

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F608221

TINA G. CRAWFORD, EMPLOYEE	CLAIMANT
EAST ARKANSAS AREA AGENCY ON AGING, EMPLOYER	RESPONDENT
RISK MANAGEMENT RESOURCES, INSURANCE CARRIER/TPA	RESPONDENT #1
SECOND INJURY FUND	RESPONDENT #2

OPINION FILED SEPTEMBER 25, 2008

Hearing before Chief Administrative Law Judge David Greenbaum on August 22, 2008, at Jonesboro, Craighead County, Arkansas.

Claimant represented by Mr. M. Scott Willhite, Attorney-at-Law, Jonesboro, Arkansas.

Respondents #1 represented by Mr. Michael E. Ryburn, Attorney-at-Law, Little Rock, Arkansas.

Respondent #2 waived appearance.

STATEMENT OF THE CASE

A hearing was conducted August 22, 2008, to determine whether the claimant was entitled to additional workers' compensation benefits.

A prehearing conference was conducted in this claim on August 13, 2008, and a Prehearing Order was filed on said date. At the hearing, the parties announced that the stipulations, issues, as well as their respective contentions were properly set out in the Prehearing Order, subject to an additional stipulation concerning the applicable compensation rates. A copy of the Prehearing Order was introduced as "Commission's Exhibit 1."

It was stipulated that the Arkansas Workers' Compensation Commission had jurisdiction over this claim; that the employment relationship existed between the parties at all relevant times, including July 14, 2006; that the claimant sustained a compensable injury on said date; that respondents have paid various benefits, including, but not limited to a change of treating physicians from Dr. Maurice Smith to Dr. Gregory Ricca; and that respondents had controverted claimant's entitlement to all additional benefits. At the hearing, the parties stipulated that the claimant earned sufficient wages to entitle her to compensation rates of \$210.00 per week for temporary total disability and \$158.00 per week for permanent partial disability.

Claimant contended, in summary, that her authorized treating physician, Dr. Gregory Ricca, had recommended additional treatment which was reasonably necessary, as well as causally related to the admitted injury; that respondents should be held responsible for the additional treatment, including surgery; that she would be entitled to temporary total disability from the date of surgery, if approved; and that a controverted attorney's fee should attach to any additional benefits awarded.

The respondents contended that it had paid all appropriate benefits to which the claimant was entitled and that additional medical treatment was not reasonably necessary. At the hearing, respondents maintained that it had only controverted additional medical treatment, and that, if surgery was approved, it would accept claimant's entitlement to temporary total disability following the disputed surgery.

(Tr.5)

The claimant was the only lay witness to testify. The record is composed solely of the transcript of the August 22, 2008, hearing containing numerous medical exhibits.

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 claimant and to observe her 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. The Arkansas Workers' Compensation Commission has jurisdiction over this claim.
2. The stipulations agreed to by the parties are hereby accepted as fact.
3. The claimant has proven, by a preponderance of the credible evidence, that she is entitled to additional medical treatment recommended by her authorized treating physician, Dr. Gregory F. Ricca, including, but not limited to back surgery if Dr. Ricca determines that surgery remains medically necessary.
4. All additional issues are, by necessity, specifically reserved.

DISCUSSION

\_\_\_\_\_The relevant facts in this claim are basically undisputed. The only conflicting

evidence is medical opinion addressing the appropriate form of additional medical treatment reasonably necessary to treat the claimant's chronic back problems following an admitted, compensable injury, sustained while working for the employer herein.

I found the claimant to be an extremely credible witness. The claimant's course of conduct and work ethic following her release to return to work in November, 2006, demonstrates that her claim for additional medical treatment is not for the purpose of obtaining secondary gain, but, rather, to allow her to continue working without relying on pain medication. In fact, the record reflects that the claimant has followed all the recommendations of every authorized treating physician in an effort to return to her pre-injury status, but, that her physical condition has gradually deteriorated rather than improved. Initially, respondents exercised good faith in meeting its obligations under our workers' compensation laws. However, the record reflects that after the claimant petitioned, and was granted, her one-time change of physicians to Dr. Gregory Ricca, respondents paid for the initial evaluation while controverting the treatment proposed by Dr. Ricca. As stated above, and as will be set out further below, the claimant showed a strong work ethic by continuing to work for more than one year while taking pain medication before qualifying for health insurance to pay for recommended medical treatment which respondents refused to provide.

The claimant, Tina G. Crawford, has worked for the East Arkansas Area

Agency on Aging for more than ten (10) years. She was working for the employer at the time of the within hearing. The claimant is a certified nursing assistant. Her position with the employer was titled an independent living assistant. Her duties consist primarily of taking care of patients living at home. The claimant sustained an admitted, compensation injury to her low back on July 14, 2006, when she reached across a wheelchair to catch a patient who was falling. Initially, respondents paid all appropriate medical treatment provided by an number of providers including, by her family physician, Dr. Julie Dow; the company physician, Dr. Michael Lack; as well as referrals to Dr. Maurice Smith, a neurosurgeon with the Semmes-Murphy Clinic in Memphis, Tennessee, and Dr. Terence Braden, an occupational and rehabilitation specialist in Jonesboro, Arkansas. Following extensive diagnostic studies, as well as various forms of medical treatment, which the claimant maintained failed to improve her condition, the claimant was released to return to work by Dr. Smith, the authorized treating physician, in November, 2006. Initially, the claimant was released to light-duty work with significant physical restrictions. One month later, the claimant was released to return to work without any physical restrictions despite the lack of any improvement. The claimant asserted that following extensive courses of physical therapy, cortisone injections, medications, additional physical therapy, and eventually an epidural nerve block, recommended by Dr. Smith, no treatment, to date, has provided her any relief. The claimant resumed her regular job duties after her release by Dr. Smith and has

continued to work since that time despite constant complaints.

After her release by Dr. Smith, the claimant petitioned, and received, an Order from the Commission authorizing a change of physicians from Dr. Smith to Dr. Gregory F. Ricca, a neurosurgeon in Jonesboro, Arkansas. The claimant was first examined and evaluated by Dr. Ricca on March 12, 2007. Following a physical examination and a review of the prior diagnostic studies, Dr. Ricca recommended lumbar facet blocks, as well as evaluation by a pain specialist; however, respondents controverted the treatment modalities recommended by Dr. Ricca, the authorized treating physician. The record reflects that the claimant continued working while taking pain medications and eventually returned to Dr. Ricca in July, 2008, at which time Dr. Ricca performed a repeat MRI. Dr. Ricca has since recommended surgery which the claimant desires. In fact, at the time of the within hearing, the surgery had already been scheduled. The record reflects that the claimant worked in pain for more than one year in order to obtain health insurance to pay for additional medical treatment as reflected by the claimant's credible testimony below:

Q Okay. Nevertheless, we asked for a change of physician during that time frame and you got to see Dr. Ricca for the first time, is that correct?

A Yes, sir, I did.

Q All right. And it looks like you saw him from the records the first time March 12<sup>th</sup>, 2007. Does that sound right?

A That's about right.

Q And did he examine you?

A Yes, sir, he did.

Q Okay. It looks like from his records he recommended another block, is that correct?

A Yes, sir, a different type.

Q Okay. Was that ever performed?

A No, sir.

Q All right. So then we go through there, and the next time it looks like you see Dr. Ricca is sometime June or July of this year, is that correct?

A Yes, sir.

Q And his records indicate he recommends surgery?

A Yes.

Q All right. Now, from November or December of 2006 until you see Dr. Ricca in June or July of this year, are you back to work?

A Yes, sir.

Q Doing your normal duties?

A As best I can.

Q Okay. And how are you doing at work?

A It's a struggle at work.

Q Okay. And have you scheduled any procedures as recommended by the doctor?

A Yes, sir, I scheduled the surgery.

Q And when is that scheduled?

A For September the 16<sup>th</sup>.

Q Okay. And by what means are you going to pay for this?

A Part of my Blue Cross Blue Shield and the rest on my credit card.

Q Okay. And did you have health insurance when this originally occurred back in July of 2006?

A Yes, sir, I did have health insurance, but I was off work so long, you have to work so many hours to keep your insurance, that I lost it.

Q Okay. And did that occur sometime between the date of the injury and in July of 2006?

A Yes.

Q Okay. Now, when you went back to work, were you advised – how long did you have to work before you got insurance again?

A A year.

Q Okay. Do you know when that year kicked in?

A I don't know exactly when the year ended. I knew it had to be a year.

Q Okay. So you went back to work for a year and got your health insurance?

A Yes, sir.

Q And now you have that and you are using that to help pay for the surgery?

A Yes, sir. (Tr.16-18)

On cross-examination, the claimant acknowledged that she had pre-existing medical problems. The claimant was taking a blood thinner for blood clots believed to be hereditary. The claimant also had a prior neck surgery in 2003. The claimant stated that she received a good result from her neck surgery. On further

cross-examination, claimant confirmed that Dr. Ricca initially recommended additional nerve blocks which were never performed because the respondent insurance carrier denied the treatment. She stated that her condition continued to deteriorate and that Dr. Ricca now recommends surgery. The claimant denied a statement in Dr. Ricca's report that she requested surgery while maintaining that because of the increased pain, she was willing to undergo surgery. The claimant further acknowledged that she smoked cigarettes and was over-weight. Nevertheless, despite the additional risk factors, she stated that she did not wish to take pain pills the rest of her life and, therefore, wanted to undergo the surgery recommended by Dr. Ricca.

A review of the medical evidence is warranted. The claimant was initially examined and treated by her family physician, Dr. Julie Dow. The claimant was next sent, by the employer, to the company doctor, Dr. Michael Lack, with Occupational Health Partners in Jonesboro, Arkansas. The claimant first saw Dr. Lack on July 19, 2006. Dr. Lack referred the claimant for a lumbar MRI on July 28, 2006. The radiology report reflected an abnormal low T2 signal within the disc at L4-L5, with normal position, size, and shape. There also appeared to be impingement on the right at L3-4. (Cl. Ex. A, pp.10-11)

Dr. Lack subsequently referred the claimant to Dr. Terence P. Braden, an occupational and rehabilitation specialist, as well as Dr. Maurice Smith, a neurosurgeon in Memphis, Tennessee. Both physicians placed significant physical

restrictions on the claimant which prevented her from working. Following extensive, conservative treatment and physical therapy, Dr. Smith recommended a nerve block and advised that the claimant remain off work until the block was performed and the claimant was seen in follow-up following the block. (Cl. Ex. A, p.21)

Dr. Smith acknowledged in his follow-up report that the claimant's persistent back and right leg pain did not respond to the nerve block. He recommended an EMG/nerve conduction study. The claimant returned to Dr. Smith on December 29, 2006, at which time he released her to return to work without restrictions which I found to be totally inconsistent with the claimant's continued complaints and the prior medical findings. Dr. Smith's office notes of December 29, 2006, state:

Persistent back, right-sided leg pain which did not respond to an L3-4 transforaminal block.

**Plan:**

I would like to obtain an EMG/nerve conduction study of her lower extremities and see her back after this is obtained. I believe that if this is negative, we can say that her she [sic] is asymptomatic from her disc herniation and that her major pain generator is her myofascial pain syndrome. At that point, she will need no further acute neurosurgical attention. I will see her back after her EMG/nerve conduction studies.

ADDENDUM: Ms. Crawford returns after her EMG/nerve conduction studies obtained today. These were reviewed and are normal. From a neurosurgical perspective, I really feel that she is without evidence of radiculopathy by clinical exam or EMG studies. The small disc herniation at L3-4 on the right is most probably asymptomatic as she did not have any improvement from the block and she has no evidence of radiculopathy on clinical exam. I believe that her major pain generator is coming from her myofascial pain syndrome and I see really no significant structural changes in her spine. From a neurosurgical perspective, I will place her at MMI and allow her to return to work without restrictions and will give her no permanent

impairment rating. (Cl. Ex. A, p.22)(Emphasis supplied)

The claimant was next examined by Dr. Gregory Ricca following a Commission ordered change of physician. Dr. Ricca examined the claimant on March 12, 2007. Dr. Ricca reviewed lumbar MRI studies of both July 28, 2006, as well as November 15, 2006, and noted that they were identical. Dr. Ricca recommended medication, together with lumbar facet blocks at L3-4, right and L4-5, right with possible facet rhizotomies. He further opined that the claimant should be evaluated by a pain specialist to determine the best course of therapy. (Cl. Ex. A, pp.24-25)

As previously noted, respondents resisted Dr. Ricca's treatment recommendations. The claimant returned to Dr. Ricca on July 7, 2008. Dr. Ricca noted that in the interim time, the claimant had only been seen by her primary care physician, Dr. Dow, continuing to work while taking pain medication. Dr. Ricca ordered a repeat lumbar MRI which was performed on July 9, 2008. The findings included bilateral lateral recess stenosis L3-4 and L4-5 with bilateral neural compression, worse on the right. He also noted possible small HNP at L4-5 right; that the thecal sac and right L5 root were displaced but without definite HNP. Dr. Ricca explained the reasons for surgery to the claimant. Following his explanation, the claimant requested surgery and Dr. Ricca agreed that it was appropriate. (Cl. Ex. A, p.28)

Following Dr. Ricca's recommendations, respondents submitted the clinical records from Dr. Ricca, together with the MRI studies dated July 28, 2006, and July

9, 2008, to a medical review institute for its opinion. I found it interesting that the recommendations made by the Medical Review Institute of America were the same recommendations made by Dr. Ricca on March 12, 2007, which respondents failed and refused to accept. Rather than agree to the recommendations made by Dr. Ricca on March 12, 2007, the claimant continued working resulting in a gradual deterioration of her condition which resulted in Dr. Ricca's recommending surgery more than a year later. A portion of the medical review findings follow:

**Explanation of Findings:**

1. Please provide opinion with supporting rationale, re: medical appropriateness of Lumber Decompressions L3-4 and L4-5, right.

The submitted clinical record indicates that the patient has a history of Intractable low back pain as a result of a work place event occurring on 07/14/06. The records suggest that the patient has undergone conservative care consisting of oral medications and physical therapy and epidural steroid injections with no significant improvement. The patient's imaging studies are not overly impressive and indicate a congenitally small canal with evidence of facet joint hypertrophy at L3-4 and L4-5 and L5-S1. The patient has been found to have mild to moderate central spinal canal stenosis at L4-5 due to a combination of effects. There is no clear indication that the patient has a disc herniation. It was recommended at one point that the patient undergo facet blocks which do not appear to have been performed which would clearly be appropriate based upon her imaging studies and reported physical examinations. She is not exhibiting any signs of neurogenic claudication on physical examination and tends to have more difficulty in static positions suggesting facet disease. The patient's most recent imaging study indicates similar pathology at L3-4, L4-5 and L5-S1 which continues to indicate mild to moderate acquired spinal stenosis with moderate facet hypertrophy at these levels. Given the limited pathology noted on the MRI report it is unclear if right sided decompressions at L3-4 and L4-5 would provide the patient any improvement in her subjective reports. Current evidence based guidelines would recommend that all potential pain generators be identified or eliminated. The

submitted clinical records indicate that there was previously a recommendation for facet joint blocks. It would be important to exclude the facets as a cause for the patient's continued low back pain without evidence of radiculopathy prior to moving forward with a decompressive surgery. If the patient fails to respond to lumbar facet blocks all conservative care would have been exhausted and the patient would be considered an appropriate candidate for lumbar decompression at L3-4 and L4-5. The proposed lumbar decompressions at L3-4 and L4-5, right is not medically appropriate at this time.

**Conclusion/Decision to Not Certify:**

The proposed lumbar decompressions at L3-4 and L4-5, right is not medically appropriate at this time. (Resp. B)(Emphasis supplied)

The Workers' Compensation Act requires employers to provide such medical services as may be reasonably necessary in connection with an employee's injury. A.C.A. §11-9-508; *American Greeting Corp. v. Garey*, 61 Ark. App. 18, 963 S.W.2d 613 (1998). What constitutes reasonably necessary medical treatment under A.C.A. §11-9-508 is a question of fact for the Commission. *Gansky v. Hi-Tech Engineering*, 325 Ark. 163, 924 S.W.2d 790 (1996); *Geo Specialty Chem., Inc. v. Clingan*, 69 Ark. App. 369, 13 S.W.3d 218 (2000). Medical treatment which is required to stabilize and maintain an injured worker's status remains the responsibility of the employer. *Artex Hydroponics, Inc. v. Pippin*, 8 Ark. App. 200, 649 S.W.2d 845 (1983).

Rather than conduct a further analysis of the record in this cause, suffice it to say that the claimant has proven, by a preponderance of the credible evidence, that she is entitled to additional, continued medical treatment by Dr. Gregory F. Ricca. The claimant's credible testimony, as well as the claimant's course of

conduct and work history conclusively shows that the claimant is motivated solely by the desire to improve her physical condition and continue working rather than by any secondary gain. The claimant's medical treatment should be decided by the claimant and her physician rather than a third-party administrator and an outside consultant that has never examined nor had any personal contact with the claimant. Further, the recommendations of the medical review were consistent with the recommendations of Dr. Ricca. While I recognize that the claimant has certain risk factors which must be taken into consideration, the ultimate decision must be, and should be, made by the doctor and his patient. Accordingly, I hereby make the following:

AWARD

\_\_\_\_\_Respondent, Risk Management Resources, is hereby directed and ordered to pay for all medical treatment recommended by Dr. Gregory F. Ricca that is related to claimant's July 14, 2006, compensable injury, including, but no limited to back surgery if Dr. Ricca follows through with his recommendations.

All additional issues are specifically reserved.

IT IS SO ORDERED.

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DAVID GREENBAUM  
Chief Administrative Law Judge