

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F407936

DEBRA A. HYCHE, EMPLOYEE	CLAIMANT
WAL-MART ASSOCIATES, EMPLOYER	RESPONDENT
CLAIMS MANAGEMENT, INC., CARRIER/TPA	RESPONDENT

Opinion filed June 20, 2007

A hearing was held before ADMINISTRATIVE LAW JUDGE Chandra Hicks, on April 16, 2007, in Searcy, White County, Arkansas.

The claimant was represented by THE HONORABLE James W. Stanley, Attorney at Law, Little Rock, Arkansas.

The respondent was represented by THE HONORABLE Andrew Ivey, Attorney at Law, Little Rock Arkansas.

STATEMENT OF THE CASE

A hearing was held in the above-styled claim on April 16, 2007, in Searcy, Arkansas. A Prehearing Order was previously entered in this case on February 6, 2007. This Prehearing Order set forth the stipulations offered by the parties, the issues to be litigated, and their respective contentions.

Stipulations

The following stipulations were submitted by the parties either in the Prehearing Order or at the start of the hearing, and are hereby accepted:

1. The Arkansas Workers' Compensation Commission has jurisdiction of the within claim.

2. The employee-employer relationship existed at all

relevant times, including July 23, 2004.

3. The claimant suffered a specific incident injury to the right knee on July 23, 2004.

4. The claimant earned an average weekly wage equal to \$209.00, which is commensurate with compensation rates of \$139.00 for both temporary total disability and permanent partial disability purposes.

Issues

By agreement of the parties, the issues to be litigated were limited to the following:

1. Whether claimant is entitled to additional medical treatment.

2. Whether claimant is entitled to additional temporary total disability benefits.

3. Controverted attorney's fee.

Contentions

Claimant:

Claimant contends that she is entitled to temporary total disability benefits and further medical.

Respondent:

Respondents contend that any treatment provided by Drs. William Hefley and Charles Schultz, and any other physician seen through their referral, was and is unauthorized, is treatment obtained outside the chain of authorized treating physicians and is therefore not the responsibility of respondents. Respondents

further contend that right total knee replacement surgery the claimant underwent in December 2004, was elective in nature and is therefore not reasonably necessary in connection with the compensable July 23, 2004 right knee injury.

The documentary evidence submitted in this case consists of the Commission's Prehearing Order marked Commission's Exhibit No. 1. In addition, post-hearing briefs were filed by the parties and are hereby incorporated by reference, as Commission's Exhibit No. 2. The claimant's Prehearing Questionnaire was marked as Claimant's Exhibit No. 1, and the medical packet submitted by the claimant was marked as Claimant's Exhibit No. 2. The respondent's Prehearing Questionnaire was marked as Respondent's Exhibit No. 1, and its medical packet was marked as Respondent's Exhibit No. 2. The respondent's non-medical packet was marked as Respondent's Exhibit No. 3, and the claimant's deposition of January 23, 2006 was marked as Respondent's Exhibit No. 4.

The following witness testified at the hearing: the claimant.

DISCUSSION

The claimant, age 49 (4/29/58), was hired by the respondent in February of 2004 as a cashier. The claimant sustained an admittedly compensable injury to her right knee on July 23, 2004, while working for the respondent when she slipped and fell on a wet mat, catching her knee on boxes underneath the counter top. The respondent accepted the claim as compensable and paid some

medical benefits and temporary total disability benefits. The claimant now contends she is entitled to additional medical treatment and temporary total disability benefits from November 26, 2004 through January 28, 2005.

At the hearing, the claimant denied having any prior treatment for her knees before the July 23, 2004 incident. According to the claimant, the respondent sent her to its company doctor, Dr. Justus, who x-rayed her knee, and gave her pain medication and some anti-inflammatories.

The claimant testified she had continued complaints of pain. Therefore, Dr. Justice referred her to Dr. Blickenstaff, an orthopedic specialist. According to the claimant, Dr. Blickenstaff performed an MRI and gave her a series of Cortisone shots in the knee and drained it. She testified he gave her a brace to wear while standing and placed her on light-duty work, which resulted in the respondent transferring her to the lawn and garden department wherein she performed cashiering duties. According to the claimant, she saw Dr. Blickenstff approximately eight or nine times, and after the Cortisone shots were performed, she underwent a series of Silicone shots.

The claimant testified that her condition continued to worsen, so she talked to her case manager, John McKinney, and he told her to go for a second opinion. The claimant further testified she sought treatment from Martin, Bowen and Hefley, and was seen by Dr. Hefley, who had been recommended by her family physician. The claimant testified that Dr. Hefley performed

another MRI, and some x-rays. Thereafter, she was scheduled for surgery, a total knee replacement. According to the claimant, she stopped working for the respondent around November 26, (2004). After her surgery, the claimant testified she stayed in the rehab hospital for a week, and that she underwent physical therapy at White County Hospital. According to the claimant, she returned to work for the respondent on January 28, (2005). The claimant denied having received any benefits during the time period that she was off recovering from her surgery. The claimant essentially testified she continued to work for the respondent until August 12, 2005, basically performing duties in the same position, with some accommodations.

The claimant testified she saw Dr. Schultz, a pain management specialist. According to the claimant, she has seen one other doctor since moving to Texas, who is with a pain management clinic.

As of the date of the hearing, the claimant was taking Methodone and Percocet for her injury, and doing home exercises. She testified her knee is doing a lot better, as it is 100% better than it was before the surgery, although it swells.

She admitted some of her medical bills were paid by her husband's group health insurance, Blue Cross Blue Shield. According to the claimant, the balance of her medical bills were discharged in bankruptcy.

The claimant essentially testified she is asking for temporary total disability for the time she was off work until

she returned to work, (November 26, 2004 to approximately January 28, 2005), and further medical treatment that may be necessary for her injury.

On cross-examination, the claimant admitted that the respondent paid for her to treat with Drs. Justus and Blickenstaff, and that neither one referred her to Dr. Hefley. She admitted she did not receive written approval from Mr. McKinney to go for a second opinion, as all of their communication has been over the phone. The claimant admitted to signing a Form N, and to not requesting a change of physician from the Commission.

She further admitted to seeking treatment from Dr. Hefley on her own sometime around November of 2004, who examined her and found right knee advanced patellofemoral osteoarthritis. The claimant testified:

Q. Did he tell you that was the problem and the need for treatment?

A. I do not believe so. He also told me that I had bone on bone, that I had no cartilage left.

Q. Isn't it correct that he told you you could have the, well let me put it a different way. Isn't it correct that you advised that he told you you could have the surgery whenever you were ready, whenever you wanted it?

A. He told me I needed the surgery, yes.

Q. That's not what I asked you, ma'am.

A. Okay, I'm sorry.

Q. What I asked was, did you advise me in your deposition that he had determined you could have the surgery whenever you wanted to schedule it?

A. I don't - - I guess. You know, I don't remember what I said in the deposition.

A. (Witness continuing:) All I know is that he told me that, you know, that it needed to be done.

Q. Let me refresh your recollection here. This is beginning on page 43 of your deposition. You were going into great detail and I appreciate that, the treatment that you had received from Dr. Blickenstaff -
-

A. Right.

Q. I'm starting at line 22. You said, from him I made an appointment with Doctor - - with Martin, Bowen and Hefley, that's the orthopedic clinic here in Little Rock and I did this on my own. He did not send me down there. And he determined that, the same thing. There was no cartilage left in the knee and that whenever I got tired of hurting that I would have, that I could schedule it and replace it and so we did - -

A. Right.

Q. Do you remember saying that?

A. Yes, okay. But I would like to add also that, you know - -

The claimant admitted to having stated that before July 23, 2004, she had not had any problems with her knee or had to seek any treatment. She denied seeing Dr. Justus on June 10, 2004 because she had injured her right knee. After being shown medical notes from that date, the claimant could not recall seeing Dr. Justus and telling him she had fallen the prior day mopping her floor and that she had pain in her right knee and left wrist. The claimant admitted to missing a lot of time from work prior to her injury.

On redirect examination, the claimant again denied being

able to recall the June 10 doctor's visit concerning her knee. She did admit that if she had been doing some mopping, it would have been at home and not at work.

The claimant's deposition was taken on January 23, 2006. The claimant gave an extensive testimony about her work history, which included that of being a truck driver. She denied any prior injuries that would have prevented her from working. The claimant admitted to being diagnosed with fibromyalgia in the first part of 2005.

According to the claimant, she last worked for the respondent on August 20, 2005. The claimant admitted to a right knee injury with the respondent on July 23, 2004, and a subsequent incident with an alleged injury to the left knee on February 5, 2005. She essentially denied any prior incidents with her knees. The claimant admitted to going to the orthopedic clinic (Martin, Bowen and Hefley) in Little Rock on her own.

The claimant testified the respondent discharged her on August 12, 2005 due to register shortages, and she admitted to having drawn unemployment benefits in the amount of \$1,000.00.

On August 20, 2004, the claimant was seen for evaluation of right knee pain with Dr. Blickenstaff. The claimant reported having been evaluated by Dr. Justus on July 26, 2004 due to a fall at work on July 23, 2004. At that time, the claimant continued to complain of knee pain and swelling. She reported some previous bilateral knee swelling intermittently but that her symptoms had been exacerbated since her fall. He noted that x-

rays of the right knee revealed decreased medial joint compartment space and no acute bony abnormality. His impression was "right knee contusion/sprain with medial compartment degenerative joint disease. Resulting pain and synovitis." Dr. Blickenstaff aspirated fluid from the claimant's knee and injected it with Lidocaine and Depo-Medrol, and directed her to refrain from repetitive squatting or any excessive impact loading activity.

An MRI of the claimant's right knee was taken on September 13, 2004 with the following impression:

1. Osteoarthritic change, greatest involving the medial compartment.
2. Medial meniscus, slightly diminutive in nature, but without evidence for frank tear.
3. Moderate-size joint effusion.
4. Marrow edema or bone contusions in the medial femoral condyle and medial tibial plateau.

On September 21, 2004, Dr. Blickenstaff reported that after having an MRI that demonstrated degenerative changes in the medial compartment, no frank meniscus tear was noted, but that the claimant had continued complaints of medial sided knee pain with subjective swelling. His impression was "Exacerbation of medial compartment arthrosis right knee." He re-aspirated the claimant's knee and injected it with Depo-Medrol. Specifically, Dr. Blickenstaff wrote, "She is not a very good surgical candidate due to her young age and moderate obesity as well as her social situation. I will see her back in 3 weeks."

On October 26, 2004, Dr. Blickenstaff reported:

Debra is here for her 2nd Synvisc injection right knee. She is somewhat improved but has reaccumulated a knee joint effusion. After sterile prep I aspirated 35 cc of clear yellow fluid from her knee and injected her knee with Synvisc. RTC one week for the 3rd injection.

Dr. Blickenstaff reported on November 2, 2004, the claimant had reports of subjective improvement. After aspirating her right knee, he injected it with Synvisc. He recommended that she progress back to regular activity and return on an as needed basis.

On November 3, 2004, the claimant saw Dr. Hefley for evaluation of right knee pain. He noted the claimant had experienced prior problems of some aching in both of her knees at times over the years, but the pain had not been as severe as it had been since her fall at work. Dr. Hefley also noted that her pain had been primarily anterior. He reported the following:

X-RAYS: She has advanced medial compartment collapse and significant patellofemoral involvement as well.

IMPRESSION:

1. Right knee advanced varus patellofemoral osteoarthritis.

PLAN:

1. Conservative measures aren't working. I believe she is going to require surgery. Given her location of pain and radiographic findings and exam findings I think tibial osteotomy or uni-compartment replacement would not suffice for her. I certainly think she is too far gone for just arthroscopy alone. I have recommended right total knee replacement arthroplasty. Risks, plans and expectations were reviewed.

2. She'll pre-donate two units of autologous blood.

3. In regards to causation of the accident I feel that the arthritis was pre-existing at the time of her fall. She had been apparently mildly symptomatic previously and the fall exacerbated the symptoms from this pre-existing condition but did not cause her arthritis and I discussed that with her.

Further review of the medical evidence shows that the claimant underwent "right total knee replacement arthroplasty," with Dr. Hefley on December 1, 2004 due to osteoarthritis, of the right knee.

The claimant saw Dr. Sean Foley on December 6, 2004 pursuant to referral from Dr. Hefley for acute patient rehabilitation after undergoing elective right knee arthroplasty on December 1, 2004 by Dr. Williams. He recommended that the claimant undergo acute inpatient rehabilitation under the care of Dr. Collins.

Dr. Hefley reported on December 15, 2004, the claimant was two weeks out from right total knee replacement. Although the claimant had complained of spasms involving the right thigh and right lower leg, she was home and receiving home physical therapy visits. According to Dr. Hefley, the claimant's Venous Doppler was negative for deep venous thrombosis. He noted the claimant was ambulatory with the use of a cane, but that she had some additional pain when weight bearing. Therefore, Dr. Hefley continued the claimant's physical therapy treatment and directed her to return in three weeks so that he could evaluate her progress.

On January 5, 2005, the claimant had continued complaints of posterior pain that radiated into her calf although a second venous Doppler was negative, and an MRI of the lumbar spine was reportedly negative. As a result, he decided to obtain an arterial ultrasound to rule out pseudoaneurysm or other problems.

The claimant was evaluated on January 24, 2005 by Dr. Charles

Schultz for chronic pain pursuant to referral from Dr. Raul Ramirez. His assessment and plan included the following:

Assessment:

1. Neck pain with radicular pain into the right and left upper extremities with parathesias and muscle spasms.
2. Low back pain with radicular pain into the right lower extremity with paresthesias and muscle spasms representing a right L2-4 radiculopathy.
3. Possible obstructive sleep apnea with snoring, hypersomnia, and excessive daytime sleepiness.
4. Headaches.
5. Gastroesophageal reflux disease.
6. Osteoarthritis.
7. Arthralgias.
8. Depression
9. Chronic sinusitis.

Plan:

1. Will perform an EMG and nerve conduction study to better characterize the patient's pain in paresthesias in the right and left upper and right lower extremities with back pain, neck pain, and muscle spasms. The study was performed in (sic) reveals evidence of a mild right and left median neuropathy at the wrist (carpal tunnel syndrome). With regard to the right lower extremity, there is evidence of chronic neurogenic changes and reinnervation changes in the distribution of the right L2-4 nerve roots which is chronic in nature.
2. Will order a sleep Polysomogram to look for evidence of obstructive sleep apnea as an etiology for hypersomnia, snoring, and excessive daytime sleepiness.
3. Will use Flexeril 10 mg.po t.i.d. for treatment muscle spasms.
4. Will use Percocet 10/325 mg one every four to six hours as needed for breakthrough pain. Patient understands the addictive potential of this medication and has agreed to use it sparingly and as directed. This medication should not be obtained from any other physician.
5. Will use Avinza 30 mg po bid for treatment of chronic pain. Patient understands the addictive potential of this medication and has agreed to use it sparingly and as directed. This medication should not be obtained from any other physician. The patient was instructed not to abruptly stop this medication without consulting a medical doctor first. The patient was told not to break these tablets or alter the dosage in anyway.

6. The patient has agreed to also sign a written pain agreement. This pain agreement is part of her medical record.

7. Will use bilateral wrist braces to treat her right and left median neuropathies at the wrist.

8. Will have the patient return to clinic in 1 month to see how she is doing with regard to her symptoms. At that time I will make further recommendations as indicated. The patient is to contact our office if she develops new neurologic events or worsening of her neurologic symptoms prior to her return visit.

According to medical records, the claimant continued to treat with Dr. Schultz through September 28, 2005 pursuant to the aforementioned conditions.

On February 18, 2006, Dr. Schultz reported, in pertinent part, the following:

This letter is being written at the request and with the permission of my patient, Debra Hyche. The patient was first seen in clinic January 2005 and follow every 2-3 months thereafter. The patient's diagnoses include but are not limited to bilateral lower extremity pain and paraesthesia with evidence of a right L2-4 radiculopathy on EMG. Specifically, the patient has a history of a right knee replacement in 2004. She now suffers from left knee pain. Would recommend orthopedic surgical consultation for the patient's left knee pain which has not responded to conservative therapies such as oral pain medications and rest.

On September 9, 2005, the claimant saw Hefley. He reported:

SUBJECTIVE: She is now 9 months out from right total knee replacement. Until 2 weeks ago, she was working at Wal-Mart and standing on her feet as a cashier for about 8 hours a day. She was happy with her knee. It was doing well. She had some occasional aches and pains. Two weeks ago she lost her job and since then, she has not been standing on it. She has noticed a lot of pain in the knee, primarily anteriorly. She has not had fever.

PAST MEDICAL HISTORY/REVIEW OF SYSTEMS: Unchanged.

EXAMINATION: X-rays of the right knee were ordered, performed, and interpreted by me with the following findings: Implants are well fixed in good position and stable.

IMPRESSION:

1. She is 9 months post (12-1-2004) right total knee replacement High Flex quad-tendon-sparing, now with some increased pain and a small effusion. Perhaps this is related to the change in her activity level. I do not see any problems with the implants.
2. Emotional stress. She recently lost her job, and her husband is in the final stages of terminal cancer. This could contribute to her knee symptoms.

PLAN:

1. Sterapred 10 mg 12-day Dosepak.
2. Juzo knee sleeve.
3. Outpatient PT for quad and VMO strengthening.
4. I will see her in 4 weeks and check her progress.

ADJUDICATION

A. Medical treatment

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. Ark. Code Ann. § 11-9-508(a). The claimant bears the burden of proving that she is entitled to additional medical treatment. Dalton v. Allen Eng'g Co., 66 Ark. App. 201, 989 S.W.2d 543 (1999). What constitutes reasonably necessary medical treatment is a question of fact for the Commission. Wright Contracting Co. v. Randall, 12 Ark. App. 358, 676 S.W.2d 750 (1984).

The claimant is essentially asserting her entitlement to additional medical, provided by Drs. Hefley and Schultz, and any treatment that resulted through their referral, which includes the right knee total replacement performed by Dr. Hefley on

December 1, 2004.

The record indicates that although the claimant suffered from some aching in both of her knees over the years, prior to the work incident of July 23, 2004, her pain, particularly in the right knee, had not been as severe as it had been since her fall at work. Medical records show that although the claimant was treated conservatively, her symptoms of pain continued, as well as swelling, which resulted in several aspirations of fluid from the knee. The claimant ultimately underwent a total right knee replacement with Dr. Hefley on December 1, 2004. In medical notes of November 3, 2004, Dr. Hefley recommended right total knee replacement arthroplasty since conservative measures were not working. The claimant essentially testified that the surgery significantly improved her symptoms. Therefore, pursuant to Dr. Hefley's recommendation, and considering the persistent nature of the claimant's symptoms after undergoing conservative treatment, and because the surgery significantly improved the claimant's condition, I find that the surgery, subsequent treatment, and referrals by Dr. Hefley were reasonable and necessary treatment in connection with the claimant's compensable right knee injury of July, 23 2004. While I recognize that Dr. Blickenstaff opined that the claimant was not a very good surgical candidate due to her young age, moderate obesity, and her social situation, minimal weight should be attached to this opinion due to the aforementioned reasons.

However, I do not find that the treatment and/or referrals

rendered by Dr. Schultz was reasonably necessary in connection with the claimant's compensable right knee injury. The treatment rendered by Dr. Schultz was primarily geared to treat other conditions rather than the claimant's compensable right knee injury.

Neither Dr. Hefley or any other treating physician has recommended future care for the claimant's compensable right knee injury. Therefore, based on the record before me, I find that the claimant has received all the reasonable and necessary treatment in connection with her compensable right knee injury of July 23, 2004.

B. Whether the treatment from Drs. Hefley and Schultz was authorized.

The respondent essentially contends that the treatment the claimant sought from Drs. Hefley and Schultz was not authorized, hence she went "outside the change of physician rules" in seeking medical treatment from Drs. Hefley and Schultz, and their chain of referrals.

If a claimant desires a change of physician, she must petition the Commission for approval. Sharp v. Lewis Ford, Inc., 78 Ark. App 164, 78 S.W. 3d 746 (2002). Pursuant to the provisions of Act 1167 of 1999, there is an absolute, statutory right to a one-time change of physician. Collins v. Lennox Industries, Inc., 77 Ark. App. 303, 75 S.W. 3d 204 (2002). Treatment or services furnished or prescribed by any physician other than the ones selected according to the provisions of Ark.

Code Ann. §11-9-514(a)(3), except emergency treatment, shall be at the claimant's expense. See, Ark. Code Ann. §11-9-514(b).

In the present matter, the parties stipulated that the claimant sustained a compensable right knee injury on July 23, 2004. The claimant admitted she signed a form AR-N on July 26, 2004 (which has been made part of the record), and that she was aware that the respondent was paying for her treatment from Drs. Justus and Blickenstaff. The claimant further admitted the respondent provided her with light duty work while treating with these two physicians. The claimant further admitted she did not petition the Commission for a change of physician prior to initiating treatment with Dr. Hefley. Although the claimant maintains that the claim was controverted on August 2, 2004, no documentation of the same has been submitted, and there is no other evidence to support such a contention or that the respondent controverted the claimant's right to medical treatment. Moreover, no evidence of record has been presented to support a finding that the claimant's treatment from Dr. Hefley constituted "emergency treatment" pursuant to Ark. Code Ann. §11-9-514(b). Although the claimant initially testified that the adjuster sent her for a second opinion, on cross examination and during her deposition, she essentially admitted she sought treatment from Dr. Hefley on her own pursuant to recommendation by her family physician. Based on the evidence of record, I find that the treatment provided by Dr. Hefley was unauthorized and therefore shall not be the responsibility of the respondent.

Although the treatment from Dr. Schultz and his chain of referrals was found not to be reasonably necessary for the claimant's compensable knee injury, based on the record before me, had this treatment been found to be reasonably necessary for the claimant's compensable knee injury, in my opinion, this treatment was also unauthorized, as it was obtained pursuant to referral from Dr. Ramirez.

C. Temporary disability

The claimant also proved that she remained in her healing period prior to her surgery, and had not returned to work, so that the claimant proved she was entitled to temporary total disability compensation from November 26, 2004 until to January 27, 2005, as the claimant returned to work for the respondent on January 28, 2005. See, Wheeler Const. Co. v. Armstrong, 73 Ark. App. 146, 41 S.W. 3d 822 (2001).

FINDINGS OF FACTS AND CONCLUSIONS OF LAW

1. The Arkansas Workers' Compensation Commission has jurisdiction of the within claim.
2. The employee-employer relationship existed at all relevant times, including July 23, 2004.
3. The claimant suffered a specific incident injury to the right knee on July 23, 2004.
4. Claimant earned an average weekly wage equal to \$209.00, which is commensurate with compensation rates of \$139.00 for both temporary total disability and permanent partial disability purposes.
5. The treatment and referrals that the claimant received for her right injury from Dr. Hefley was

reasonable and necessary in connection with her compensable injury.

6. The treatment the claimant received from Dr. Hefley was unauthorized and therefore not the responsibility of the respondent.
7. The treatment the claimant received from Dr. Schultz was not reasonable and necessary for her compensable right knee injury of July 23, 2004, nor was it authorized.
8. No future medical treatment has been recommended for the claimant's right knee injury. Therefore, the claimant is not entitled to future medical care for her compensable injury.
9. The claimant proved her entitlement to temporary total disability compensation from November 26, 2004 until January 27, 2005. The respondent has controverted these benefits.

AWARD

The respondent is directed to pay benefits in accordance with the Findings of Facts cited above.

Maximum attorney's fees are herein awarded to the claimant's attorney on the controverted indemnity benefits pursuant to Ark. Code Ann. §11-9-715.

All accrued sums shall be paid in a lump sum without discount and this award shall earn interest at the legal rate until paid, pursuant to Ark. Code Ann. §11-9-809.

IT IS SO ORDERED.

CHANDRA HICKS
Administrative Law Judge

CH/ml