

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. E402841

SHARON WILLIAMS, EMPLOYEE	CLAIMANT
MEDICAL CENTER OF SOUTH ARKANSAS, EMPLOYER	RESPONDENT
CROCKETT ADJUSTMENT, TPA	RESPONDENT

OPINION FILED MARCH 29, 2005

Hearing held January 6, 2005 before the Honorable Dale Douthit, Administrative Law Judge at Little Rock, Pulaski County, Arkansas.

Claimant was represented by Gary Davis, Attorney at Law, of Little Rock, Arkansas

Respondent was represented by Norwood Phillips, Attorney at Law, of El Dorado, Arkansas.

STATEMENT OF THE CASE

On January 6, 2005, the above-captioned claim came on for a hearing in Little Rock, AR. A prehearing conference was conducted on October 6, 2004, and a prehearing order was entered that same day. A copy of the October 6, 2004 prehearing order has been marked as Commission Exhibit #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 at the hearing, 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/self-insured employer relationship existed at all relevant times, including February 16, 1994; that on February 16, 1994, the claimant sustained a compensable injury to her neck and shoulder; that the respondents accepted the February 16,

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1994, injury as compensable and paid some benefits. The respondents have controverted any medical benefits after August 17, 2004. This claim was the subject of opinions entered by prior administrative law judges on November 24, 1997 and November 6, 2000, which opinions are now final and are res judicata to the present claim.

The issues to be presented were defined as whether additional medical treatment is reasonably necessary in connection with the compensable injury, controversion and attorney fees.

The claimant contends she sustained compensable injuries to her shoulder and neck on or about February 16, 1994, and has received treatment since that time for said injuries. The respondents have indicated they will not be responsible for claimant's medical bills after August 17, 2004. Claimant argued that the medication prescribed to her by Dr. Safman is reasonable and related to the admitted compensable injury.

The respondents contend that the claimant has received all medical benefits to which she is entitled; specifically, respondents controvert any medical benefits beyond August 17, 2004.

DISCUSSION

The 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. (A.C. A. §11-9-508 {a}). The claimant must prove by a preponderance of the evidence that she is entitled to medical treatment. Dalton v. Allen Eng'g Co., 66 Ark. App. 201, 989 S.W. 2nd 543 (1999). Further, the employee has the burden of proving by a preponderance of the evidence that medical treatment is reasonable and necessary. Wal-Mart Store, Inc. v. Brown, 82 Ark. App. 600, 120 S.W. 3rd 153 (2003). What constitutes reasonably necessary medical treatment is a question of

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fact for the Commission. Wright Contracting Co. v. Randall, 12 Ark. App. 358, 676 S.W. 2d 750 (1984).

In the case at hand, the claimant was an LPN who suffered admittedly compensable injuries to her neck, right shoulder and right arm, as a result of an altercation with a combative patient on February 16, 1994. As reflected in the record, the claimant then sought treatment from several doctors for her compensable injuries. (T. pg. 12, lns. 16-25). The claimant then had two surgeries on her neck (7/7/94 and 5/9/95) as a result of the February 16, 1994 altercation. On 11/28/94 claimant started seeing Dr. Bruce Safman, a pain management physician. Claimant testified she still sees Dr. Safman for pain management. Even though other doctors examined the claimant sporadically after the accident, it is the continual treatment and prescriptions from Dr. Safman to which the parties are at odds, and it's the sole issue this examiner will address.

The record shows the claimant saw Dr. Safman approximately 40-50 times between 11/28/94 through 7/19/2000 (JX 1, pgs. 86-118.9). The record shows the claimant saw Dr. Safman 15 times between 4/20/02 through 7/10/04. (CX 1, pgs. 1-15). After a thorough review of Dr. Safman's reports, it is evident his primary, if not sole, attention to the claimant concerned her areas agreed compensable as a result of the 2/16/94 injuries. (Neck, right arm & right shoulder.)

Sometime in September, 1999, the claimant had a fall injuring her back. The claimant filed for workers' compensation benefits arguing the 1999 fall was a compensable consequence of her 1994 compensable injury. The Commission conducted a full hearing on the issue September 28, 2000. The Commission ruled in an opinion filed 11/6/2000 that the claimant

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failed to prove her low back injury was a compensable consequence of her admitted compensable neck/shoulder injury of 2/94. (Commission's Exhibit #3) The claimant included the entire transcript of the September 28, 2000 hearing into the record herein.

The respondents argued on January 6, 2005, that "the massive doses of medication prescribed by Dr. Safman was not reasonable and necessary medical treatment." (T. pg. 23, Ins. 14-16) Respondents also argued that claimant's injury to her low back, for which she underwent a lumbar laminectomy, could be the cause for the prescribed pain medication. However, at the September 28, 2000 hearing regarding the low back injury, the respondents correctly pointed out that the claimant never mentioned her low back to Dr. Safman. (CX 2, pg. 22, Ins. 16-25)

At issue is whether the pain management from Dr. Safman is reasonable and necessary in relation to the claimant's 1994 compensable injuries. After a thorough review of all Dr. Safman's reports, it is clear to this examiner that Dr. Safman's treatment is totally related to the claimant's neck, right arm and right shoulder. In nearly every report from Dr. Safman, the report leads off by saying something to the effect of "Ms. Williams is being seen for chronic pain in the right shoulder." (CX 1, pg. 13). Or, "Ms. Williams is reporting increased pain in her right shoulder." (CX 1, pg. 14). Without citing each and every report from Dr. Safman, the two cites above are a fair characterization of nearly all Dr. Safman's treatments concerning the claimant.

The respondents also introduced a report from Dr. Jim Moore. (RX 2) This examiner does not totally disregard the report from Dr. Moore; however, I feel it has very little probative value. First, the report incorrectly assumes Dr. Safman had not been seeing the claimant before 1999. Second, Dr. Moore never personally examined the claimant. Had he done so, he would

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have been able to answer some of the questions he raised in his own report; such as whether a TENS unit had been tried, or psychotherapy. Those treatments had been tried, but Dr. Moore obviously didn't have a complete medical history on the claimant before completing his report. Dr. Moore questioned the use of some, but not all, of the prescription medication. However, since Dr. Safman has been treating the claimant for ten (10) years, this examiner finds his recommendations more reliable than those from Dr. Moore.

Dr. Safman's last report entered into the record is dated September 11, 2004, and states "I think I have done just about everything I can." However, he goes on to say "I will see her again in 3 months. I am only seeing her for medication maintenance purposes." (RX 1) It is well settled that a claimant may be entitled to ongoing medical treatment after the healing period has ended, if the medical treatment is geared toward management of the claimant's injury. Hydrophonics, Inc. v. Pippin, 8 Ark. App. 200, 649 S.W. 2d 845 (1983). It is this examiners opinion that all of Dr. Safman's treatment and prescribed medications were geared toward the claimant's 1994 compensable injuries. Further, as stated by the claimant, there were times Dr. Safman would recommend prescriptions that he felt were not related to the compensable injuries, and the claimant would pay for those herself. (T. pg. 17, lns. 3-5).

From a review of the record as a whole, to include medical reports, documents and other matters properly before the Commission, and having having had an opportunity to hear the testimony and observe the witnesses demeanor, the following findings of fact and conclusions of law are made in accordance with A.C.A. §11-9-704.

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FINDINGS OF FACT AND CONCLUSIONS OF LAW

- 1) The employee/self-insured-employer relationship existed on 2/16/94
- 2) The claimant suffered compensable injuries on 2/16/94.
- 3) The stipulations agreed to by the parties are reasonable and are hereby accepted as fact.
4. The claimant has proven by a preponderance of the evidence that the treatments and prescriptions from Dr. Safman are reasonable, necessary and related to her 1994 compensable injury.
- 5) The claimant's attorney is entitled to the maximum statutory attorney's fee on benefits awarded herein in accordance with A.C.A. §11-9-715 (Repl. 1996)

ORDER

Respondents are hereby directed to pay for the treatment and prescriptions from Dr. Safman in accordance with the findings of fact set forth herein.

Claimant's attorney is entitled to the maximum attorney's fee on benefits awarded herein in accordance with A.C.A. §11-9-715 (Repl. 1996) and Death & Permanent Total Disability Trust Fund v. Brewer, 76 Ark. App. 348, 65 S.W. 3d 463 (2002).

IT IS SO ORDERED.

DALE DOUTHIT
Administrative Law Judge

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