

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F602968

KRYSTAL GRAY

CLAIMANT

WAL MART STORES, INC.

RESPONDENT

CLAIMS MANAGEMENT, INC.
INSURANCE CARRIER/TPA

RESPONDENT

OPINION FILED MARCH 8, 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 CURTIS NEBBEN, Attorney, Fayetteville, Arkansas.

STATEMENT OF THE CASE

A hearing was held in the above styled claim on December 11, 2006, in Springdale, Arkansas. A pre-hearing order was entered in this case on May 22, 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 announced that they had agreed on the appropriate weekly compensation rates. A copy of this pre-hearing order with this addition 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. The Arkansas workers' Compensation Commission has jurisdiction of this claim.

2. On all relevant dates, including November 30, 2004, the relationship of employee-self insured-TPA existed between the parties.
3. The appropriate weekly compensation rates are \$182.00 for total disability and \$154.00 for permanent partial disability.
4. On or about November 30, 2004, the claimant sustained a compensable injury to her low back.
5. There is no dispute over the payment of medical expenses incurred through December 14, 2004.

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 after December 14, 2004.

In regard to these issues, the claimant contends:

"Claimant was injured on approximately November 16, 2004. Her back was injured. She was in the process of twisting, bending, and squatting in order to scan a heavy item at work."

In regard to these issues, the respondents contend all reasonable and necessary medical expenses have been paid arising out of said claim based on the present medical evidence.

DISCUSSION

_____The sole issue presented for resolution at the present time concerns the claimant's entitlement to additional medical services that were provided after December 14, 2004. In order to be entitled to these medical services the claimant must prove that

these services actually represent “reasonably necessary” medical services, under Ark. Code Ann. §11-9-508.

In order to prove that the medical services in dispute are “reasonably necessary”, the claimant must show that these medical services were necessitated by or connected with her compensable injury. Clearly, the claimant’s admittedly compensable injury of November 30, 2004, involved her lower back. It is also apparent that her subsequent difficulties and complaints, for which she sought the medical services in dispute also involved her back. However, the greater weight of the evidence establishes that the claimant had completely recovered from the effects of her admittedly compensable low back injury by December 14, 2004.

The medical evidence presented shows that the claimant’s admittedly compensable low back injury was in the form of a lumbar strain or sprain. These types of injuries normally totally resolve with appropriate conservative treatment. The recovery time is generally within 30 days.

In the present case, the record shows that the claimant was provided with appropriate conservative treatment modalities for her lumbar strain or sprain. These treatment modalities consisted of oral medication (primarily in the form of analgesics) with accompanying physical therapy and exercises. During this period, the claimant’s physical activities, (primarily in the form of bending, twisting, and lifting) were also restricted. The greater weight of the credible evidence shows that the claimant responded appropriately to this conservative treatment and that her symptoms

had totally resolved by December 14, 2004. In her report of that date, Dr. Rebecca Lewis (the claimant's primary treating physician) noted, on her physical examination, that the claimant's lower back was "totally normal" and that the claimant had "good flexibility and good mobility" of the lower back. This report clearly shows that, at that time, the claimant was entirely asymptomatic and Dr. Lewis considered the claimant's injury to be a "resolved lumbar strain". The claimant was discharged from further medical care with her only instructions to continue her strengthening exercises at home. Dr. Lewis also observed that the claimant should do fine.

The claimant testified that her low back complaints only improved with the treatment provided her by Dr. Lewis and did not totally resolve or go away. However, this testimony would be contradicted by the observations of Dr. Lewis on May 14, 2004. The claimant also offers no explanation for her failure to seek any medical treatment for any complaints involving her lower back until March 16, 2005. There is also no evidence that, during the period of December 14, 2004 through March 16, 2005, the claimant was in any way limited in her physical activities as a result of back complaints. During this period, the claimant continued to perform her regular employment activities without any indication of physical difficulties.

When the claimant next sought medical services, she went to the emergency room at Siloam Springs Memorial Hospital. This occurred on March 16, 2005. It is apparent from the records of this facility that the primary reasons for the claimant's visit

were physical complaints unrelated to her low back. These consisted of a cough, sore throat, poor appetite, and generalized weakness or malaise. The records of this visit indicate that the claimant's mention of back complaints was only in passing. In her testimony, the claimant stated that the reason she went to the hospital emergency room was because she was experiencing "really sharp pains and throbbing down my leg". Curiously, neither the initial visit on March 16, 2005 or a second emergency room visit on March 21, 2005, record any radicular complaints or symptoms involving either of the claimant's legs. Contrary to the claimant's testimony, the emergency room visit of March 21, 2005, noted a history that the claimant's back complaints have occurred "on and off" since December of 2004. The physical examinations performed during these two emergency room visits failed to show any objective findings to substantiate the claimant's back complaints. In fact, except for complaints of pain, even the subjective components of her exams appears normal. As a result, these complaints were given a generalized diagnosis of "low back pain with somatic dysfunction".

At the hearing, the claimant testified that she had requested the respondents' to provide her with medical treatment in March of 2005. She stated that she was not allowed to return to Dr. Lewis. As a result, she sought medical treatment from a chiropractor, on her own. However, the medical records show that the claimant did, in fact, return to Dr. Lewis on March 28, 2005. The claimant was seen again by Dr. Lewis on April 4, 2005. Both of these visits took place prior to any of the chiropractic treatment shown by the

medical record. According to the records introduced, the claimant first consulted a chiropractor on April 14, 2005.

The March 28, 2005 and April 4, 2005 records of Dr. Lewis note that the claimant was complaining of "recurrent" low back pain. However, the physical examinations performed at the time of these two visits (unlike the claimant's initial visits) failed to show any objective evidence to substantiate the claimant's current symptoms and complaints. While "objective findings" are not absolutely necessary to establish the existence of a continuing compensable injury, the absence of such findings is certainly relevant in determining whether compensable injury has resolved or continuous. Essentially all subjective and objective tests were normal. Dr. Lewis diagnosed the claimant's current difficulties with her back as being attributable to the effects of her pregnancy.

The medical record (Claimant's Exhibit No. 1, page 32) contains what appears to be an initial chiropractic intake information sheet. However, the only other record introduced that concerns chiropractic treatment during 2005 is a single page treatment record (Claimant's Exhibit No. 1, page 34). From these reports, it is impossible to ascertain with any accuracy the history given by the claimant, the nature of complaints made by the claimant, the results of any physical examinations or evaluations by the treating chiropractor, or any diagnosis or etiology for the claimant's various complaints. The initial intake record would indicate palpatory muscle spasms from the claimant's lower back

down the entire outside of her right leg with paresthesia or numbness of the left leg. None of these symptoms or complaints were noted by the claimant's prior medical providers. This initial intake does note that the claimant is pregnant with a due date apparently of October 25, 2005. Curiously, the claimant's period of chiropractic treatment appears to have continued from April 15, 2005 through the delivery of her child on or about October 25, 2005.

No further medical or chiropractic treatment was sought by the claimant until February 8, 2006. At that time, the claimant again sought chiropractic services for what would appear to be a myriad of complaints, including her low back. However, the chiropractic records indicate that the claimant was provided with treatment to her cervical and thoracic cervical spine, as well as her lumbar spine. The pain chart completed indicate complaints going from the base of the claimant's neck down the back of both legs. This time the claimant appears to have been treated for cervical, thoracic, and lumbar difficulties with occasional treatment for her wrists and elbow.

The claimant was ultimately seen by Dr. Cyril Raben, an orthopaedic surgeon, as the result of a change of physicians requested and obtained from this Commission. Dr. Raben records that the claimant was complaining of difficulties from the middle of her back down through her lower back and both legs. However, the claimant's physical examination was again noted to be entirely normal, in regard to both objective and subjective findings. Dr.

Raben made no particular specific diagnosis of the etiology or cause of the claimant's complaints.

As I have found that the claimant has failed to prove that any difficulties or complaints she was experiencing with her low back and lower extremities, after December 14, 2004, were causally related to or necessitated by the admittedly compensable injury of November 30, 2004. I must also find that she has failed to prove that these medical services represent "reasonably necessary" medical services within the meaning of Ark. Code Ann. §11-9-508. Therefore, liability for the expense of these medical services cannot be imposed upon the respondents herein.

However, there is one exception to his holding. The respondents are liable for the expense of the initial evaluation of the claimant by Dr. Cyril Raben. This initial evaluation was the result of a change of physicians obtained by the claimant from this Commission, under the authority of Ark. Code Ann. §11-9-514. Pursuant to applicable case law, the expense of the initial evaluation following such a change of physicians conclusively constitutes "reasonably necessary medical services", under Ark. Code Ann. §11-9-508, Wal Mart Stores, Inc. v. Brown, 82 Ark. App. 600, 120 S.W. 3rd 153 (2003).

FINDINGS OF FACT & CONCLUSIONS OF LAW

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

2. On November 30, 2004, the relationship of employee-self insured employer-third party administrator existed between the parties.

3. On November 30, 2004, the claimant earned wages sufficient to entitle her to weekly compensation benefits of \$182.00 for total disability and \$154.00 for permanent partial disability, should such benefits have been appropriate.

4. On November 30, 2004, the claimant sustained a compensable injury to her low back, in the form of a lumbar strain/sprain.

5. There is no dispute over the payment of medical expenses incurred for medical services provided to the claimant through December 14, 2004.

6. With the exception of the evaluation by Dr. Cyril Raben, on or about September 26, 2006, the claimant has failed to prove by the greater weight of the credible evidence that any medical services provided her for her various back and leg complaints, after December 14, 2004, represent "reasonably necessary medical services" for her admittedly compensable back injury of November 30, 2004. Specifically, she has failed to prove by the greater weight of the credible evidence that such medical services were necessitated by or connected with her admittedly compensable low back injury. The medical services provided to the claimant by Dr. Cyril Raben, at the time of his initial evaluation of the claimant under the authority of a change of physicians granted by this Commission, would constitute "reasonably necessary medical services" for the claimant's admittedly compensable lumbar injury

under Ark. Code Ann. §11-9-508, Wal Mart Stores, Inc. v. Brown, 82 Ark. App. 600, 120 S.W. 3rd 153 (2003).

7. The respondents have controverted the claimant's entitlement to any additional medical services for low back complaints, after December 14, 2004.

ORDER

Based upon my foregoing findings and conclusions, I have no alternative but to deny and dismiss the claimant's request for additional medical services, with the exception of the medical services rendered her by Dr. Cyril Raben, during his initial evaluation on September 26, 2006.

The respondents shall be liable for the expenses incurred by the claimant as a result of the initial evaluation by Dr. Raben on September 26, 2006. Such liability is subject to the medical fee schedule established by this Commission.

All benefits herein awarded have heretofore accrued and 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