

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F607615

RITA JONES

CLAIMANT

DOLLAR GENERAL  
SELF INSURED

RESPONDENT

OPINION FILED NOVEMBER 15, 2007

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

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

Respondent represented by BETTY HARDY, Attorney, Little Rock, Arkansas.

STATEMENT OF THE CASE

A hearing was held in the above styled claim on October 1, 2007, in Springdale, Arkansas. A pre-hearing order was entered in this case on August 7, 2007. 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 claimant withdrew her stipulation concerning the appropriate weekly compensation rates. As no indemnity benefits are in dispute at the present time, there is no need for a stipulation or finding concerning the appropriate compensation rates. A copy of the pre-hearing order with this amendment 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 June 9, 2006, the relationship of employee-self insured employer existed between the parties.

2. On June 9, 2006, the claimant sustained a compensable injury to her back.

3. There is no dispute over temporary total disability benefits.

4. There is no dispute over medical expenses incurred through June 1, 2007.

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 by or at the direction of Dr. Cyril Raben after June 1, 2007.

In regard to this issue, the claimant contends:

"Claimant was injured on June 9, 2006. Her back was injured when she was lifting a heavy case of soda."

In regard to this issue, the respondent contends:

"It is the contention of the respondent that the claimant has been provided all appropriate benefits to which she is entitled. Specifically, respondent has paid claimant's medical expenses and indemnity benefits. It is respondent's position that the pain management sought by the claimant is not reasonably necessary nor causally related to the work related injury."

#### DISCUSSION

\_\_\_\_\_At the present time, the sole issue is the claimant's entitlement to additional medical services by or at the direction of Dr. Cyril Raben, after June 1, 2007. The burden rests upon the claimant to prove that such medical services represent "reasonably necessary medical services", as that term is used in the Act.

“Reasonably necessary medical services” must be medical services that are necessitated by or connected with the compensable injury. These services must also have a reasonable expectation of accomplishing their intended purpose or goal, at the time they are rendered. Whether medical services are “reasonably necessary” is essentially a medical question. The resolution of this issue must substantially rest upon the medical evidence presented.

In the present case, the claimant sustained an admittedly compensable injury to her lumbar spine, on June 9, 2006. This injury was in the form of a large disc herniation of the L4-5 intervertebral disc. This herniation caused a lateral recess stenosis or impingement of L4 and L5 exiting nerve roots with resulting radiculopathies affecting the lower extremities. As a result of this injury, the claimant required surgical decompression of the nerve roots, in the form of a laminectomy and a surgical fusion of the L4 and L5 vertebral bodies by the use of bone grafting and external instrumentation. This procedure was carried out by Dr. James Blankenship, a neurosurgeon, on October 31, 2006.

Following this surgery, the claimant continued to be treated by Dr. Blankenship with medication and physical therapy. An epidural steroid injection was performed by Dr. R. David Cannon (a pain management specialist), at Dr. Blankenship’s request.

On January 22, 2007, Dr. Blankenship released the claimant to return to light duty employment. This was less than three months following her rather extensive surgical procedure. The claimant attempted to return to employment with this respondent, but was not

provided a position that was within her medically imposed restrictions. The position provided required lifting in excess of the restrictions and limitations imposed by Dr. Blankenship. However, the claimant was able to return to a concurrent employment, as a cook for the Huntsville School District, that she held at the time of her compensable injury. This employer apparently accommodated the restrictions and limitations imposed by Dr. Blankenship.

On February 20, 2007, a Functional Capacity Evaluation was performed on the claimant by the Performance Physical Therapy Group. This evaluation was conducted at the request of Dr. Blankenship. According to the physical therapist performing this evaluation and Dr. Blankenship, the claimant's evaluation suggested some minor inconsistencies in the reliability or accuracy of the claimant's subjective reports of pain and physical limitations. However, it was also noted that these inconsistencies were overall minor, and that the claimant's subjective reports of pain and physical limitations generally matched well with the clinical observations of the physical therapist.

The physical therapist also indicated that the testing suggested the presence of near full, but not entirely full, effort on the part of the claimant in performing the requested tests. It was the examiner's opinion that the claimant could actually do more physically at times, than was demonstrated by the testing. In his report of February 26, Dr. Blankenship stated that in his opinion these inconsistencies were minor and were not volitional on the

part of the claimant, but represented a degree of psychogenic overlay.

On February 26, 2007, Dr. Blankenship discharged the claimant from his care. He also assessed a permanent physical impairment of 9 percent to the body as a whole for the claimant's compensable injury.

The claimant then sought and obtained a change of physicians from Dr. Blankenship to Dr. Cyril Raben, an orthopaedic surgeon. Dr. Raben primarily specializes in the treatment of back injuries and conditions. According to his reports, Dr. Raben examined the claimant and reviewed the results of her various tests. It was his initial impression that the claimant was suffering from postlaminectomy syndrome, or chronic pain syndrome or chronic pain from a pseudoarthrosis or non union of the L4-5 fusion and perineural scarring or adhesions from the prior surgery. He recommended that the claimant undergo an evaluation and a formal program of chronic pain management by a specialist in that field. It is these recommended medical services that are the focus of the present controversy.

The claimant testified that she had received some benefit from the treatment provided by Dr. Blankenship. However, she stated that she still continued to experience some degree of pain in her back and legs (primarily left leg). Clearly, some degree of residual pain would not be unusual or unexpected in light of the nature and magnitude of the claimant's compensable injury and the resulting extensive surgical procedure that it necessitated.

After consideration of all the evidence presented, it is my opinion that the greater weight of the evidence establishes that an evaluation and possible treatment by a chronic pain management specialist would constitute reasonably necessary medical services for the claimant's compensable lumbar injury. In reaching this decision, I have placed considerable weight and credit on the expert medical opinion of Dr. Raben. Dr. Raben has substantial expertise in the area of medicine associated with the treatment of injuries such as that experienced by the claimant. I would also note that the chronic pain management program he has recommended is commonly accepted throughout the local medical community as being an appropriate treatment modality for chronic pain from injuries such as that experienced by the claimant. Clearly, this treatment modality would be highly preferable to the continued use of extensive narcotic pain medication, which the claimant has heretofore received.

In reaching this decision, I recognize that Dr. Blankenship has expressed the opinion that one possible type of chronic pain management, the surgical implanted dorsal column stimulator, would likely be of no benefit to the claimant. However, Dr. Blankenship has in no way indicated that other chronic pain management modalities would be medically inappropriate or have no reasonable expectation of helping control the claimant's chronic pain. I would also note that Dr. Blankenship had previously indicated that a dorsal column stimulator might be a medically appropriate or treatment modality. The change in his opinion apparently occurred

as the result of what he describes as minor inconsistencies or exaggeration of the claimant's physical limitations or symptoms purportedly shown on the FCE.

However, I find that the claimant's description of her chronic pain and other symptoms in her testimony represents an accurate description of her current difficulties. The nature and magnitude of these difficulties would clearly be consistent with the nature and magnitude of the claimant's compensable injury and resulting permanent physical damage. I do not know the minor inconsistencies or exaggerations that were observed on the claimant's FCE. However, her physical limitations recorded on this FCE would be those generally seen in individuals experiencing permanent physical damage such as that sustained by the claimant. It is my opinion that the claimant has demonstrated a high degree of motivation by quickly returning to regular gainful employment and by maintaining regular gainful employment thereafter. These actions would be inconsistent with malingering or intentional symptom magnification.

Finally, I would note that chronic pain management programs have demonstrated significant success in reducing or alleviating chronic pain and limitations from both psychosomatic and organic causes. As previously noted, the claimant's alternative treatment modalities have involved the use of extensive narcotic pain medication for an extended period of time. A formal program of chronic pain management would be reasonable and appropriate to assist the claimant in getting off these narcotic pain medications.

FINDINGS OF FACT & CONCLUSIONS OF LAW

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

2. On June 9, 2006, the relationship of employee-self insured employer existed between the parties.

3. On June 9, 2006, the claimant sustained a compensable injury to her lumbar spine, in the form of a herniated L4-5 intervertebral disc with resulting impingement on the exiting nerve roots.

4. There is no dispute, at present, over the claimant's entitlement to temporary total disability benefits.

5. There is no dispute over the payment of expenses for medical services incurred through June 1, 2007.

6. The claimant has proven by the greater weight of the credible evidence that an evaluation and implementation of an appropriate chronic pain management program represents "reasonably necessary medical services" for her compensable lumbar injury. Specifically, she has proven that such medical services are necessitated by or connected with her compensable injury and have a reasonable expectation of accomplishing the purpose of reducing or alleviating the claimant's chronic pain complaints. Pursuant to Ark. Code Ann. §11-9-508, the respondent is liable for the expense of this chronic pain management program. This liability is subject to the medical fee schedule established by this Commission.

7. The respondent has denied the claimant's entitlement to further medical services, after June 1, 2007.

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

ORDER

The respondent is liable for the expense of an evaluation and appropriate program of chronic pain management by a provider to be selected by Dr. Cyril Raben as he is currently the claimant's authorized treating physician. This liability is subject to the medical fee schedule established by this Commission.

All benefits herein awarded are subject to the maximum legal rate of interest until paid.

IT IS SO ORDERED.

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MICHAEL L. ELLIG  
ADMINISTRATIVE LAW JUDGE