

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F502187

CAROLYN RIMMER (FREEMAN)	CLAIMANT
ARKANSAS SUPPORT NETWORK, INC.	RESPONDENT
COMPANION PROPERTY & CASUALTY, INSURANCE CARRIER	RESPONDENT

OPINION FILED MAY 3, 2007

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

Claimant represented by MATT LINDSEY and CONRAD ODOM, Attorneys, Fayetteville, Arkansas.

Respondents represented by JOSEPH PURVIS, Attorney, Little Rock, Arkansas.

STATEMENT OF THE CASE

A hearing was held in the above styled claim on February 5, 2007, in Springdale, Arkansas. The deposition of Dr. John Park was taken on January 23, 2007, and has been admitted as Respondents' Exhibit No. 2. The deposition of R. Bryan Benafield was taken on January 23, 2007, and has been admitted as Respondents' Exhibit No. 3. The deposition of Dr. Robert J. Tomlinson, Jr. was taken on November 14, 2006, and has been admitted as Respondents' Exhibit No. 4.

A pre-hearing order was entered in the case on September 19, 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. A copy of this pre-hearing order was made Commission's Exhibit No. 1 to the hearing.

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

1. On December 8, 2004, the relationship of employee-employer-carrier existed between the parties.
2. The appropriate weekly compensation benefits are \$207.00 for total disability and \$155.00 for permanent partial disability.
3. On December 8, 2004, the claimant sustained a compensable injury to her right shoulder.
4. The respondents deny the occurrence of a compensable injury to the claimant's neck or cervical spine in the accident of December 8, 2004.
5. There is no dispute over the payment of medical expenses incurred to date.
6. There is no dispute, at present, over temporary total disability benefits.

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

1. The claimant's entitlement to additional medical services, in the form of surgery as recommended by Dr. Tomlinson.

In regard to these issues, the claimant contends:

- (a) That employee/employer relationship existed on or about December 8, 2004.
- (b) On that date, claimant sustained a compensable injury to right shoulder and neck while assisting a consumer.
- (c) This claim has been admitted as compensable and benefits were paid.
- (d) That Dr. Knox has treated her for her neck and his treatment is complete at this time.

- (e) That the claimant was originally treated for her right shoulder by Dr. Benafield and Dr. Park. That the claimant requested and received a change of physician to Dr. Robert Tomlinson in a Change of Physician Order by the Workers' Compensation Commission.
- (f) That Dr. Robert Tomlinson has recommended surgery procedure and that this has been controverted by the delay in authorization of the workers' compensation carrier.
- (g) That the claimant is entitled to a controverted attorney's fee on all benefits awarded.

In regard to these issues, the respondents contend:

- (a) That, respondent accepted the claim as compensable and have paid all sums that are due and owing.
- (b) That, any problems the claimant is having in the cervical area are the result of pre-existing degenerative condition and are not the result of the incident of December 8, 2004, and therefore are not the responsibility of the respondent.

DISCUSSION

The sole issue presented for resolution at the present time concerns the claimant's entitlement to additional medical services, in the form of arthroscopic surgery on her right shoulder as recommended by Dr. Tomlinson. The burden rests upon the claimant to prove that these medical services represent "reasonably necessary medical services", under Ark. Code Ann. §11-9-508. In order to represent "reasonably necessary medical services" the services in question must be necessitated by or connected with the claimant's admittedly compensable right shoulder injury. Further, the medical services must have a reasonable expectation of accomplishing the purpose or goal for which they are intended.

The medical records show that there is an obvious conflict in the medical opinion concerning the necessity of the surgical procedure recommended by Dr. Tomlinson. Clearly, Dr. Tomlinson is adamant in his opinion that the recommended surgical procedure is necessary to repair a partial thickness tear involving the claimant's right rotator cuff. He attributes this physical damage to the effects of the claimant's compensable injury. On the other hand, both of the claimant's prior treating physicians, Dr. R. Bryan Benafield and Dr. John P. Park, are of the opinion that the claimant has no tear of her right rotator cuff and certainly not one attributable to the effects of her compensable right shoulder injury. Thus, they conclude that the surgical procedure recommended by Dr. Tomlinson is unnecessary.

However, this case is not as simple as determining whether Dr. Tomlinson is correct or whether Dr. Benafield and Dr. Park are correct. In his reports and deposition, Dr. Tomlinson has made it clear that, although it is his opinion that the claimant needs the recommended corrective surgery, he personally will not perform such a procedure nor treat the claimant any further, due to the claimant's refusal to participate in a program of rehabilitation, which Dr. Tomlinson believes is a necessary precursor to the recommended surgery. Thus, we have two doctors, who will not perform the recommended surgery because they feel that it is not necessary or medically appropriate, and the recommending doctor, who will not perform the surgery due to the claimant's refusal to follow his recommended preparatory program of physical therapy.

Thus, it would appear that the issue of the claimant's entitlement to the recommended surgical procedure is premature, as there is no evidence that she could actually obtain a qualified physician to provide such medical services, if they would be approved. It would clearly be an act of futility to award a specific type of medical service or treatment, without a properly qualified physician willing to provide such service.

Under these circumstances, to award the claimant the medical benefit she now seeks would simply have no practical effect. Therefore, I find that a decision should be reserved on the issue of whether the medical services recommended by Dr. Tomlinson constitute reasonably necessary medical services under Ark. Code Ann. §11-9-508, until such time as the claimant can establish that there is a reasonable likelihood she could actually obtain such services, if they were awarded.

FINDINGS OF FACT & CONCLUSIONS OF LAW

1. The Arkansas workers' Compensation Commission has jurisdiction of this claim.
2. On December 8, 2004, the relationship of employee-employer existed between the parties.
3. On December 8, 2004, the claimant sustained a compensable injury to her right shoulder.
4. There is no dispute, at the present time, over the payment of medical expenses incurred to date.
5. There is no dispute, at the present time, over the payment of temporary total disability benefits.

6. The record fails to show that the claimant has a reasonable expectation of ultimately receiving the additional medical services she now seeks, even if such services are awarded at the respondents' expense. A decision upon whether the medical services she now seeks represent reasonably necessary medical services under Ark. Code Ann. §11-9-508, is premature and should be reserved until the claimant can show a reasonable expectation of actually receiving such services if they are awarded.

ORDER

Based upon my foregoing findings and conclusions, I have no alternative but to decline to rule on the issue of whether certain medical services, as recommended by Dr. Robert Tomlinson, represent reasonably necessary medical services under Ark. Code Ann. §11-9-508. This matter is reserved until such time as the claimant can show that she has a reasonable expectation of actually receiving such services from a qualified medical provider.

IT IS SO ORDERED.

MICHAEL L. ELLIG
ADMINISTRATIVE LAW JUDGE