

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F504400

KATHY FOSTER	CLAIMANT
EXPRESS PERSONNEL	RESPONDENT
HALLMARK MANAGEMENT, LLC INSURANCE CARRIER/TPA	RESPONDENT

OPINION FILED MARCH 15, 2007

Hearing before ADMINISTRATIVE LAW JUDGE MICHAEL L. ELLIG in Springdale, Washington County, Arkansas.

Claimant represented by EVELYN BROOKS, Attorney, Fayetteville, Arkansas.

Respondents represented by JARROD PARRISH, Attorney, Little Rock, Arkansas.

STATEMENT OF THE CASE

A hearing was held in the above styled claim on December 18, 2006, in Springdale, Arkansas. A pre-hearing order was entered in the case on November 7, 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. Prior to the commencement of the hearing, the parties agreed on the appropriate weekly compensation rates and further clarified the issue to be litigated at the present time. A copy of the pre-hearing order with these amendments noted thereon was made Commission's Exhibit No. 1 to the hearing.

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

1. On February 2, 2005, the relationship of employee-employer-carrier-TPA existed between the parties.

2. On February 2, 2005, the appropriate weekly compensation benefits are \$213.00 for total disability and \$160.00 for permanent partial disability.
3. On February 2, 2005, the claimant sustained a compensable injury to her left shoulder.

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

1. The claimant's entitlement to additional medical services in the form of a second MRI of her left shoulder and an evaluation and possible treatment by Dr. Morris, as recommended by Dr. Arnold.

In regard to this issue, the claimant contends:

"Claimant was injured on February 2, 2005. Her left shoulder was injured when she was lifting a heavy box."

In regard to this issue, the respondents contend:

"Respondents contend that the claimant had her one-time change of physician to Dr. Christopher Arnold. By report dated 8-31-06, Dr. Arnold has recommended that the claimant continue to receive injections if the one he gave her was of benefit. Respondents have not denied continued treatment with Dr. Arnold. However, he has recommended that she be allowed to return to Dr. Sites. Because the claimant has had her change of physician to Dr. Arnold, respondents contend that Dr. Sites is no longer her treating physician. Further, Dr. Arnold has recommended that the claimant see Dr. Morse from a neurological standpoint. Respondents contend that the referral would not be reasonable and necessary related to the compensable injury."

#### DISCUSSION

\_\_\_\_\_The sole issue presented for resolution at the present time is the claimant's entitlement to additional medical services at the respondents' expense, as recommended by Dr. Arnold. These medical

services consist of a second MRI of the claimant's left shoulder and an evaluation and possible treatment by Dr. Michael Morse. The burden rests upon the claimant to prove her entitlement to these benefits.

In order to be entitled to these benefits, the claimant must show by the greater weight of the evidence that such medical services would represent reasonably necessary medical services, as that term is used by Ark. Code Ann. §11-9-508. In order to constitute "reasonably necessary medical services", the medical services must be necessitated by or connected with the compensable injury and have a reasonable expectation of successfully accomplishing the purpose or goal for which they are intended.

Reasonably necessary medical services are not limited to those medical services intended only to resolve or improve the actual physical damage caused by the compensable injury. This term also extends to medical services which are reasonable or medically appropriate to accurately diagnose the nature and extent of the compensable injury, to medical services intended to maintain or stabilize the level of healing achieved, and to medical services that are intended only to manage or reduce the symptoms and complaints caused by the compensable injury, including chronic symptoms and complaints.

The claimant's compensable injury was initially diagnosed by Dr. Karl Haws (the company physician) as a left shoulder strain. Dr. Haws treated the claimant with conservative modalities, consisting primarily of oral medication and a restriction against

movement or use of the left arm. Following an MRI study, Dr. Haws diagnosed the claimant's difficulties as not only a left shoulder strain, but also tendonitis of the left rotator cuff. Dr. Haws treated these conditions with oral medication, physical therapy, and a restriction against the use or movement of the left arm. Due to the claimant's lack of a satisfactory response to his conservative treatment modalities, Dr. Haws ultimately recommended an orthopaedic evaluation, on March 4, 2005.

The claimant was seen for this evaluation by Dr. Terry Sites, on March 7, 2005. It was Dr. Sites' opinion that the claimant's MRI study showed findings consistent with degenerative joint disease of the acromioclavicular joint and a tendinopathy of the rotator cuff. He gives the diagnosis of left shoulder acromioclavicular joint pain with arthrosis, left shoulder rotator cuff tendonitis/tendinopathy, with possible partial tear and/or additional intra-articular pathology. He also notes that on examination, the claimant exhibited hypersensitivity, which interfered with the performance of his physical examination. Dr. Sites mentions the potential of further medical treatment, either in the form of an operative procedure or, a less invasive, treatment regimen that consisted of injections into the area of the claimant's discomfort. In addition, he recommended further physical therapy and restricted use of her arm. The claimant appears to have improved with Dr. Sites' treatment, but continued to experience some degree of difficulties. In his last report, dated June 23, 2005, Dr. Sites notes that the claimant's left shoulder

difficulties have substantially improved. Dr. Sites also states that he does not believe the claimant will improve any further with conservative treatment modalities and that the only remaining treatment offering any reasonable expectation of further improving or resolving the claimant's difficulties would be in the form of a distal clavicle resection and arthroscopy of the left shoulder. However, he noted that the claimant was not interested in pursuing this procedure at the present time. Thus, he released the claimant to return only on an as needed basis.

The claimant then obtained a change of physicians through this Commission from Dr. Sites to Dr. Christopher Arnold, an orthopaedic surgeon. The claimant was evaluated by Dr. Arnold on August 31, 2006. For some reason, Dr. Arnold was convinced that he was only to examine the claimant and provide a second opinion on the necessity and type of further treatment. Following his evaluation and review of the claimant's previous x-rays and MRI studies, Dr. Arnold concurred in the diagnosis of left shoulder pain secondary to an acromioclavicular arthropathy and rotator cuff tendonitis. He recommended another AC joint injection, identical to those previously provided the claimant by Dr. Sites. In fact, he even went on to provide the claimant with this injection. It was his recommendation that if this injection was of benefit, these injections should be continued. If the injection did not provide significant relief, then further treatment options would need to be considered, including surgery.

Dr. Arnold also recommended that a neurological evaluation, presumably in the form of an EMG-NCV, by Dr. Michael Morse. The clear purpose of this evaluation would be to investigate the possibility of a radicular cause of the claimant's left shoulder and arm symptoms. He also noted that the previous MRI study did not rule out a tear of the claimant's rotator cuff, and due to the significant time lapse from the prior study, he recommended a second MRI of the claimant's shoulder.

Dr. Arnold is a highly competent orthopaedic surgeon with particular expertise in the area of the diagnosis and treatment of shoulder difficulties. His expert medical opinion concerning the reasonableness and necessity of medical tests and services for the claimant's shoulder difficulties is entitled to substantial weight and credit. Further, the neurological evaluation recommended by Dr. Arnold would not only be reasonable, but would be the general and standard practice for patients experiencing difficulties similar to the claimant, who had experienced prior significant cervical trauma and injury.

The respondents argue that since there is no indication of any injury to the claimant's neck or cervical spine on February 2, 2005, the recommended neurological testing could not be related to or necessitated by the claimant's compensable injury on February 2, 2005. However, a reasonable adequate or accurate diagnosis of the nature and extent of a compensable injury often involves a process of elimination. Clearly, if the neurological evaluation and testing reveals that the claimant's shoulder/arm complaints are due

to a cervical radiculopathy or some other condition unrelated to the compensable injury, no further treatment for such an unrelated condition would represent reasonably necessary medical services. I would note that the testing could also reveal that the claimant's shoulder difficulties could have a neurological cause, in the form of a brachial plexus injury that could be caused by the accident on February 2, 2005.

The repeat MRI study, recommended by Dr. Arnold, would also appear to be standard medical practice to investigate the possibility of whether the claimant's left shoulder difficulties were in fact due to a partial tear of the rotator cuff, which had continued to progress. Clearly, such an initial defect may have gone unnoticed on the prior MRI, but would be more likely detectable on a follow up study.

After consideration of the evidence presented, it is my opinion that the greater weight of the credible evidence proves that the neurological evaluation and repeat MRI study that has been recommended by Dr. Christopher Arnold would be necessitated by or connected with the claimant's compensable left shoulder injury of February 2, 2005. It is my further opinion that the greater weight of the medical evidence presented shows that such testing is standard and common medical practice in this area for injuries and complaints of the type and nature exhibited by the claimant. Such testing would have a reasonable expectation of accomplishing its purpose or goal of ascertaining an accurate diagnosis of the nature and extent of the claimant's compensable injury and the cause of

her continuing difficulties. Thus, I find that these recommended medical services represent reasonably necessary medical services, as that term is used in 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.

FINDINGS OF FACT & CONCLUSIONS OF LAW

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

2. On February 2, 2005, the relationship of employee-employer-carrier-third party administrator existed between the parties.

3. On February 2, 2005, the claimant earned wages sufficient to entitle her to weekly compensation benefits of \$213.00 for total disability and \$160.00 for permanent partial disability, when and if such benefits may become appropriate.

4. On February 2, 2005, the claimant sustained a compensable injury to her left shoulder.

5. There appears to be no dispute, at the present time, over the claimant's entitlement to the payment of expenses incurred for medical services that have already been provided or her entitlement to temporary disability benefits.

6. The medical services that have been recommended by Dr. Christopher Arnold, in the form of a neurological evaluation of the claimant's complaints by Dr. Michael Morse and a repeat MRI study of the claimant's left shoulder, represent reasonably necessary medical services, under Ark. Code Ann. §11-9-508. Specifically,

the claimant has proven that such recommended medical services would be necessitated by or connected with her compensable injury and have a reasonable expectation of accomplishing their intended purpose or goal. Under the provisions of Ark. Code Ann. §11-9-508, the expense of such medical services, subject to the medical fee schedule established by this Commission, is the liability of the respondents herein.

7. The respondents have controverted the claimant's entitlement to the recommended medical services.

8. As no benefits have herein been awarded directly to the claimant, no controverted attorney's fee can be awarded to the claimant's attorney.

#### ORDER

The respondents shall be liable for all reasonably necessary medical services required by the claimant for her compensable injury of February 2, 2005. This shall include the medical services recommended by Dr. Christopher Arnold, in the form of a neurological evaluation by Dr. Michael Morse and a repeat MRI study of the claimant's left shoulder. Such liability is subject to the medical fee schedule established by this Commission.

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.

---

MICHAEL L. ELLIG  
ADMINISTRATIVE LAW JUDGE