

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F404386

DAVID ZOLLICOFFER	CLAIMANT
ARKANSAS VALLEY ELECTRIC	RESPONDENT
ARKANSAS RURAL ELECTRIC, SELF INSURED TRUST, INSURANCE CARRIER	RESPONDENT

OPINION FILED NOVEMBER 15, 2005

Hearing before ADMINISTRATIVE LAW JUDGE MICHAEL L. ELLIG in Fort Smith, Sebastian County, Arkansas.

Claimant represented by R. GUNNER DELAY, Attorney, Fort Smith, Arkansas.

Respondents represented by BETTY DEMORY, Attorney, Little Rock, Arkansas.

STATEMENT OF THE CASE

A hearing was held in the above styled claim on August 30, 2005, in Fort Smith, Arkansas. A pre-hearing order was entered in this case on July 1, 2005. This pre-hearing order set out the stipulations offered by the parties and outlined the issues to be litigated and resolved at the forthcoming hearing. Immediately prior to the hearing, the parties agreed to a change in the issues with the only issue to be the claimant's entitlement to the additional medical services and testing recommended by Dr. James Blankenship in his report of July 20, 2005.

The following stipulations were offered by the parties and are hereby accepted:

1. On April 21, 2004, the relationship of employee-self insured employer-TPA existed between the parties.
2. The appropriate weekly compensation rates are \$453.00 for total disability and \$340.00 for permanent partial

disability.

3. On, April 21, 2004, the claimant sustained a compensable injury to his neck, or cervical spine.
4. There is no dispute, at present, over the payment of medical expenses.
5. There is no dispute over the payment of temporary total disability benefits.
6. The respondent has accepted liability for and is paying permanent partial disability benefits for a permanent physical impairment of 10% to the body as a whole.

The claimant contended that he was entitled to the services recommended by Dr. Blankenship, as they represented reasonably necessary medical services for his compensable cervical injury.

The respondents denied that they recommended medical services are "reasonably necessary" and controverted the claimant's entitlement to such benefits.

DISCUSSION

_____The sole issue in this case is the claimant's entitlement to the medical services that have been recommended by Dr. James Blankenship in his report of July 20, 2005. In this report, Dr. Blankenship recommended an epidural steroid injection with a selective nerve root block for both diagnostic and therapeutic purposes. He further recommended six to eight weeks of aggressive physical therapy, a work hardening program. Finally, Dr. Blankenship recommended a follow up appointment for further evaluation upon completion of the epidural steroid injection and

the program of physical therapy.

The evidence presented reflects that the claimant's compensable injury took the form of a herniated nucleus pulposus of the C5-6 intervertebral disc with impingement of the left C-6 nerve root. Surgical intervention, in the form of an anterior cervical decompression and fusion at C5-6 (using bone implant and anterior spinal instrumentation), was performed by Dr. Steven Cathey on December 8, 2004. There was no indication of complications from the surgery. The evidence all indicates that the nerve root impingement was relieved by this procedure. However, the claimant continued to complain of symptoms and difficulties following the surgery.

It would appear from the records and reports of Dr. Cathey that he saw the claimant on only two occasions following the surgical decompression and fusion. The first of these visits was on December 21, 2004. The second visit was on January 18, 2005. It would appear from the reports and records of Dr. Cathey that he was somewhat peeved that the claimant had not become totally asymptomatic within a few weeks following his surgery. On January 18, 2005, Dr. Cathey opined that the claimant had reached maximum medical improvement in regard to his compensable injury and his subsequent cervical disc surgery. He assigned a 10% permanent physical impairment to the body as a whole. He released the claimant to return to work at regular duty, with no restrictions and discharged the claimant from any further care.

The claimant was subsequently seen by Dr. Lane Wilson. Dr. Wilson, is a family practitioner. The claimant had been originally sent to Dr. Wilson for initial treatment by the respondents. Dr. Wilson provided the claimant with medication and recommended a further neurological work up. The claimant ultimately applied for and received a change of physicians to Dr. Blankenship.

Dr. Blankenship is a highly competent neurosurgeon with considerable expertise in the evaluation and treatment of cervical difficulties such as those experienced by the claimant. It is obviously his opinion that the recommended epidural steroid injection with selective nerve root block is reasonable and medically appropriate to both diagnose the etiology of the claimant's continuing cervical complaints, as well as to provide possible symptomatic relief. It is also apparent that it is his expert medical opinion that a six to eight week program of aggressive physical therapy including work hardening, would be medically appropriate and have a reasonable expectation of improving the claimant's symptomatic complaints and reducing his physical limitation and restrictions. Finally, it is apparent that it is his expert medical opinion that a follow up neurosurgical evaluation would be medically appropriate and reasonably necessary for the claimant's compensable cervical difficulties. Dr. Blankenship's expert medical opinion is regard to the necessity of these services and the potential for their success is entitled to substantial weight and credit.

Medical services are “reasonably necessary” when they are necessitated by or connected with the compensable injury and have a reasonable expectation of accomplishing the purpose or goal for which they are intended. It is obviously the expert opinion of Dr. Blankenship that the services he recommended were necessitated by or connected with the claimant’s compensable cervical injury and have a reasonable expectation of accomplishing the purpose of goal for which they are intended. Clearly, it cannot be presumed that Dr. Blankenship would recommended unnecessary or inappropriate medical services. I find his expert medical opinion sufficient to prove that the medical services he has recommended constitute “reasonably necessary medical services” under Ark. Code Ann. §11-9-508. Pursuant to the provisions of this subsection, the respondents are liable for the expense of these services, subject to the medical fee schedule established by this Commission.

In reaching this decision, I recognize that Dr. Cathey has opined that the claimant reached MMI (maximum medical improvement) on January 18, 2005. He also did not recommend any further medical evaluation or treatment. However, he has offered no expert medical opinion directly on the reasonableness or necessity of the services subsequently recommended by Dr. Blankenship. His failure to previously make a recommendation of similar treatment necessarily constitute as an expert medical opinion directly refuting that of Dr. Blankenship.

I find it also appears unusual that Dr. Blankenship opined that the claimant had reached maximum medical improvement only some

five weeks following his extensive cervical surgery. Clearly, Dr. Cathey does not treat the term maximum medical improvement as synonymous with the end of the healing period. Fusions, such as that performed by Dr. Cathey take months to finally solidify and in some cases such a solid fusion is never obtained. Generally, routine follow up appointments are scheduled to monitor the progression of the fusion. However, Dr. Cathey simply discharged the claimant from further care.

It is obvious that the claimant had not achieved the maximum benefit of time and medical treatment, in to the actual healing of the physical damage caused by his compensable injury, by January 18, 2005. As shown by the radiographic studies performed by both Dr. Cathey and Dr. Blankenship, the claimant's fusion was progressing but had clearly not stabilized.

While I am not familiar with Dr. Cathey's normal procedures in cases of this nature, they are certainly different from those commonly employed in this area for the follow up of patients undergoing cervical decompression and fusion of the cervical spine. The recommendations of Dr. Blankenship may closely coincide with the regiment commonly used in this area for the treatment or follow up of injuries with resulting surgery of the type involved in this case.

In reviewing the medical reports, I would further note that the claimant has apparently previously undergone an unsuccessful epidural steroid injection. However, this was prior to the corrective surgery by Dr. Cathey and would not necessarily be a

reliable predictor of the outcome of the currently recommended procedure. Clearly, the procedure recommended by Dr. Blankenship is commonly recognized by the general medical community as being appropriate for injuries such as that sustained by the claimant and for complaints such as those as the claimant is currently making. The same holds true for the recommended aggressive physical therapy and work hardening programs. Thus, I find that this recommended medical care would have a reasonable expectation of accomplishing the purpose or goal for which it is intended.

FINDINGS OF FACT & CONCLUSIONS OF LAW

1. The Arkansas Workers' Compensation Commission has jurisdiction of this claim.
2. On April 21, 2004, the relationship of employee-self insured employer-third party administrator existed between the parties.
3. On April 21, 2004, the claimant earned wages sufficient to entitle him to weekly compensation rates of \$453.00 for total disability and \$340. 00 for permanent partial disability.
4. On April 21, 2004, the claimant sustained a compensable injury to his neck or cervical spine.
5. There is no dispute, at the present, over the payment of accrued medical expenses and all such expenses incurred to date have apparently been paid.
6. The medical services recommended by Dr. James Blankenship, in his report of July 20, 2005, represented

reasonably necessary medical services for the claimant's compensable injury. The evidence presented establishes that these medical services were necessitated by or connected with the claimant's compensable injury and the subsequent surgical intervention it required. Further, the evidence presented shows that these recommended services have a reasonable expectation of accomplishing the purpose or goal for which they are intended. Pursuant to Ark. Code Ann. §11-9-508, the respondents are liable for the expense of these services subject to the medical fee schedule established by this Commission.

7. The respondents have controverted the claimant's entitlement to the additional medical services recommended by Dr. Blankenship.
8. As no controverted benefits have herein been awarded to the claimant, no controverted attorney's fee can be awarded to his attorney.

ORDER

The respondents shall be liable for the expense of the medical services recommended by Dr. James Blankenship, in his report of July 20, 2005. This liability is subject to the medical fee schedule established by this Commission.

This award shall bear the maximum legal rate of interest until paid.

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IT IS SO ORDERED.

MICHAEL L. ELLIG
Administrative Law Judge