

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. D909612

GRADY FREEMAN

CLAIMANT

KAY CHAIR

RESPONDENT

LIBERTY MUTUAL INSURANCE COMPANY,  
INSURANCE CARRIER/TPA

RESPONDENT

OPINION FILED SEPTEMBER 28, 2006

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

Claimant represented by EDDIE WALKER, JR., Attorney, Fort Smith, Arkansas.

Respondents represented by JEFFREY RICKARD, Attorney, Fort Smith, Arkansas.

STATEMENT OF THE CASE

A hearing was held in the above styled claim on July 11, 2006, in Fort Smith, Arkansas. A pre-hearing order was entered in this case on April 12, 2006. This pre-hearing order set out the stipulations offered by the parties and outlined the issues to be litigated and resolved at the present time. A copy of this pre-hearing order was made Commission's Exhibit No. 1 to the hearing.

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

1. The Opinion of April 24, 1995 has become final and is res judicata of all issues raised and addressed therein.
2. All benefits have been paid through April 22, 2003.

By agreement of the parties, the issues to be litigated and resolved at the present time were limited to the following:

1. The claimant's entitlement to unpaid medical expenses after April 22, 2003.

2. Attorney's fee.

In regard to these issues, the claimant contends:

"(a) That he continues to be in need of and receive treatment from Dr. Gary Edwards regarding his compensable injury and that Dr. Edwards is his authorized treating physician. However, the respondents have failed and refused to make appropriate payments regarding Dr. Edwards' bills.

(b) The claimant contends that although requests for mileage reimbursement have been submitted on several occasions the respondents continue to refuse to reimburse him.

(c) The claimant contends that his attorney is entitled to an attorney's fee on all benefits not previously paid."

In regard to these issues, the respondents contend:

"The respondents will contend that they have provided to the claimant on the claimant's behalf all reasonable and necessary medical benefits and all indemnity benefits to which the claimant is entitled under the Arkansas Workers' Compensation Act."

DISCUSSION

\_\_\_\_\_The central issue in this claim concerns the claimant's entitlement to the payment of various unpaid medical expenses. The burden rests upon the claimant to prove that these expenses were incurred for "reasonably necessary medical services."

Medical services are considered "reasonably necessary" when they are connected with the compensable injury and have a reasonable expectation of accomplishing the purpose or goal for which they are rendered, at the time the services were rendered. "Reasonably necessary" medical services are not limited to those services directed toward the actual repair or resolution of the

physical damage caused by the compensable injury. Medical services may also be "reasonably necessary" if they are appropriate to adequately diagnose the nature and extent of the compensable injury, to maintain the level of healing achieved, or even to merely reduce or maintain the magnitude of chronic symptoms resulting from the compensable injury. So long as the treatment is necessitated by or connected with the compensable injury, it is immaterial that this treatment may also provide the claimant with relief or benefit from symptoms caused by concurrent non compensable injuries or conditions.

It must be further noted that the claimant's compensable injury occurred on May 30, 1989. Thus, any substantive rights he has to medical benefits would be controlled by the act and case law in effect at that time.

The claimant contends that the respondents have refused to pay expenses incurred for medical services rendered him by and at the direction of Dr. Gary Edwards, including travel expenses incurred in order to obtain these services. The respondents contend that they have paid all reasonably necessary medical benefits. However, from the evidence presented, it is difficult to determine exactly which medical expenses have or have not been paid. Obviously, from the claimant's exhibits, it would appear that the respondents have not paid the claimant any travel expenses associated with his receipt of medical treatment, the expense of his membership at the Marvin Altman Fitness Center, and the expense of his Tylenol P.M. since August of 2004. The claimant testified that the respondents

had previously paid these expenses, but had not paid these expenses since November of 2003. Neither party has expressly indicated that the respondents have refused to pay the expenses incurred for continued periodic treatment given the claimant by Dr. Edwards. However, I will assume that some or all of these expenses have not been paid after April 22, 2003.

All of the evidence presented, including the medical evidence, establishes that the claimant has and will continue to experience chronic symptoms and difficulties, from the effects of his compensable injury of May 30, 1989, and required surgery. In his report of April 20, 2006, Dr. Gary Edwards (the claimant's current treating physician) states:

"He (the claimant) has a significant history of chronic back pain that stems from a herniated disc and he has had surgery for that in the past. He has spinal stenosis and some degeneration."

In a report, dated April 22, 2003, Dr. Bradley Short (a physiatrist who evaluated the claimant at the respondents' request) states:

"IMPRESSION:

1. Lumbar spine injury.
2. Status post-surgery for this.
3. Lumbar spinal stenosis.
4. Some component of failed back surgery syndrome.
5. Chronic pain.

. . .

"I do believe he suffers from some component of scar tissue formation, possibly some component of arachnoiditis."

All of the evidence presented, including the medical evidence, proves that the claimant has and will continue to require preventive medical services to maintain the level of healing he

has achieved from his compensable injury and to maintain the level of his chronic symptoms, resulting from this injury. He will also continue to require more aggressive medical treatment to maintain the level of his chronic symptoms in the event of periodic flare up or exacerbations.

From this report of April 20, 2006, it is Dr. Edwards' emphatic opinion that medical services in the form of periodic or "as needed" osteopathic manipulation, galvanic stimulation, and ultrasound treatment is medically appropriate to maintain the level of healing and function obtained by the claimant and to maintain or stabilize the level of his chronic symptoms from the compensable injury and its reasonable and natural sequelae (such as the damaging effects of the corrective surgery and the arthritic changes the injury and surgery has caused or accelerated). It is his further expert medical opinion that non weight bearing exercises, in the form of almost daily swimming, is also reasonably necessary to maintain the level of healing and function achieved, and to maintain or stabilize the claimant's chronic symptoms from his compensable injury and its natural sequelae.

It would appear from the April 22, 2003 report of Dr. Short, that (at that time), it was his opinion that some what different conservative treatment modalities might be appropriate. It is obvious that Dr. Short was impressed and surprised by the fact that the claimant was able to maintain the level of pain and function exhibited with only such small amounts of narcotic pain medication. In fact, he expressly recommended that the dosage of one of the

claimant's medications be increased. Dr. Short makes no mention of the treatment modalities in the form of osteopathic manipulation, galvanic stimulation, ultrasound, and non weight bearing exercise (swimming). Thus, it would appear that Dr. Short was either unaware that the claimant was receiving these particular treatment modalities or these conservative treatment modalities were not being provided to the claimant at that time.

However, it is clear that either the institution or continued use of these conservative treatment modalities has even further reduced the claimant's dependence on narcotic pain medication below the unusually low levels noted by Dr. Short. By the hearing, the claimant appears to only require non narcotic pain medication obtained "over the counter" to manage his chronic symptoms.

In the present case, it is the expert medical opinion of the claimant's treating physician that medical services in the form of periodic osteopathic manipulation, galvanic stimulation, ultrasound, non weight bearing exercise, and non narcotic over the counter pain medication is medically appropriate and has a reasonable expectation of accomplishing the purpose of maintaining the claimant's level of function and stabilizing his chronic symptoms. Although Dr. Edwards is a family practitioner, he is a licensed physician and has an excellent reputation in this community. He has also been the claimant's treating physician for the compensable injury for an extended period of time. His opinion is certainly entitled to considerable weight and credit. It must also be noted that there is no expert medical opinion offered that

expressly refutes this opinion of Dr. Edwards. Further, the claimant's testimony clearly shows that the conservative treatment modalities recommended and provided by Dr. Edwards accomplished their intended purpose. Under similar facts, the Arkansas Court of Appeals recognized that long term treatment of chronic symptoms resulting from a compensable injury, by the use of massive doses of narcotic pain medication, represents reasonably necessary medical services within the meaning of the Act, Hamilton v. Gregory Trucking, 90 Ark. App. 248, \_\_\_\_\_ S.W. 3<sup>rd</sup> \_\_\_\_\_ (Ark. App. 3-16-2005). It is obvious that the best interests of all parties concerned would be even better served by the management of the present claimant's chronic pain symptoms without resorting to the use of massive doses of addictive narcotic medication.

After consideration of all the evidence presented, it is my opinion that the claimant has proven by the greater weight of the credible evidence that the medical services provided him by and at the direction of Dr. Gary Edwards, in the form of periodic evaluations, osteopathic manipulation, galvanic stimulation, ultrasound, non weight bearing exercise (swimming), and non narcotic over the counter pain medication represents "reasonably necessary medical services" for his compensable back injury of May 30, 1989 and its natural sequelae. Therefore, under the provisions of 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. The respondents are also be liable for the reasonable expense incurred by the claimant in obtaining

these reasonably necessary medical services in the manner and amount provided by the Commission's Rules.

However, I would note that Dr. Edwards is also the claimant's regular "family doctor" and has provided the claimant with medical services for non compensable conditions totally unrelated to the claimant's compensable back injury. The respondents would in no way be liable for the expense of these services.

FINDINGS OF FACT & CONCLUSIONS OF LAW

1. The Arkansas Workers' Compensation Commission has jurisdiction of this claim.
2. On May 30, 1989, the relationship of employee-employer-carrier existed between the parties.
3. On May 30, 1989, the claimant sustained a compensable injury to his lumbar spine, in the form of a herniated disc. This injury subsequently resulted in corrective surgery.
4. There is no dispute, at the present time, over the claimant's entitlement to medical services at the respondents' expense through April 22, 2003.
5. There is no dispute, at the present time, over the claimant's entitlement to disability benefits (either temporary or permanent).
6. The medical services provided the claimant by and at the direction of Dr. Gary S. Edwards, on and after April 22, 2003, in the form of periodic evaluations, osteopathic manipulation, galvanic stimulation, ultrasound treatment,

non weight bearing exercises, and non narcotic over the counter pain medication (Tylenol P.M.) represent reasonably necessary medical services for the claimant's compensable injury of May 30, 1989 and its resulting natural sequelae. Pursuant to Ark. Code Ann. §11-9-508, the respondents are liable for this expense, subject to the medical fee schedule established by this Commission.

7. The respondents have controverted the claimant's entitlement to any medical expenses unpaid after April 22, 2003.
8. A reasonable fee for the claimant's attorney is the maximum statutory attorney's fee on the controverted medical expenses herein awarded (the claimant's compensable injury occurred prior to the amendment of Ark. Code Ann. §11-9-715 by Act 1281 of 2001).

#### ORDER

The respondents shall be liable for the expense of reasonably necessary medical services provided to the claimant by and at the direction of Dr. Gary Edwards, in the form of periodic evaluations, osteopathic manipulation, galvanic stimulation, ultrasound, non weight bearing exercise (swimming), and non narcotic over the counter pain medication (Tylenol P.M.). Such liability shall be subject to the medical fee schedule established by this Commission.

The respondents shall pay to the claimant's attorney the maximum statutory attorney's fee on the additional controverted medical expenses herein awarded. One-half of this attorney's fee

shall be in addition to such medical benefits. The claimant's attorney is hereby authorized to receive from any benefits which may hereinafter become due and payable to the claimant the remaining one-half of this attorney's fee.

All benefits herein awarded, which have heretofore accrued, are payable in a lump sum without discount.

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

IT IS SO ORDERED.

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MICHAEL L. ELLIG  
Administrative Law Judge