and steroid injections; however, respondents denied this type treatment and referred the claimant to Dr. Bruce Safman.

According to the claimant, Dr. Safman performed a grip test on her hands and stated she had fibromyalgia without examining her neck or back. No treatment or testing was recommended. The claimant asked to see another doctor but respondents denied further treatment. The claimant, after a referral from her doctor, sought an evaluation with Dr. Wayne Bruffett and, after an examination, Dr. Bruffett recommended the claimant see a chiropractor. The claimant has not seen the chiropractor nor had the physical therapy or steroid injections as recommended by Dr. Bruffett and Dr. Knott. The claimant described her symptoms now as having a lot of pain in her neck and back with pain going down her arm. The pain is aching and throbbing.

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, we have the respondents' chosen physician, Dr. Bruce Safman, examining the claimant on one occasion and opining that the claimant suffers from fibromyalgia and that additional treatment for her work injury is not warranted. On the other hand, we have the claimant's authorized treating physician, Dr. Patricia Knott, opining that the claimant does not have the multiple trigger points diagnostic of fibromyalgia, as well as a report from Dr. Wayne Bruffett who does not opine the claimant's condition is fibromyalgia. In fact, Dr. Bruffett provides an opinion that the cause of the claimant's pain is related to her work injury and the disk herniation and disk degeneration in her neck. Dr. Bruffett recommended a conservative treatment of some gentle chiropractic treatment. According to the claimant, Dr. Knott had also recommended some additional physical therapy and some steroid injections. I give greater weight to the opinions of Dr. Wayne Bruffett and Dr. Patricia Knott over the opinion of Dr. Safman. Dr. Bruffett's June 21, 2004, report reveals that the current MRI indicates the claimant's condition had worsened since her previous studies which supports the claimant's testimony of her more recent problems.

Treatment intended to reduce or enable a claimant to cope with chronic pain attributable to a compensable injury may constitute reasonably necessary medical treatment within the meaning of Ark. Code Ann. §11-9-508(a). See, *Chronister v. Lavaca Vault*, Full Workers' Compensation Commission, June 20, 1991 (D704562). An employer may also remain liable for medical treatment reasonably necessary to maintain a claimant's condition after the healing period ends. *Artex Hydroponics, Inc. v. Pippin*, 8 Ark. App. 200, 649 S.W.2d 845 (1983).

I find the claimant has proven by a preponderance of the evidence that additional medical treatment is reasonable and necessary for treatment of the claimant's condition. The claimant has undergone conservative care since her injury and has not had surgery.

**ORDER**

The claimant has proven by a preponderance of the evidence that the additional medical treatment is reasonable and necessary and related to her compensable injury.

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.

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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**LINDA K. MARSHALL  
ADMINISTRATIVE LAW JUDGE**