

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F411824

PATRICIA RUTH	CLAIMANT
SETREK, INC.	RESPONDENT
GALLAGHER BASSETT SERVICES, INC. INSURANCE CARRIER	RESPONDENT

OPINION FILED JULY 19, 2006

Hearing before ADMINISTRATIVE LAW JUDGE ELIZABETH DANIELSON in Springdale, Washington County, Arkansas.

Claimant represented by AARON MARTIN, Attorney, Fayetteville, Arkansas.

Respondents represented by MICHAEL MAYTON, Attorney, Little Rock, Arkansas.

STATEMENT OF THE CASE

A hearing was held on May 9, 2006, in Springdale, Arkansas.

A pre-hearing conference was held in this claim, and as a result a pre-hearing order was entered in the claim on March 9, 2006. This pre-hearing order set forth the stipulations offered by the parties, the issues to litigate and the contentions thereto.

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

1. The Arkansas workers' Compensation Commission has jurisdiction of this claim.

2. On all pertinent dates, the relationship of employee-employer-carrier existed between the parties.

3. The claimant sustained a compensable injury to her low back on October 17, 2004.

4. The claimant is entitled to a weekly compensation rate of \$80.00.

5. Medical expenses have been paid to October 2005.

6. The respondents have accepted an impairment rating of 10 percent to the body as a whole.

By agreement of the parties the issues to litigate are limited to the following:

1. Additional medical.

In regard to the foregoing issues the claimant contends that she is entitled to additional medical treatment for her compensable lower back injury. The claimant suffered a compensable lower back injury on August 7, 2004. She underwent surgery with Dr. Kelly R. Danks in January 2005. However, the claimant suffered a compensable recurrence sometime in October of 2005. Dr. Danks issued a report dated October 25, 2005, indicating that the claimant's current problems are related to her previous L4-L5 injury. Therefore, the claimant will contend that she suffered a compensable recurrence, and that her need for additional medical treatment should be paid by the respondent. Also, the claimant will contend that if she did in fact suffer a new injury, or an aggravation on October 2005, that it was still a compensable injury or aggravation. Then, the claimant underwent a partial diskectomy on January 7, 2005. She underwent physical therapy, and was instructed to continue with home exercises. The claimant's current symptoms occurred while performing these recommended home exercises. Therefore, if your Honor deems that the claimant did not sustain a compensable recurrence, the claimant will argue in the alternative that the aggravation or new injury is still

compensable. Currently, the only issues in dispute, is additional medical treatment. However, the claimant contends that she would be entitled to a controverted attorney's fee, for all future indemnity benefits.

In regard to the foregoing issues the respondents contend that all benefits to which the claimant is entitled have been paid or are being paid at the present time. All related medical expenses to which the claimant is entitled have been paid and have not been controverted. All temporary disability benefits to which the claimant is entitled have been paid and have not been controverted. The ten percent (10%) anatomical impairment rating has been accepted and is being paid in biweekly benefits. The respondents are not responsible for any additional medical treatment. On October 3, 2005, the claimant called Sheila Hall, the claims representative assigned to this file, and advised her she had been exercising at home the week before and something popped in her back. It is the position of the respondents that this injury while the claimant was exercising is a new injury for which the respondents are not responsible and was an independent intervening event which terminates the respondents' responsibility for payment of additional medical benefits. The claimant sustained an aggravation or new injury in late September or early October 2005 for which the respondents are not responsible.

The documentary evidence submitted in this matter consists of the Commission's pre-hearing order marked Commission's Exhibit No. 1. The claimant submitted documentary evidence marked Claimant's

Exhibit No. 1. The respondents submitted documentary evidence marked Respondents' Exhibit No. 1. All these exhibits were admitted without objection.

#### DISCUSSION

The claimant testified and the parties have stipulated that she sustained a compensable injury to her low back on October 17, 2004, for which she was subsequently operated on by Dr. Kelly Danks. The claimant testified that this operation alleviated some of the pain she had in her right side and down her right leg and foot. The claimant testified that following her surgery she did follow up visits with Dr. Danks and also underwent physical therapy. The claimant testified that after she was released from physical therapy, she was given a chart demonstrating how she was to do home exercises.

The claimant testified that on September 17, 2005, when she woke up she was having a little bit of lower back pain so she did one of the exercises that had been recommended for her to alleviate the pain. The claimant testified that the exercise helped relax and also stretch the muscles so she was able to get up and walk around without too much pain. The claimant testified that after she had her shower and a cup of coffee, the lower part of her back started to ache a little bit so she decided to do some more of her exercises because it was her understanding that these would help strengthen the lower part of her back and alleviate some of the pain. The claimant testified that she got down on the floor and proceeded to do one of the exercises as instructed. The claimant

testified that she did the exercises for her right side and then when she began doing the exercises for the left. After she had done one of the repetitions, she began the second movement, she felt and heard something pop, felt pain in her low back and pain shot down her left leg all the way to her ankle. The claimant testified that she tried to contact the carrier to report this incident but never could get through. The claimant testified that her pain was so intense that she called Dr. Danks and an appointment was set for her to see him. The claimant testified that she was seen by Dr. Danks on October 14, 2005, and he had her undergo an MRI as well as injections to help alleviate the pain.

The claimant testified that she eventually was able to get in touch with the workers' compensation carrier and told her what had happened and that she had seen Dr. Danks. The claimant reported that the carrier reported that they would not pay for this medical treatment. The claimant testified that since that time her pain is not as bad because she has learned to live with it. The claimant noted that some mornings when she wakes up and she is hurting extremely bad, she has to lie in bed for fifteen or twenty minutes before she can get up and walk.

On cross examination, the claimant testified that after she was released by Dr. Danks she began working for Superior Care doing the same type work she had done for the respondent. The claimant testified that she also found work with a private individual doing home care. The claimant agreed that after she had her home

exercise event she was also seen by her primary doctor, Dr. Wilson. The claimant further agreed that following her October 2004 compensable injury she had pain which radiated down her right leg but that following her home exercise event in September 2005 the main problem is the pain radiating down her left leg. The claimant testified that she got a lot of relief from the surgery which Dr. Danks performed, noting that he released her from his care on May 6, 2005. The claimant testified that she still was stiff and sore but that her pain was much less. The claimant agreed that she did not return to see Dr. Danks from the date he released her until after her home exercise event. The claimant testified that the work which she did with Superior Care involved her working five days a week, two hours a day, from 11:30 in the morning to 1:30 in the afternoon. The claimant testified that shortly after she began working for Superior Care, she also began working for a Mr. Wolfe who had Alzheimers and needed help. The claimant testified that she worked for Mr. Wolfe from 4:30 p.m. til 7:30 each day or from 5:00 in the afternoon until 8:00 five days a week. The claimant testified that she also worked every other weekend for Mr. Wolfe. The claimant testified that on the weekends when she worked for Mr. Wolfe she would get there about 8:00 in the morning and work until about 10:00 then take a thirty to forty-five minute break, come back and fix his lunch, leave around 1:00 p.m., come back in about two hours to fix him a snack and then leave and come back about 5:00 to fix his dinner, clean the dishes and get him ready for bed. The claimant testified that this schedule with Mr. Wolfe continued

until he reached the third stage of Alzheimers which means he became violent and she could no longer work with him. The claimant testified that she worked for Mr. Wolfe up until the middle of April 2006. The claimant testified that she continued with her two different jobs after her October 2005 exercise event because her work required no physical exertion. The claimant testified that currently she is working with a little 92-year-old woman who she goes to her home, washes her dishes and sits and visits with her for a couple of hours. The claimant testified that the exercise she was doing when she felt a pop and pain in her back in September 2005, had her laying on her back on the floor and she would lift one of her knees slowly up to her chest and hold it for twenty seconds. The claimant testified that when she did the second knee lift on the left side is when she experienced her problem. The claimant testified that she would do these exercises slow and controlled. The claimant also testified that from the time she was released from Dr. Danks until September 2005 she did not have any flair ups with her back although she might experience a little back pain when she would wake up in the morning. The claimant testified that besides doing the recommended exercise, she was also doing walking as recommended by her doctor and had gotten up to about a mile a day. The claimant agreed that after she was seen by Dr. Danks in October 2005, she underwent an MRI and as a result Dr. Danks has talked with her about a back fusion. The claimant testified that she really did not like the idea of a fusion and no surgery has been scheduled to date. The claimant testified that

she is not under any ongoing treatment for her back at the time because she has no way to pay for it. The claimant agreed that the only work that she has done through Superior Care or her private work has involved making the beds, light house work, sweeping, light cooking, helping Mr. Wolfe in and out of the shower, getting him dressed for bed and things like that.

On redirect examination, the claimant was asked if since her last day of work for the respondent up through her incident of September 2005 could she recall any accident, fall or any other event that she would associate with her current back pain and the claimant responded, "None whatsoever."

The medical records set forth that on November 15, 2004, the claimant underwent an MRI of her lumbar spine which showed at L4-5 disc space narrowing and desiccation, a focal disc protrusion on the right, which impinges upon the theca, and likely upon the right L5 nerve just as it becomes intrathecal. It is further noted that there is mild degenerative changes in the intervertebral disc of the lower lumbar spine but without apparent neural impingement. The claimant underwent an L4-5 discectomy performed by Dr. Kelly Danks on January 7, 2005. The claimant began physical therapy on February 9, 2005, with a short term goal as to understand and demonstrate home exercise program and understand the role of physical therapy and rehabilitation. Her long term goals were to decrease her pain and increase her range of motion, increase muscle flexibility, increase her MMT scores to 5/5 and to return to functional activities without symptoms. On June 28, 2005, there is

a note from the Performance Physical Therapy Group noting that the claimant started treatment on February 9, 2005, and was in compliance nine of nine sessions. The claimant was discharged with a home exercise program and to follow up if needed with Dr. Danks. On May 6, 2005, Dr. Danks writes that the claimant has occasional back pain but is otherwise doing well with no leg pain. Dr. Danks writes that the claimant can be released to return to work with no restrictions, noting that she does not have any business lifting real heavy objects and that she has reached maximum medical improvement with a 10 percent whole body impairment rating. Dr. Danks writes on October 5, 2005, that he has seen the claimant noting that she had a herniated disc at L4-5 on the right and did well from this from her surgery. Dr. Danks writes that for the last couple of months the claimant had some back pain and in the last two weeks she has had a considerable amount of left leg pain noting that her previous pain was in the right leg. After examination, Dr. Danks writes that the claimant is having opposite sciatica probably secondary to L4-5 disc. Dr. Danks gave the claimant a shot of depo-Medrol and prescribed Hydrocodone for discomfort. On October 11, 2005, the claimant underwent an MRI which showed a previously operated L4-5 disc on the right and a large extra dural defect which only partially enhances. Dr. David Brown, who read the MRI, writes that this appears to be a recurrence of a large disc protrusion slightly more prominent to the left of midline setting forth that part of this disc material is probably free fragment. Dr. Danks writes on October 18, 2005,

that the claimant has a very large left recurrent herniated disc at L4-5 and she should consider re-operation, noting that she would require a diskectomy and a fusion. On October 25, 2005, Dr. Danks writes to whom it may concern that it is his opinion that the claimant's current problems are related to her previous injury at L4-5, noting that she underwent a new MRI on October 11, 2005, which revealed recurrent disc extrusion at the same level as her previous diskectomy only slightly more prominent to the left of the midline. On March 13, 2006, Dr. Danks writes that the claimant suffered a herniated nucleus pulposus from an on the job injury and was seen in December 2004. The doctor writes that she had physical therapy for treatment which would include home exercises that she was to pursue at home.

After consideration of all the evidence and testimony presented in this matter as well as consideration of the letter briefs submitted by both parties, I find that the claimant has proven by a preponderance of the evidence that she is entitled to additional medical treatment for her compensable injury albeit this time to the left side of her low back and down her left leg. The claimant's credible testimony that she was following the recommendations of her physical therapist as well as her physician when she again experienced low back pain which radiated down her left leg. The record is clear that her physical therapist and her treating physician recommended that she continue with home exercises to strengthen and stretch the muscles in her back following her compensable injury. The claimant has testified that

subsequent to her original back surgery, she off and on had soreness in her low back and had continued with her home exercise program in an effort to alleviate her discomfort. The medical records set forth that the claimant was instructed to do home exercises. Dr. Danks wrote on October 25, 2005, that it is his opinion that the claimant's current problems are related to her previous injury at L4-5 as noted by her new MRI of October 11, 2005. Therefore, the claimant's current problems are a result of her original compensable injury and the respondents should be responsible for the medical treatment therefore. See McCray v. Conway Human Development Center, Claim #F002368, AWCC (2001).

#### FINDINGS & CONCLUSIONS

1. The Arkansas workers' Compensation Commission has jurisdiction of this claim.
2. On all pertinent dates, the relationship of employee-employer-carrier existed between the parties.
3. The claimant sustained a compensable injury to her low back on October 17, 2004.
4. The claimant is entitled to a weekly compensation rate of \$80.00.
5. Medical expenses have been paid to October 2005.
6. The respondents have accepted an impairment rating of 10 percent to the body as a whole.
7. The claimant has proven by a preponderance of the evidence that she is entitled to additional medical treatment for her compensable low back injury. See discussion above.

ORDER

The claimant has proven by a preponderance of the evidence that she is entitled to additional medical treatment for her compensable low back injury.

The respondents should pay for all reasonable and necessary medical treatment for this claimant's compensable injury.

IT IS SO ORDERED.

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ELIZABETH DANIELSON  
ADMINISTRATIVE LAW JUDGE