

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION**

**WCC NO. F611618**

**MELVIN L. BASS, EMPLOYEE**

**CLAIMANT**

**UNIVERSITY OF ARKANSAS FOR  
MEDICAL SCIENCES, EMPLOYER**

**RESPONDENT**

**PUBLIC EMPLOYEE CLAIMS DIVISION,  
INSURANCE CARRIER/TPA**

**RESPONDENT**

**OPINION FILED SEPTEMBER 24, 2008**

Hearing conducted before Administrative Law Judge S. Dale Douthit in Little Rock, Pulaski County, Arkansas.

Claimant was represented by Mr. Terence C. Jensen, Attorney at Law, Benton, Arkansas.

The respondents were represented by Mr. Richard S. Smith, Attorney at Law, Little Rock, Arkansas.

**STATEMENT OF THE CASE**

On June 27, 2008, the above captioned claim came on for a hearing in Little Rock, Arkansas. A prehearing conference was conducted on May 22, 2008, and a Prehearing Order was filed on that same date. A copy of the Prehearing Order was marked as Commission Exhibit "1" and made a part of the record herein without objection, subject to any modifications made at the full hearing.

At the full hearing, the parties agreed to the following stipulations:

- 1) The Arkansas Workers' Compensation Commission has jurisdiction of this claim.
- 2) The employee-employer-carrier relationship existed at all relevant times, including February 19, 2006.

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- 3) Claimant's average weekly wage was \$588.78 per week which would entitle the claimant to compensation rates of \$393.00 per week for temporary total disability and \$275.00 per week for permanent partial disability.
- 4) The claimant sustained a compensable back injury on February 19, 2006, for which respondents have paid temporary total disability benefits from February 27, 2006, through September 24, 2006; and have paid a 10% whole person impairment rating.

The parties agreed at the full hearing that the sole issue would be whether the claimant is entitled to additional medical treatment.

At the full hearing, the claimant contended he sustained a compensable injury to his low back and spine on February 19, 2006. The claimant contends he was treated by Dr. Barry Baskin who was selected by the respondents. Unsatisfied with the treatment he received from Dr. Baskin, the claimant requested a change of physician which was granted by the Workers' Compensation Commission. The claimant's new change of physician was Dr. Covey, who saw the claimant on February 20, 2008. Dr. Covey has recommended additional treatment and respondents have indicated they intend to deny all additional treatment. The claimant requests that the Arkansas Workers' Compensation Commission allow him to be treated by Dr. Covey and undergo the treatment recommended by Dr. Covey.

Respondents contended at the full hearing that the claimant has received all

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benefits to which he is entitled. Respondents contend that claimant reached maximum medical improvement on his back, and have accepted and paid a 10% impairment rating. Respondents contend that claimant's bilateral knee pains are not work related and the cause of the claimant's growing pain is unknown. Respondents contend Dr. Covey's proposal to treat a two year old soft tissue injury with opiates is not reasonable or necessary. Respondents contend that the claimant has had two prior injections, one of which did not help the claimant at all. That Dr. Barry Baskin has released the claimant.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

After reviewing 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 claimant and to observe his demeanor, the following findings of fact and conclusions of law are hereby made in accordance with A.C.A. § 11-9-704:

- 1) The Arkansas Workers' Compensation Commission has jurisdiction over this claim.
- 2) The stipulations agreed to by the parties and recited herein are reasonable and are hereby accepted as fact.
- 3) The respondents have controverted and refused to pay for any additional medical treatment being recommended by Dr. Covey following the claimant's initial evaluation conducted on February 20, 2008.

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- 4) The claimant has proven by a preponderance of the evidence that the additional medical treatment now recommended by Dr. Covey is reasonable, necessary, and related to the claimant's compensable back injury. Therefore, the respondents are directed and ordered to pay for the additional pain management now recommended by Dr. Covey to include, but is not limited to, the prescription medication now recommended by Dr. Covey and the nerve root block recommended by Dr. Covey.

**DISCUSSION**

The claimant sustained an admittedly compensable back injury on February 19, 2006. The claimant testified that he originally went to see a physician at UAMS, but was ultimately asked to change doctors by the respondents to Dr. Barry Baskin. The claimant treated with Dr. Baskin on a few occasions and received physical therapy and medication from him.

Ultimately, Dr. Baskin released the claimant to his regular duties and assigned him a 10% impairment to the body as a whole. Still, with continuing back pain the claimant requested a change of physician through the Arkansas Workers' Compensation Commission. The Arkansas Workers' Compensation Commission granted the claimant a change of physician to Dr. Covey, and on February 20, 2008, Dr. Covey examined the claimant. In his February 20, 2008, report, Dr. Covey recommended the claimant have a selected nerve root block at L3-4 and other prescription medications. (R. Ex. 1, pg. 27). The claimant contends that he is entitled

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to the additional treatment now recommended by Dr. Covey and the respondents contend that since claimant previously had epidural injections one of which that did not work and the fact that the claimant was released by Dr. Baskin with no recommendations that any additional medical treatment would not be reasonable, necessary, or related to the claimant's compensable injury.

**ADJUDICATION**

It must first be pointed out that I found the claimant to be an extremely credible witness. The claimant's testimony leads this examiner to believe that the claimant still suffers from back pain due to his stipulated compensable back injury. An employer shall promptly provide for an injured employee such medical treatment as may reasonably necessary in connection with the injury received by the employee. A.C.A. § 11-9-508(a). The claimant must prove by a preponderance of the evidence that he is entitled to additional medical treatment. Wal-Mart Stores, Inc. v. Brown, 82 Ark. App. 600, 120 S.W.3d 153 (2003). What constitutes reasonably necessary medical treatment is a question of fact for the Commission. Dalton v. Allen Engineering Co., 66 Ark. App. 201, 989 S.W.2d 543 (1999).

A claimant may be entitled to ongoing medical treatment after the healing period has ended, if the medical treatment is geared toward management of the claimant's injury. Patchell v. Wal-Mart Stores, Inc., 86 Ark. App. 230, 184 S.W.3d 31

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(2004). In the present case, I find that the claimant has proven by a preponderance of the evidence that the additional treatment now recommended by Dr. Covey in his February 20, 2008, report contained herein at Respondents' Exhibit 1, page 27, is reasonable, necessary, and related to the claimant's compensable injury. Therefore, I find that the respondents are responsible for the additional medical treatment now recommended by Dr. Covey, including but not limited to the prescription medications and nerve root block injection. Respondents argued that the additional treatment from Dr. Covey is not reasonable and necessary because the claimant had had two previous epidural steroid injections. My review of the medical records fail to show the level at which the previous epidural steroid injections were given. Further, it must be noted that the claimant did in fact receive benefit from one of those steroid injections. In making my determination, I also note that Dr. Covey in his February 20, 2008, report specifically takes into consideration the fact that the claimant had two previous epidural steroid injections and knew that Dr. Baskin had basically told the claimant he had to live with his continuing problems. (R. Ex. 1, pg. 24).

After Dr. Covey took into consideration all the claimant's previous treatment and the medical opinion of Dr. Baskin, Dr. Covey still feels the claimant can benefit from a pain management standpoint with additional medications and a specific nerve root block at L3-4. Based upon the credible testimony of the claimant and all the

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medical exhibits contained in the record, I find that the claimant has proven by a preponderance of the evidence that he is entitled to the additional medical treatment now recommended by Dr. Covey in his February 20, 2008, report.

**ORDER**

Respondents are directed to pay benefits in accordance with the findings of fact set forth herein.

**IT IS SO ORDERED.**

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**S. DALE DOUTHIT**  
**Administrative Law Judge**

SDD/pjb