

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F111047

CARMELLA C. PATTERSON

CLAIMANT

REBSAMEN MEDICAL CENTER, INC.

RESPONDENT EMPLOYER

**RECIPROCAL OF AMERICA/ARK. PROPERTY
& CASUALTY GUARANTY FUND**

RESPONDENT CARRIER

ORDER AND OPINION FILED MARCH 17, 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 SUSAN M. FOWLER, Attorney at Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

The above claim came on for a hearing on February 23, 2005, in Little Rock, Arkansas. A prehearing conference was held on January 19, 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.

The parties agreed there was a compensable injury on September 22, 2001, with a compensation rate of \$168 per week for temporary total disability.

The claimant contends that she is entitled to additional reasonable and necessary medical treatment for her SI joint injury.

Respondents contend the claimant cannot establish the medical she is seeking is reasonable and necessary in connection with her compensable injury. Additional medical was controverted on October 14, 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 on September 22, 2001.
2. The compensation rate is \$168 per week.
3. The claimant has failed to prove by a preponderance of the evidence that additional medical treatment is reasonable and necessary and related to the compensable injury.

DISCUSSION

The claimant sustained an admittedly compensable injury on September 22, 2001, when she kept a patient from falling. The claimant sustained a back injury and immediately sought medical treatment. The claimant saw Dr. Miriam Morse initially and was then sent to Dr. Bruce Safman. Dr. Safman treated the claimant with medication, shots and physical therapy and continued to treat with Dr. Safman until 2002. The claimant contacted the Commission and a change of physician order was filed on May 27, 2003, allowing the claimant to change to Dr. Thomas Hart. According to the

claimant, she had some tests ordered by Dr. Hart and she understood these tests revealed problems with her SI joint. The claimant saw Dr. Hart five or six times and had an injection and some physical therapy and medication and continued treating with Dr. Hart until May 2004. According to the claimant, respondents next sent her to Dr. Safman for a functional capacity evaluation and after asking her some questions, he diagnosed her with fibromyalgia.

Under cross examination, the claimant confirmed that she saw Dr. Safman through July 2002, but did continue to work full time. The claimant confirmed that respondents again sent her to Dr. Safman on August 18, 2004 and she was diagnosed with fibromyalgia. The claimant returned to see Dr. Safman on September 15, 2004, but could not see him after that because of inability to pay. The claimant confirmed under cross examination that she had a car accident in 1996 and another car accident in October 2004 and she did not advise the respondents of the October 2004, car accident at her deposition. The claimant confirmed that she filed an AR-C Form asking for additional medical benefits on October 14, 2004, and that was after her car accident.

The claimant described her pain as constant, across her low back, across her hips and down into her legs and right foot. According to the claimant, her right buttocks and right foot are numb periodically. The claimant stopped working in May 2004, because of pain.

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.

After considering all the credible evidence in the present case, I find the claimant has failed to prove by a preponderance of the evidence that additional medical treatment is reasonable and necessary and related to her compensable injury. The claimant sustained her compensable injury in September 2001 and has received ongoing medical care and treatment until the respondents controverted the claim in October 2004. The claimant treated primarily with Dr. Bruce Safman until she received a change of physician in 2003, to Dr. Thomas Hart. It was the consensus that the claimant was not a surgical candidate; however, she continued to have pain in her SI joint. Dr. Safman opined in July 2002, that the claimant had reached maximum medical improvement. He further opined that there was no guarding or muscle spasm noted and no medication or treatment had been beneficial to her. Dr. Safman opined that he had nothing else to offer the claimant and released her and she continued to work her regular job. The claimant next saw Dr. Thomas Hart who began some testing and conservative care, to include radiofrequency denervation procedures. Dr. Hart's last medical report in evidence dated May 3, 2004, wanted to refer the claimant to Dr. M. J. Griffin for treatment of the SI joint pain. A report from M. J. Griffin, physical therapist,

dated August 16, 2004, revealed the claimant had 30 visits from May 5, 2004 through August 13, 2004, and that her progress had stabilized and a total asymptomatic state was not being achieved. The claimant again saw Dr. Safman and his August 18, 2004, report reveals he has diagnosed the claimant with fibromyalgia based on her diffuse aches and pains in her upper and lower extremities. Dr. Safman could not establish a cause and effect of the claimant's work injury and the fibromyalgia nor the work injury being an exacerbation of her fibromyalgia.

Although the claimant continues to complain of pain in her low back and down into her legs, she did confirm that she was involved in a motor vehicle accident in October 2004, where she was seen for mid back pain, hip pain and lower extremity pain. After considering all the medical evidence, I was not persuaded that additional medical treatment was reasonable and necessary and related to the compensable injury. The claimant has received extensive conservative medical care following her injury, to include a change of treating physicians. Extensive physical therapy, prescription medication and other conservative measures have been provided the claimant. Dr. Safman has provided a diagnosis that relates the claimant's current symptoms to fibromyalgia and he has not connected this condition to the claimant's work injury nor indicated the work injury has exacerbated the fibromyalgia condition. I must give weight to that medical opinion.

ORDER

The claimant has failed to prove by a preponderance of the evidence that additional medical treatment is reasonable and necessary and related to the compensable injury. The claim for benefits is respectfully denied and dismissed.

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.

IT IS SO ORDERED.

LINDA K. MARSHALL
ADMINISTRATIVE LAW JUDGE