

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F512871

ROY HUNT

CLAIMANT

HORTICARE CO., INC.

RESPONDENT EMPLOYER

BRIDGEFIELD CASUALTY INSURANCE CO.

RESPONDENT CARRIER

ORDER AND OPINION FILED MARCH 5, 2007

Hearing before Administrative Law JUDGE LINDA K. MARSHALL.

Claimant represented by the HONORABLE JAMES W. STANLEY, Attorney at Law, Little Rock, Arkansas.

Respondents represented by the HONORABLE MICHAEL E. RYBURN, Attorney at Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

The above claim came on for a hearing in Little Rock, Arkansas on January 23, 2007. A prehearing conference was held on December 5, 2006, and a prehearing order was filed the same date. A copy of the prehearing order was marked as Commission Exhibit No. 1 and made a part of the record without objection.

At the prehearing conference, the parties agreed that there was an October 13, 2005, compensable injury.

The claimant contends he is entitled to additional care and treatment by Dr. Harold Chakales, a physician selected by the Commission as his authorized change of physician.

Respondents contend that the treatment by Dr. Chakales is not reasonable and necessary and that the tests that he wants to perform have already been performed in

the recent past. Dr. Ron Williams has released the claimant to return to work.

Respondents further contend the appropriate temporary total disability rate is \$200 and the permanent partial disability rate is \$154.

ISSUES TO BE LITIGATED

1. Additional medical benefits by Dr. Harold Chakales.

From a review of 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 witnesses and to observe their demeanor, the following findings of fact and conclusions of law are made in accordance with Ark. Code Ann. §11-9-704:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. There was an October 13, 2005, compensable injury.
2. The claimant has failed to prove by a preponderance of the evidence that additional medical treatment and testing by Dr. Harold Chakales is reasonable and necessary in relation to the compensable October 13, 2005, injury.

DISCUSSION

The claimant, 46 years old, sustained a compensable injury on October 13, 2005, to his lower back.. The claim was accepted and the claimant came under the care of Dr. Ron Williams, a neurosurgeon. Dr. Williams released the claimant to light duty after a period of treatment. The claimant returned to work for the respondent employer for four or five days but was unable to do any meaningful work. The claimant

took three weeks of physical therapy and did home exercises and took medication. The claimant requested a change of physician and his authorized physician was changed from Dr. Ron Williams to Dr. Harold Chakales.

According to the claimant, he has seen Dr. Chakales, beginning in June 2006 up to the time of the hearing, a total of five times and Dr. Chakales has taken x-rays and prescribed Hydrocodone and Skelaxin. The claimant testified he takes the medication six to eight times per day and this helps reduce his pain which he described as a stinging burning in his low back and hip and standing too long causes the muscles to flinch and the leg to get weak.

Under cross examination, the claimant verified that he worked for the respondent employer from May or June 2005 until his injury on October 13, 2005. The claimant verified that he had a prior injury while working for a construction company in May 2003 and sustained a pulled muscle in his back and was off work until May 2005, drawing temporary total disability benefits. The claimant testified that he entered into a joint petition to settle that case for \$2,000. The claimant also sustained a knee injury in October 1997 and returned to work in May 1998, but was taken off work again in June 1998 and was off work until 2001 sometime. That claim was settled for \$12,685 with the medical left open.

The claimant described his October 13, 2005, injury as occurring when he was lifting wet leaves in a tarp. He confirmed that he indicated on his Form N that he injured his low back and his hip. The claimant first saw the doctor on Friday, some four days after the incident. The claimant confirmed that the employer provided light-duty work, which consisted of watering some flowers and plants and sitting on a bench; however,

he complained that he was not comfortable standing and stooping and bending and he returned back to the doctor and asked to be taken off work.

The claimant confirmed that he did not tell Dr. Ron Williams about his previous back injury. The claimant also participated in a Functional Capacity Evaluation that revealed invalid results because he did not perform up to standards. The claimant confirmed that Dr. Ron Williams ordered a MRI, a myelogram and an EMG/NCV study, all in November and December 2005. The claimant testified that Dr. Chakales took x-rays of his shoulder and back. Dr. Chakales' records indicate he wants to run a CAT scan and a discogram which respondents have denied.

The claimant contends additional medical treatment by Dr. Chakales is reasonable and necessary and related to his compensable injury. Employers must promptly provide medical services which are reasonably necessary for treatment of compensable injuries. Ark. Code Ann. §11-9-508(a)(Repl. 2005). However, injured employees have the burden of proving by a preponderance of the evidence that medical treatment is reasonable and necessary. *Wal-Mart Stores, Inc. v. Brown*, 82 Ark. App. 600, 120 S.W.3d 153 (2003). In assessing whether a given medical procedure is reasonably necessary for treatment of the compensable injury, we analyze both the proposed procedure and the condition it is sought to remedy. *Deborah Jones v. Seba, Inc.*, Full Workers' Compensation Commission Opinion filed December 13, 1989 (Claim No. D511255). Also, respondents are only responsible for medical services which are causally related to the compensable injury.

In the present case, the claimant has failed to prove by a preponderance of the evidence that additional medical treatment is reasonable and necessary and related to

his compensable October 13, 2005, injury. The claimant was diagnosed with a lumbosacral strain and was provided conservative care with medication, physical therapy and a steroid injection. The claimant was provided diagnostic testing, to include a MRI, myelogram with a CT contrast and EMG and nerve conduction studies. Dr. Williams' December 14, 2005, report reveals that the EMG and nerve conduction studies showed some chronic radiculopathy at L2-4 with no acute changes and the myelogram does not show a true ruptured disc. There was some mild narrowing at L3-4, L4-5 and L5-S1 but no well defined nerve root compromise.

The claimant was scheduled for a Functional Capacity Evaluation. This evaluation concluded that the claimant performed with unreliable results and inappropriate pain behaviors; however, he demonstrated the ability to work in a light-work category for an 8-hour day. The claimant testified at the hearing that Dr. Chakales has not provided any actual treatment for him; however, Dr. Chakales has recommended some additional testing. I am unable to find that the testing recommended by Dr. Chakales is reasonable and necessary in relation to the claimant's lumbar strain injury. The claimant was afforded competent and conservative care and treatment by Dr. Ron Williams who ordered appropriate testing to diagnose any serious results from the claimant's October 13, 2005, work injury. Dr. Williams has allowed the claimant to return to work in a light-duty capacity with follow-up as needed. I am unable to give Dr. Harold Chakales' recommendations any considerable weight based on his reports in evidence.

ORDER

The claimant has failed to prove by a preponderance of the evidence that

additional medical treatment and testing by Dr. Harold Chakales is reasonable and necessary in relation to the compensable October 13, 2005, compensable injury. The claim for benefits is respectfully denied and dismissed.

IT IS SO ORDERED.

**LINDA K. MARSHALL
ADMINISTRATIVE LAW JUDGE**