

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F010031

SONDRA CLARK	CLAIMANT
ST. EDWARD MERCY MEDICAL CENTER SELF INSURED	RESPONDENT
SISTERS OF MERCY, TPA	RESPONDENT

OPINION FILED JULY 10, 2007

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

Claimant represented by RONALD MCCANN, Attorney, Fayetteville, Arkansas.

Respondents represented by RANDY MURPHY, Attorney, Little Rock, Arkansas.

STATEMENT OF THE CASE

A hearing was held on May 1, 2007, in Fort Smith, Arkansas. The deposition of Dr. Luke Knox was taken on April 2, 2007, and has been admitted as Joint Exhibit No. 1. The deposition of Dr. Anthony Capocelli was taken on June 10, 2003, and has been admitted as Respondents' Exhibit No. 2. The deposition of Dr. Vincent B. Runnels was taken on May 5, 2003, and has been admitted as Respondents' Exhibit No. 3. A pre-hearing order was entered in this case on November 8, 2006. Prior to the commencement of the hearing, the first issue was expanded to cover the cost of an MRI that was performed at the request of Dr. Knox, on April 13, 2006. Prior to the commencement of the hearing, an additional issue of the respondents' entitlement to have the claimant evaluated by another neurosurgeon for the purpose of getting a second opinion on the currently recommended surgery was added. A copy of the pre-

hearing order with these amendments noted thereon, was made Commission's Exhibit No. 1.

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

1. On May 1, 2000, the relationship of employee-self insured employer-TPA existed between the parties.
2. The appropriate weekly compensation benefits are \$394.00 for total disability and \$296.00 for permanent partial disability.
3. On May 1, 2000, the claimant sustained a compensable injury to her lumbar spine.
4. There is no dispute over the medical expenses incurred prior to April 20, 2006.
5. There is no dispute over temporary total disability benefits accruing prior to April 10, 2006.

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 additional medical services by Dr. Cannon and Dr. Knox after April 20, 2006, and an MRI performed on April 13, 2006.
2. The claimant's entitlement to additional temporary total disability from April 10, 2006 through a date yet to be determined.
3. Appropriate attorney's fee.

4. The respondent's entitlement to have the claimant evaluated by another neurosurgeon for a second opinion on the recommended surgery.

In regard to these issues, the claimant contends:

"The claimant contends that she sustained an injury to her spine while in the course and scope of her employment with the respondent on May 1, 2000. Dr. D. Luke Knox continues to be her primary care physician for that injury. Dr. Knox referred Sondra to Dr. R. David Cannon for evaluation and treatment with her first visit being July 3, 2006. The claimant contends she is entitled to receive compensation for Dr. Cannon's treatment, as well as her continuing treatment with Dr. Knox, including the recommended surgery. She further contends that she is entitled to receive temporary total disability benefits for her healing period."

In regard to these issues, the respondents contend:

"Respondents contend that any benefits other than the plain x-ray and SPECT scan ordered by the Commission are not reasonable and necessary treatment for claimant's compensable injury."

#### DISCUSSION

\_\_\_\_\_After a lengthy hiatus in her medical treatment, the claimant returned to Dr. Luke Knox, on April 10, 2006. This interruption was occasioned by the respondents' appeals of a prior award of medical benefits that was initially made on December 10, 2003. This award was ultimately affirmed by the Court of Appeals on January 4, 2006.

The claimant returned to see Dr. Knox on April 10, 2006. At that time, the claimant continued to voice the same complaints she has made since her initial injury. Dr. Knox also noted on his

physical examination continuing lumbar paraspinal muscle spasms and crepitus. At the direction of Dr. Knox, a third MRI was performed on the claimant's lumbar spine on April 13, 2006. Apparently, at some point in time, plain x-rays were also taken of the claimant's lumbar spine by Dr. Knox. The claimant again saw Dr. Knox for follow up, on April 20, 2006. At the time of this visit, Dr. Knox referred the claimant to Dr. David Cannon for a therapeutic and diagnostic disc space injection of a local anesthetic. Dr. Knox appears to have abandoned his previous recommendation for a SPECT scan of the lumbar spine, which had been awarded by the prior opinion. On August 31, 2006, the disc space injection was performed by Dr. Cannon. Subsequently, on September 6, 2006, Dr. Knox re-evaluated the claimant and recommended an anterior lumbar discectomy and fusion at L4-5. The MRI of April 13, 2006, and the services provided by and at the direction of Dr. Knox, after April 20, 2006, form the basis for the current dispute.

The burden rests upon the claimant to prove that the MRI study of April 13, 2006 and the medical services provided by and at the direction of Dr. Knox, together with the further medical services recommended by Dr. Knox, represent "reasonably necessary medical services" for her compensable injury. In order to represent "reasonably necessary" medical services, the services provided must have a purpose or goal that is connected with the compensable injury. Such services must also have a reasonable expectation of accomplishing their intended purpose or goal, at the time the services are rendered. However, it is not necessary for the

claimant to prove that these services were ultimately successful in accomplishing their intended purpose or goal.

A third MRI had been initially recommended by Dr. Knox, on September 5, 2001. The prior Opinion had found that this MRI was not "reasonably necessary" for the claimant's compensable injury. The basis of this holding was that the claimant had undergone two previous lumbar MRI's, in 2000. These studies had been interpreted as showing essentially the same findings of no significant abnormalities involving the L4-5 and L5-S1 intervertebral discs and no spinal cord or nerve root compression or impingement at these levels. Both of these studies were of sufficient diagnostic quality. It was also noted that except for the claimant's subjective complaints, there was no evidence to reasonably suspect spinal cord or nerve root impingement to justify a third study.

For essentially the same reasons as were given in the prior Opinion, I find that the claimant has failed to prove that the lumbar MRI, which was performed at the direction of Dr. Knox on April 13, 2006, represents a "reasonably necessary" medical service for her compensable lumbar injury. In reaching this decision, I recognize that a considerable period of time had elapsed between the MRI studies in 2000 and the study performed on April 13, 2006. However, this does not change the fact that the possibility that the claimant's employment related injury had produced a compression or impingement of her spinal cord or exiting nerve roots in the L4 through S1 areas of her spine had already been adequately investigated and effectively eliminated by exhaustive diagnostic

testing and numerous clinical examinations. Thus, it comes as no surprise that this third lumbar MRI study shows no significant difference from the two prior studies and was also interpreted as revealing no compression or impingement on the spinal cord or exiting nerve roots in the L4-S1 areas of the claimant's spine.

The next medical services to be addressed is the diagnostic and therapeutic injection or block performed by Dr. Cannon in the area of the L4-5 disc. As indicated by Dr. Knox, the purpose of this injection was not only to alleviate the claimant's subjective complaints, but was also to investigate the possibility that the claimant's complaints were due to a L5 radiculopathy. As previously noted, the evidence presented shows that during the claimant's course of evaluation and treatment in 2000 and 2001, the possibility of an L5 radiculopathy, as the source of her subjective complaints, was thoroughly investigated and eliminated. In fact, a similar disc space injection had been performed by Dr. John Swicegood (at the request of Dr. Capocelli) on November 15, 2000. The first of these injections by Dr. Swicegood had produced essentially the same result as the injection by Dr. Cannon, i.e. a temporary improvement in the claimant's subjective complaints. However, a second injection by Dr. Swicegood appears to have been of no benefit. This result would not have been consistent with an L5 radiculopathy being the source of the claimant's subjective complaints and also establishing this type of treatment would not be of any particular therapeutic benefit.

At the time Dr. Cannon's services were provided, there would have been no reason to believe that this type of service had any reasonable expectation of accomplishing its intended diagnostic and/or therapeutic purposes. As previously noted, exhaustive testing performed on the claimant and repeated clinical examinations had effectively eliminated a radicular cause for the claimant's symptoms. Any significant therapeutic purpose had been eliminated by the prior course of similar treatment by Dr. Swicegood. Therefore, I find that the medical services provided the claimant by Dr. Cannon do not constitute "reasonably necessary medical services" under Ark. Code Ann. §11-9-508.

The final matter to be addressed concerns the additional medical treatment provided and recommended by Dr. Knox. According to his reports and deposition, this would consist of his follow up visit, a fourth MRI study of the claimant's lumbar spine, a preoperative evaluation by a Dr. Dorman, and an anterior lumbar discectomy and fusion at L4-5. The basis for his recommendation of these services is his opinion that the claimant's persistent low back and left leg difficulties are attributable to some type of abnormality involving the L4-5 disc area of the claimant's spine. However, he is not clear as to what form this discal injury or damage takes. Clearly, it is not in the form of a herniation with resulting impingement on either the spinal cord or the exiting nerve roots. As has been repeatedly noted, this possibility has been reasonably eliminated by exhaustive testing. Although there is no objective evidence of an annular tear or a facet irritation,

these types of damages would clearly remain reasonable possibilities. In fact, a discogram had previously been recommended by Dr. Swicegood, in the latter part of 2000, to investigate the possibility of a discal tear. A SPECT scan had also been previously recommended by Dr. Knox, presumably to investigate any irritation or defects involving the vertebral facets, in 2001. Neither of these studies have ever been performed.

As conceded by Dr. Knox, a vertebral fusion is an extensive surgical procedure that is not without risk. It is permanent in nature with possible extensive subsequent complications. I recognize that the claimant has gone a considerable period of time without medical care for her persistent back and leg complaints. Although these persistent complaints are primarily subjective, they are not without some objective support, such as the spinal crepitus and muscle spasms. I also recognize that Dr. Knox may be correct in his opinion that this procedure would alleviate these complaints. However, it is my opinion that further testing and evaluation is appropriate before any decision is made in regard to the recommended surgery.

It is my opinion that the claimant should undergo a thorough evaluation by and at the direction of appropriate medical specialists at the Neurosurgery Department of the University of Arkansas School for Medical Sciences. This is to include all appropriate testing, which is not limited to but may include an SPECT scan, a discogram, and psychological testing. Such evaluation and testing is to be at the respondents' expense,

subject to the medical fee schedule established by this Commission.

The respondents are also required to obtain from the evaluating physician a report setting out his findings concerning the nature of the claimant's lumbar difficulties and the recommended program of treatment. Pursuant to the provisions of the Act, the respondents may have a physician of their choosing participate in the evaluation or review the testing. A decision upon the reasonableness and necessity of the medical services recommended by Dr. Knox and the claimant's entitlement to additional temporary total disability is reserved pending the receipt of the reports setting out the results of this evaluation and after allowing both parties the opportunity to cross examine or present rebuttal evidence in regard thereto.

FINDINGS OF FACT & CONCLUSIONS OF LAW

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

2. On May 1, 2000, the relationship of employee-self insured employer-third party administrator existed between the parties.

3. On May 1, 2000, the claimant earned wages sufficient to entitle her to weekly compensation benefits of \$394.00 and \$296.00 for permanent partial disability.

4. On May 1, 2000, the claimant sustained a compensable injury to her lumbar spine.

5. There is no dispute over the payment of medical expenses that were incurred through April 20, 2006, except for a lumbar MRI performed on April 13, 2006.

6. There is no dispute over temporary total disability benefits accruing prior to April 10, 2006.

7. The claimant has failed to prove by the greater weight of the credible evidence that the lumbar MRI performed on April 13, 2006, represented reasonably necessary medical services for her compensable injury.

8. The claimant has failed to prove by the greater weight of the credible evidence that the medical services provided her by and at the direction of Dr. Cannon represented reasonably necessary medical services for her compensable injury.

9. The issue of whether the medical services provided and recommended to the claimant by Dr. Knox, after April 20, 2006 representing reasonably necessary medical services should be reserved for future determination upon receipt of the additional evaluation, testing, and reports herein ordered.

10. The issue of the claimant's entitlement to additional temporary total disability benefits on and after April 10, 2006, should also be reserved for future determination, upon further development of the record.

11. The respondents have denied the claimant's entitlement to the lumbar MRI that was performed on April 13, 2006, and her entitlement to any additional medical services by or at the direction of Dr. Knox or Dr. Cannon, after April 20, 2006.

12. In order to adequately protect the interest of all parties concerned, this Commission should exercise its statutory authority to direct evaluation and testing of the claimant by a

physician of the Commission's choosing. Pursuant to the Act, the respondents are entitled to have a physician of their choosing participate in this evaluation. The appropriate medical expert to perform this and oversee this additional evaluation and testing is Dr. Thomas Glen Pait, at the University of Arkansas School for Medical Sciences in Little Rock, Arkansas.

ORDER

The claimant is hereby directed to undergo an evaluation and testing by Dr. Thomas Glen Pait, and any appropriate physicians and medical personnel at the University of Arkansas School for Medical Sciences in Little Rock, Arkansas. This is to include a neurosurgical evaluation and appropriate testing, which may include but is not limited to a SPECT scan, a discogram, and a psychological evaluation. The respondents are liable for the expense of this evaluation and testing, subject to the medical fee schedule established by this Commission. The respondents are also directed to obtain from the evaluating physician all appropriate records and reports setting forth his findings and opinion in regard to the etiology of the claimant's continuing lower back and left lower extremity complaints and his recommendation in regard to the appropriate treatment modality, including a discectomy and fusion.

The issues of the claimant's entitlement to the additional medical services recommended by Dr. Knox, after April 20, 2006, should be and hereby is reserved for future determination pending further development of the record.

The issue of the claimant's entitlement to additional temporary total disability benefits from April 10, 2006 through a date yet to be determined is also reserved for future determination, pending further development of the record.

The claimant's claim for the expense of the MRI of April 13, 2006, and the services of Dr. Cannon are denied and dismissed.

IT IS SO ORDERED.

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MICHAEL L. ELLIG  
ADMINISTRATIVE LAW JUDGE