

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F001706

TAMMY TACKETT WARD	CLAIMANT
ST. EDWARD MERCY MEDICAL CENTER	NO. 1 RESPONDENT
SISTERS OF MERCY HEATH SYSTEM INSURANCE CARRIER	NO. 1 RESPONDENT
DEATH & PERMANENT TOTAL DISABILITY TRUST FUND	NO. 2 RESPONDENT

OPINION FILED MARCH 28, 2007

Hearing before ADMINISTRATIVE LAW JUDGE ELIZABETH DANIELSON in Fort Smith, Sebastian County, Arkansas.

Claimant represented by EDDIE H. WALKER, JR., Attorney, Fort Smith, Arkansas.

Respondents No. 1 represented by RANDY MURPHY, Attorney, Little Rock, Arkansas.

Respondent No. 2 represented by JUDY RUDD, Attorney, Little Rock, Arkansas.

STATEMENT OF THE CASE

A hearing was held on February 8, 2007, in Fort Smith, Arkansas.

A pre-hearing conference was held in this claim, and as a result a pre-hearing order was entered in the claim on November 20, 2006. This pre-hearing order set forth the stipulations offered by the parties, the issues to litigate and the contentions thereto.

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

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

2. On February 4, 2000, the relationship of employee-employer-carrier existed between the parties.

3. It was agreed by the parties that all prior opinions and orders will be incorporated by reference into this matter.

By agreement of the parties the issues to litigate are limited to the following:

1. Additional medical at the direction of Dr. Richard Jordan. All other issues are reserved.

In regard to the foregoing issues the claimant contends that she is entitled to treatment by or at the direction of Dr. Richard Jordan.

In regard to the foregoing issues Respondents No. 1 contend that additional medical is not reasonable or necessary.

In regard to the foregoing issues Respondent No. 2 contends that this is a medical only question, therefore, the Fund has no issue at this time.

The documentary evidence submitted in this matter consists of the Commission's pre-hearing order marked Commission's Exhibit No. 1. The claimant submitted the deposition of Dr. Richard Jordan marked Claimant's Exhibit No. 1 and medical information marked Claimant's Exhibit No. 2. The respondents submitted medical information marked Respondents No. 1's Exhibit No. 1. All these exhibits were admitted without objection. The deposition of Dr. Richard Jordan, Claimant's Exhibit No. 1, has been blue booked to this record. Only every other page was attached to the transcript.

DISCUSSION

Danny Ward testified that he was the claimant's husband and they have been married four years. Mr. Ward testified that he and

the claimant were married when she had the spinal cord stimulator implanted by Dr. Jordan. Mr. Ward testified that after the claimant had the spinal cord stimulator installed her leg problems improved but her activities were still limited in regard to her back. Mr. Ward testified that the claimant's low back condition has continued to get worse. Mr. Ward testified that he helps his wife with her personal care noting particularly that he has to put on her socks and lotion her feet because she cannot bend to take care of this need. This witness testified that the claimant uses an extension gripper to get things off the floor and that their house is now arranged to keep things off of the floor so that she can reach them. Mr. Ward testified that the claimant was having problems bending and reaching down before the spinal cord stimulator was installed. Mr. Ward testified that the spinal cord stimulator helped the claimant's leg be more stable where she could actually depend on it when she stands up. Mr. Ward testified that he has been around the claimant on a regular basis since December 2004 noting that she has been unable to engage in physically demanding activity. Mr. Ward testified that the claimant has not been involved in any new accident subsequent to her surgery in December 2004.

On cross examination, Mr. Ward testified that his wife receives workers' compensation benefits every two weeks and is also on social security disability. Mr. Ward indicated that once the claimant stopped working for the respondent she has not done anything for income. Mr. Ward testified that due to the claimant's

physical problems they are unable to engage in hobbies, travel, or do things together socially.

The claimant testified that she underwent a laminectomy at L5-S1 in March 2000 performed by Dr. Queeney. The claimant agreed that after her surgery she was able to return to work as a RN. The claimant agreed that she underwent extensive surgery in July 2001 by Dr. Standefer. The claimant testified that she returned to work following this second surgery but after a time could no longer do the physical work required as a RN on the floor so she went to work in the office. The claimant testified that after a period of time, her physical condition got to the point where she could not even do office work because she could not sit, her legs would go to sleep, she was having severe back pain, her legs would not hold her up, and her problems were so severe she would be crying by the end of the day. The claimant agreed that Dr. Jordan implanted a spinal cord stimulator in her back in December 2004. The claimant testified that since her spinal cord stimulator was implanted, her low back condition has continued to get worse to the point where she has to have her husband put on her shoes and socks because she cannot bend. The claimant testified that she has had no specific accident since she was treated by Dr. Jordan or even since she has been treated by Dr. Standefer. The claimant testified that the spinal cord stimulator has helped greatly with her mobility and the pain going down her left leg but it has not been affective as to the pain in her low back. The claimant testified that in fact her low back pain has gotten worse and the stimulator has been reset

several times in hopes of addressing this low back pain. The claimant testified that she underwent surgery in 2006 due to the constant burning pain in her low back and she could not sit upright. The claimant testified that this pain came on gradually and that her discomfort has been in the same general area as it has always been.

The claimant testified that she has been a RN for twenty-two years and had worked for the respondent for the last five years of her work history. The claimant testified that she has also worked at Cooper Clinic and in Oklahoma at different health facilities and she has also worked at Sparks right after she got out of school. The claimant was asked that with all her experience and education as a RN would she know if she had undergone a new injury and the claimant indicated that she would know if she had experienced a new injury. The claimant was then asked if in her opinion had she had a new injury and the claimant responded, "No."

On cross examination, the claimant was asked questions concerning her previous surgeries as well as test results beginning as far back as March 1, 2002. The claimant was asked if she was aware that a CT scan which was ordered by Dr. Standefer indicates that levels L3-4 were normal. The claimant responded that she did not remember that far back. The claimant testified that she last worked for the respondent in May 2004 and is currently drawing social security and receiving workers' compensation benefits indicating that these disability benefits will end in August. The claimant agreed that Dr. Standefer gave her a 15 percent permanent

partial impairment rating. The claimant testified that her condition worsened in 2005 and 2006 to the point where Dr. Jordan did a fusion in her low back. The claimant testified that she has been using a walker to walk but that she also uses a cane. The claimant agreed that Dr. Jordan did surgery on a different level than what Dr. Queeney had done earlier. The claimant was questioned concerning several of her earlier tests as to what the findings were and she responded that she has not seen these tests in a long time and that she did not see every single test that was done on her. The claimant testified that when she went to see Dr. Jordan she told him that she was having more severe pain and that she could not sit at her computer to even answer her e-mail. The claimant was asked about the different and new pain she was experiencing in her back that she reported to Dr. Jordan and the claimant responded, "well, its more severe and it is burning. It's a harder pain." The claimant testified that it was her understanding that she may have to undergo another surgery for paraforma syndrome due to developing scar tissue.

On redirect examination, the claimant was shown Dr. Standefer's operative report from July 26, 2001, which indicated that the L3 space was involved in that surgery. The claimant was shown page 13 of the exhibit and agreed that the L3-L4 space was involved in Dr. Standefer's surgery.

The claimant has testified and the medical records set forth that Dr. Joseph Queeney performed a left L5-S1 micro laminectomy with micro diskectomy on the claimant on February 29, 2000. The

claimant underwent an MRI of her lumbar spine on June 9, 2000, which revealed post operative changes on the left at L5-S1 with a small amount of epidural scar. There was also the finding of enhancement along either one of the right lower sacral nerve roots or the filum terminale consistent with arachnoiditis and there was also a finding of a small to moderate central disc protrusion at L4-5 which along with facet hypertrophy at this level results in mild to moderate spinal cord stenosis. The claimant underwent a CT of her lumbar spine on July 25, 2001, which revealed that at T12-L1, L1-2, L2-3, and L3-4 these levels were normal. This test did show moderate diffused disc bulge with possible small central disc protrusion at L4-5 and mild channel stenosis at L4-5. The test also revealed the claimant's post laminectomy at L5-S1. Dr. Standefer performed surgery on the claimant on July 26, 2002, to address a disc protrusion at L4-5. As part of the doctor's procedure performed it is noted that he reopened the previous lumbar incision with extension and exposure of posterior elements including L3, L4, L5, and the sacral. Dr. Standefer performed eleven other procedures primarily in the L4-L5 area. Dr. Standefer rated the claimant with a 15 percent whole body impairment on May 28, 2002. The claimant underwent an MRI on June 2, 2004, which notes that there is no significant disc bulge at T12-L1, L1-2, and L2-3. It is noted that at L3-4 there is mild defused disc bulge and further noting that there are post laminectomy findings from L4 through S1. This test also shows findings probable of arachnoiditis. On November 2, 2004, Dr. Richard Jordan writes to

Dr. Sinclair Armstrong concerning the claimant. Dr. Jordan sets forth a brief but concise history of the claimant's back problems as well as her current medical treatment. Dr. Jordan recommended an epidural stimulation procedure and scheduled a test run for December 1, 2004. On January 3, 2005, Dr. Richard Jordan writes that he saw the claimant on December 29, 2004, following her implantation of an epidural stimulator on December 1, 2004. The claimant reports that this procedure has helped reduce her leg pain and that she has been able to decrease her pain medications. Dr. Jordan notes that adjustments were made to the claimant's stimulator in order to give her more coverage. Dr. Jordan writes on July 8, 2005, that he has seen the claimant for her complaints of low back pain noting that her spinal cord stimulator needed reprogramming. This procedure was taken care of and the claimant's medications were adjusted. Dr. Jordan recommended that the claimant get facet blocks in Fort Smith and that she should consider having a radio frequency lumbar facet neurotomy with epidural steroid injections. The claimant underwent a mylogram on June 30, 2006, which revealed posterior fusion at L4 through S1 as well as a high grade channel stenosis at L3-4, probably a large disc herniation. A post mylogram CT was done on June 30, 2006, which revealed the claimant's prior fusion L4 through S1 as well as a very large central disc herniation at L3-4 with some superior extension of disc material behind the L3 vertebrae. This test shows severe channel stenosis present with marked decompression of the thecal sac related to this very large disc herniation. Dr.

Jordan operated on the claimant on August 25, 2006, to remove the instrumentation from L4 to S1 and to fuse the vertebrae at L3-4 with posterior Alphatek instrumentation and posterior fusion utilizing Ostcocel. On September 5, 2006, Dr. Jordan writes to Dr. Armstrong where he notes that she underwent surgery to remove old instrumentation at L4-L5 and L5-S1 as well as undergoing a fusion at L3-L4. Dr. Jordan notes that the claimant reports that the pain she was experiencing prior to surgery is much improved and that she is going to withdraw from some of her pain meds.

Dr. Richard Jordan in his deposition taken on August 29, 2005, was asked what medical treatment the claimant is going to require in the future for her back. Dr. Jordan responded that it appeared that it is going to be an ongoing problem noting that she has arachnoiditis. Dr. Jordan testified that arachnoiditis is a problem that never really goes away and once you have it, it is fairly often progressive but not predictable. Dr. Jordan testified that she does have the other abnormality in the joints of her back and is still requiring medicine on a daily basis. Dr. Jordan testified that when he initially began treating the claimant they dealt primarily with her leg pain which they have gotten a good grip on but her back pain is a progressive problem. Dr. Jordan was asked if the claimant was going to require a neurotomy in October and the doctor responded, "Yes." Dr. Jordan was asked if the claimant needs ongoing medications and he also responded yes. Dr. Jordan was asked if the claimant would need future neurotomies. Dr. Jordan responded that yes she would but thought that her

process was that she would tend toward an additional lumbar fusion rather than having to deal with the problem chronically. Dr. Jordan also mentioned that the claimant's stimulator will one day wear out and it will have to be replaced although that might take five or six years. Dr. Jordan also agreed that if the neurotomies were not successful then she would have to undergo a lumbar fusion. Dr. Jordan testified that the claimant will continue to need the stimulator for the rest of her life.

On cross examination by the claimant's attorney, Dr. Jordan testified that arachnoiditis is an objective finding that can be demonstrated on an MRI. Dr. Jordan testified that to give a permanent impairment rating attributable to the presence of arachnoiditis is difficult because the presence of this problem correlates very little with the patient's complaints. Dr. Jordan was asked about the claimant's limitations and he responded that she should never lift more than fifty pounds for the rest of her life and that she should not lift more than ten pounds frequently. Dr. Jordan refused to estimate or guess as to a period of time that the claimant would be able to work in a sitting position.

After a complete review of this record, I find that the claimant has proven by a preponderance of the evidence that she is entitled to additional medical treatment as recommended by Dr. Jordan. It is recognized that an early MRI indicated that the claimant was normal at the L3-L4 level but it is also noted that in doctor's operative procedure, the L3-L4 level was addressed. Dr. Jordan has indicated that the claimant's problems are ongoing and

as to her back pain, it is a progressive problem. Dr. Jordan has indicated that the claimant's need for the spinal cord stimulator will be a life long requirement and she will also be on some level of medication as well as progressive treatments to deal with her low back problems. There is no indication in this record that this claimant sustained any new injury, but that her problem is just progressive.

FINDINGS & CONCLUSIONS

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

2. On February 4, 2000, the relationship of employee-employer-carrier existed between the parties.

3. It was agreed by the parties that all prior opinions and orders will be incorporated by reference into this matter.

4. The claimant has proven by a preponderance of the evidence that she is entitled to additional medical treatment at the direction of Dr. Jordan. See discussion above.

ORDER

The claimant has proven by a preponderance of the evidence that she is entitled to additional medical treatment at the direction of Dr. Jordan. This treatment should be at the respondents' expense.

IT IS SO ORDERED.

ELIZABETH DANIELSON
ADMINISTRATIVE LAW JUDGE