

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F214107

RHONDA G. CORBIN

CLAIMANT

**BRYANT SCHOOL DISTRICT
(SELF-INSURED)**

RESPONDENT EMPLOYER NO. 1

SECOND INJURY FUND

RESPONDENT NO. 2

ORDER AND OPINION FILED APRIL 22, 2008

Hearing before Administrative Law JUDGE LINDA K. MARSHALL.

Claimant represented by the HONORABLE TERENCE C. JENSEN, Attorney at Law, Benton, Arkansas.

Respondent No. 1 represented by the HONORABLE CAROL LOCKARD WORLEY, Attorney at Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

The above claim came on for a hearing in Little Rock, Arkansas on March 12, 2008. A prehearing conference was held on January 22, 2008 and a prehearing order was filed the same date. A copy of the prehearing order was marked as Commission Exhibit No. 1 and made a part of the record without objection.

At the prehearing conference, the parties agreed to the following stipulations:

1. There was a compensable December 2, 2002, low back and thoracic spine injury.
2. The compensation rates are \$425/319.

The claimant contends that she is entitled to additional medical treatment from her treating physician, Dr. Carl Covey.

Respondents contend that we are now six years out from the claimant's injury to her lower back and thoracic spine and that her current need for medical treatment is not

reasonable and necessary. Benefits were paid through August 9, 2007. Respondents contend the treatment the claimant is seeking is associated with a cervical spine condition and not the low back or thoracic spine. Respondents contend an IME was done on August 4, 2005, indicating that additional medical treatment was not reasonable and necessary. The claimant ultimately got a change of physician to Dr. Covey and treatment was approved for a period of time.

ISSUES TO BE LITIGATED

1. Additional medical treatment.

From a review of 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 witnesses and to observe their demeanor, the following findings of fact and conclusions of law are made in accordance with Ark. Code Ann. §11-9-704:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. There was a compensable December 2, 2002, low back and thoracic spine injury.
2. The compensation rates are \$425/319.
3. The claimant has proven by a preponderance of the evidence that the additional medical treatment, to include a thoracic MRI and physical therapy, is reasonable and necessary and related to the compensable injury. Respondents are responsible for the reasonable and necessary medical treatment.

4. No indemnity benefits have been awarded herein. An attorney's fee may be awarded only on indemnity benefits owed and controverted. Ark. Code Ann. §11-9-715.

DISCUSSION

The claimant, a fourth grade teacher, was on lunch duty on December 12, 2002, when she hit a slick spot in the cafeteria and fell awkwardly. The claimant had immediate pain in her low back and mid-back and right below her shoulder. The medical evidence revealed the claimant sustained herniated discs at L4-5, T8-T9 and T11-12. The claimant was treated for a time by Dr. William Ackerman, who gave her epidural steroid injections in the lumbar area, as well as facet injections.

The claimant contends that she is having pain in her low back, especially if she sits, stands or walks any length of time. The claimant next described pain right below her shoulders with pain radiating up her spine. The claimant testified that this is the same type pain she has had since the injury. The claimant most recently has treated with Dr. Covey for pain management and received a series of three steroid injections which helped the pain. Dr. Covey has recommended a thoracic MRI, which respondents have denied, as well as additional physical therapy.

According to the claimant, Medicare covers Dr. Covey's treatment for her neck, since it was not claimed as a work injury. Medicare will not pay for the low or thoracic spine, since these were work injuries.

The claimant confirmed that she had previously been treated for lupus and had also seen a doctor for low back and neck pain. The claimant confirmed that Dr. William Ackerman, a treating pain management physician, had opined that she was at

maximum medical improvement on April 12, 2005 and assigned a zero permanent impairment. The claimant underwent an independent medical evaluation in August 2005 by Dr. Scott Carle, a doctor chosen by respondents. Dr. Carle found the claimant to be at maximum medical improvement and opined that she had chronic sacroiliitis related to her lupus and not her work injury. The claimant treated with Dr. Covey in January 2008, with pain coming down from the neck and in October 2007, she was having pain down the right shoulder with radicular pain in the back and the right arm. The last doctor's visit paid for by respondents was with Dr. Covey for low back pain on July 27, 2007, and medical was controverted in August 2007. The claimant testified that the only time she has gone any significant period without treatment is because respondents have denied treatment.

The claimant has not worked since 2004 but fishes occasionally and does still deer hunt. The claimant does not play golf now, does not horseback ride and does not bowl or hike.

ADJUDICATION

Ark. Code Ann. §11-9-508(a) (Supp. 2005) provides that 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. The employee has the burden of proving by a preponderance of the evidence that medical treatment is reasonable and necessary. *Hamilton v. Gregory Trucking*, 90 Ark. App. 248, 205 S.W.3d 181 (March 16, 2005). What constitutes reasonably necessary treatment under the statute is a question of fact for the Commission. *Id.* The Commission has the

authority to accept or reject medical opinions and its resolution of the medical evidence has the force and effect of a jury verdict. *Estridge v. Waste Mgmt.*, 343 Ark. 276, 33 S.W.3d 167 (2000).

In the present case, the claimant has proven by a preponderance of the evidence that the additional medical benefits for treatment of her lumbar and thoracic spine are reasonable and necessary, specifically, the thoracic MRI and physical therapy. The claimant has most recently treated with Dr. Carl Covey, a pain management specialist. On July 27, 2007, Dr. Covey recommended a thoracic MRI and some physical therapy for strengthening, endurance and conditioning of the spine. Respondents paid for one week of physical therapy and denied the thoracic MRI and all medical was controverted after August 2007.

Respondents contend the claimant's current problems are related to her cervical problems. While the claimant has treated with Dr. Covey for her cervical pain, she has not requested the respondents to be liable for that treatment. The claimant has also continued to complain of low back and thoracic pain and has sought treatment from Dr. Covey on August 27, 2007 and October 19, 2007.

Respondents also seem to rely on an IME performed by Dr. Scott Carle on August 4, 2005, where he opined the claimant was maximally improved and has no diagnosis attributed to the fall that warrants further treatment. Another IME was performed by Dr. Earl Peebles on July 17, 2003 and he opined that she had not reached maximum medical improvement at that time but did recommend a TENS unit and he also indicated she could return to teaching. Both opinions are dated and I give each little weight.

The claimant had more recently treated with Dr. Ackerman and Dr. Covey and has benefitted from some epidural steroid injections. The claimant also proceeded with the recommended thoracic MRI, as recommended by Dr. Covey, and this provided “Small left paracentral herniated nucleus pulposus at the T3-4 level results in light contouring of the left side of the ventral cord. Left paracentral protrusion lightly flattens the ventral cord at the T9-10 level...” Cl. Exh. No. 1, p. 23. The record has reports from Dr. Covey following the August 31, 2007, thoracic MRI; however, he has not addressed what measures he recommends other than the physical therapy. The claimant has requested that the MRI and the physical therapy be deemed reasonable and necessary and the responsibility of respondents. I find the preponderance of evidence supports Dr. Covey’s recommendations. The claimant presented credible testimony of pain and problems she continues to have following her fall at school. Treatment intended to reduce or enable a claimant to cope with chronic pain attributable to a compensable injury may constitute reasonably necessary medical treatment within the meaning of Ark. Code Ann. §11-9-508(a) See, *Chronister v. Lavaca Vault*, Full Workers’ Compensation Commission, June 20, 1991 (D704562). An employer may also remain liable for medical treatment reasonably necessary to maintain a claimant’s condition after the healing period ends. *Artex Hydroponics, Inc. v. Pippin*, 8 Ark. App. 200, 649 S.W.2d 845 (1983).

ORDER

The claimant has proven by a preponderance of the evidence that the additional medical treatment, to include a thoracic MRI and physical therapy, is reasonable and

necessary and related to the compensable injury. Respondents are responsible for the reasonable and medical treatment.

No indemnity benefits have been awarded herein. An attorney's fee may be awarded only on indemnity benefits owed and controverted. Ark. Code Ann. §11-9-715. Therefore, no attorney's fees are awarded.

All sums herein accrued are payable in a lump sum without discount and this award shall bear interest at the maximum legal rate until paid.

IT IS SO ORDERED.

**LINDA K. MARSHALL
ADMINISTRATIVE LAW JUDGE**