

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

WCC NO. F313531

DOUG L. BELCHER, EMPLOYEE **CLAIMANT**

**CITY OF SHERWOOD,
EMPLOYER** **RESPONDENT**

**ARKANSAS MUNICIPAL LEAGUE,
INSURANCE CARRIER/TPA** **RESPONDENT**

OPINION FILED OCTOBER 11, 2007

Hearing conducted before Administrative Law Judge S. Dale Douthit in Little Rock, Pulaski County, Arkansas.

Claimant was represented by Mr. Michael W. Boyd, Attorney at Law, Pine Bluff, Arkansas.

The respondents were represented by Mr. J. Chris Bradley, Attorney at Law, North Little Rock, Arkansas.

STATEMENT OF THE CASE

On July 17, 2007, the above-captioned claim came on for a hearing in Little Rock, Arkansas. A prehearing conference was conducted on May 9, 2007, and a Prehearing Order was entered on May 10, 2007. A copy of the May 10, 2007, Prehearing Order was marked as "Commission Exhibit 1," and made a part of the record, subject to any modifications made at the full hearing.

At the full hearing, the parties stipulated to the following:

- 1) The Arkansas Workers' Compensation Commission has jurisdiction of this claim.
- 2) The employee/employer/carrier relationship existed at all relevant times, including December 9, 2003.

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- 3) The claimant's applicable weekly compensation rates are \$440/\$330 for TTD/PPD, respectively.
- 4) The claimant sustained compensable injuries to his back and left leg on December 9, 2003; and as a result suffered a 12% whole body impairment which was accepted and paid by respondents.
- 5) All issues related to permanent impairment are reserved.

The Prehearing Order (Com. Ex. 1) listed four issues to be litigated at the July 17, 2007, full hearing. However, at the full hearing the parties agreed to only litigate the issue of whether claimant is entitled to additional medical treatment in the form of a massage chair recommended by Dr. Thomas Hart. (T. pp. 4-5, lines 6-25 & 1-5).

At the full hearing, claimant contended, in summary, the following:

- 1) That he was injured in the course and scope of his employment.
- 2) That as a result of his injuries, he was required to seek medical services, but has been denied payment for all necessary medical.
- 3) That he has been treated for three years by Dr. Shahim and Dr. Hart.
- 4) That he is entitled to a massage chair now recommended by Dr. Thomas Hart.

Respondents contended at the full hearing, in summary, that they have paid all appropriate benefits related to this claim. Respondents contend they have not controverted any medical benefits, and that a massage chair is not reasonable and

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necessary.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing 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 claimant and to observe his demeanor, the following findings of fact and conclusions of law are hereby made in accordance with A.C.A. § 11-9-704:

- 1) The Arkansas Workers' Compensation Commission has jurisdiction of this claim.
- 2) The parties stipulations are hereby accepted as fact.
- 3) The claimant has proven by a preponderance of the evidence that the Human Touch massage chair model HW569 is reasonably necessary and related to his compensable injury, as such respondents are directed to provide it to the claimant.

DISCUSSION

A. HISTORY

The claimant began working for the Sherwood Police Department in 1987. At the time of his compensable injuries on December 9, 2003, the claimant was a sergeant for the Sherwood Police Department. On December 9, 2003, the claimant sustained compensable injuries to his back and left leg due to a fall he took at the police department. The claimant testified as follows regarding the incident of December 9, 2003:

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A I was walking into the police department to take a report. It was in December. The trustees, we have a brick floor foyer when you come in, had just finished mopping or waxing it. I walked in and slipped, and my leg went one way and the other leg went the other way. I never fell to the ground, I just tore up my back.

Q As a result of that fall, you suffered a back injury. Is that correct?

A Yes, sir.

Q And you received treatment from a couple of different doctors. Is that right?

A Yes, sir.

Q Have you had surgeries to the back?

A Yes, sir.

Q Specifically, is this the low back?

A Yes, sir.

Q How many surgeries did you have?

A I've had three.

(T. pp. 19 & 20, lines 18-25 & 1-10).

Following the claimant's stipulated compensable back injury, the claimant testified he underwent three surgeries to his low back from Dr. Shahim. In addition to treatment from Dr. Shahim for his back, claimant testified he treats with Dr. Thomas Hart for pain management.

Q Okay. Dr. Shahim, whose reports are contained within exhibits

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that have already been offered here, has he been your surgeon?

A Yes, sir.

Q You've also seen Dr. Thomas Hart. Is that correct?

A Yes, sir.

Q And let me back up a little bit with Dr. Shahim. Do you still see Dr. Shahim on at least a semi-annual basis?

A. Yes, sir.

Q And currently you are still treating with Dr. Hart. Is that right?

A Right.

Q And what is it that Dr. Hart offers you in the way of treatment?

A Well, he's done a bunch of different procedures. I can't tell you the names of all the procedures. But then he also does my pain medications and stuff.

(T. pp. 20-21, lines 13-23 & 1-4).

The medical records show Dr. Hart and Dr. Shahim have done numerous procedures, prescribed numerous medications and recommended physical and massage therapy in an attempt to help the claimant with his pain management. According to the claimant, the pain management procedures, medications, and recommendations have not alleviated his back pain to date. In further trying to help manage the claimant's back pain, Dr. Hart in his June 8, 2006, report highly recommended the claimant try the I-Joy massage chair instead of seeing a massage

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therapist. (C. Ex. 1, p. 86). Dr. Hart opined that a massage chair would be beneficial and cost effective. The claimant testified that the I-Joy massage chair sits too low to the ground and was not a viable option for him. Dr. Hart repeated his recommendation for a massage chair in his August 4, 2006, report. (C. Ex. 1, p. 89). Again in his November 27, 2006, report, Dr. Hart stated, "I would highly recommend to a degree of medical certainty and probability not only continuation for his pharmacological management but somebody seriously consider getting him a back massager for his personal use instead of spending thousands of dollars more on useless physical therapy which so far has not done him any bit of good." (C. Ex. 1, p. 97(a)).

Dr. Hart continued his recommendation of a massage chair in his June 29, 2007, report, and went on to specifically state that the I-Joy chair was too low to the ground and was inefficient. (C. Ex. 2, p. 5). Dr. Hart went on to recommend the "Human Touch" model HW569 chair and stated "Hopefully, this will be obtained, as mentioned above as soon as possible." (C. Ex. 2, p. 6). It is the HW569 model massage chair that is at issue. Claimant contends it is reasonably necessary and related; and respondents contend it is not.

B. ADJUDICATION

The claimant's back injury of December 9, 2003, was stipulated as

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compensable. The only question to be adjudicated is whether the model HW569 massage chair now recommended by Dr. Hart is reasonable, necessary, and related to the claimant's compensable injury. An employer shall 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). Reasonably necessary medical services "may include that necessary to accurately diagnose the nature and extent of the compensable injury; to reduce or alleviate symptoms resulting from the compensable injury; to maintain the level of healing achieved; or to prevent further deterioration of the damage produced by the compensable injury." Greer v. Phillips Mitchell Construction, Full Workers' Compensation Commission Opinion filed February 14, 2003 (E906505). The employee has the burden of proving by a preponderance of the evidence that the medical treatment is reasonably necessary. What constitutes reasonably necessary medical treatment under A.C.A. § 11-9-508(a) is a question of fact for the Commission. Geo Specialty Chemical, Inc. v. Clingan, 69 Ark. App. 369, 13 S.W.3d 218 (2000).

The facts in this claim show that the HW569 massage chair is reasonably necessary to reduce or maintain the symptoms resulting from the claimant's stipulated compensable injury. The claimant credibly testified that prior to his compensable injury he maintained an active lifestyle with no back pain like he suffers from now.

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Clearly, Dr. Hart is an authorized treating physician whose primary responsibility is pain management. Dr. Hart stated that within a reasonable degree of medical certainty that back massages were necessary. (C. Ex. 2, p. 5). Often, massage therapy is recommended by pain management specialists. A massage chair is unusual, but Dr. Hart feels ultimately it is cost effective versus a professional massage therapist.

I recognize that the claimant previously received massage therapy through his physical therapy program; however, the claimant testified it was vastly different than the massage he received from a professional masseuse. The claimant likens the massage chair to a professional masseuse in his testimony. The claimant and Dr. Hart make a convincing argument about convenience and cost savings in a massage chair versus professional massage therapy. The claimant testified that he got benefits from a professional masseuse, but that a professional masseuse is not generally available at 2:30 a.m.:

Q Have you tried a professional masseuse?

A Yes, sir. My wife got me one, I think, Valentine's Day.

Q Does that provide a type of care that you feel you needed, a professional masseuse?

A Yeah. Except that you can't go see one at 2:30 in the morning or 3:45 in the morning.

Q So going to that, is it your idea that you would have the chair where you could get out of bed if you were in pain, and then go

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sit in the chair, and then go back to bed?

A Yes, sir.

(T. pp. 46-47, lines 25 & 1-9).

This is not a situation where the claimant went out and bought a \$5,000.00 chair without looking into other reasonable alternatives. Additionally, the respondents have not been deprived of seeking out less expensive but equally effective alternatives. The claimant testified he has tried the cheaper models of various massage devices, but they were not helpful. Dr. Hart has been recommending a massage chair for over a year, and the claimant has gone to great lengths to follow his doctor's orders and attempt to satisfy the respondents.

Medical services are "reasonably necessary" when they are necessitated by or connected with the compensable injury. Clearly, the only reason Dr. Hart has recommended the massage chair is because he is attempting to manage the claimant's pain associated with his stipulated compensable injury. Medical services must also have a reasonable expectation of accomplishing the purpose or goal for which they are intended. As stated above, the record is full of reports from the pain management specialist stating to a degree of medical certainty the massage chair is necessary and would be cost effective. There are no medical reports in evidence that contradict Dr. Hart's recommendations. Dr. Hart is the claimant's authorized treating physician for

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pain management connected solely to the claimant's compensable injury. Nothing in evidence contradicts Dr. Hart's recommendations of a massage chair. Alternatives to the HW569 chair were tried, but failed. Based on the credible evidence before me, I find the Human Touch model HW569 massage chair to be reasonable, necessary and related to the claimant's compensable injury, and as such, the responsibility of the respondents.

AWARD

The claimant has proven by a preponderance of the evidence that the Human Touch massage chair model HW569 is reasonably necessary and related to his compensable injury. Respondents are hereby directed and ordered to provide the chair in accordance with the findings of fact and conclusions of law as set forth herein. Since this is a medical award only claim, attorney fees do not apply.

IT IS SO ORDERED.

S. DALE DOUTHIT
Administrative Law Judge

SDD/pjb