

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F612962

GLADYS M. DILLARD

CLAIMANT

**NORTH LITTLE ROCK SCHOOL DISTRICT
(SELF-INSURED)**

RESPONDENT EMPLOYER

ORDER AND OPINION FILED JANUARY 31, 2008

Hearing before Administrative Law JUDGE LINDA K. MARSHALL.

Claimant represented by the HONORABLE ROBERT R. CORTINEZ, II, Attorney at Law, Little Rock, Arkansas.

Respondent represented by the HONORABLE MICHAEL E. RYBURN, Attorney at Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

The above claim came on for a hearing on December 19, 2007. A prehearing conference was held on October 23, 2007 and a prehearing order was filed the same date. A copy of the prehearing order was marked as Commission Exhibit No. 1 and introduced into evidence without objection.

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

1. There was a compensable injury on October 2, 2006.
2. Respondents paid the claim through April 9, 2007, to include the expenses associated with Dr. Harold Chakales through that date.

The claimant contends she is entitled to additional medical treatment from Dr. Chakales and the care is reasonable and necessary.

Respondents contend treatment after April 9, 2007, is not reasonable or

necessary. Respondents particularly controvert Dr. Chakales' recommendation that the claimant have yet another MRI since the previous MRI was dated March 14, 2007.

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 injury on October 2, 2006.
2. The claimant has failed to prove by a preponderance of the evidence that additional treatment with Dr. Chakales was reasonable and necessary and related to her October 2, 2006, incident.

DISCUSSION

The claimant, 54 years old, currently draws social security disability benefits resulting from her conditions of anxiety and severe depression. The claimant can continue to draw disability benefits and earn up to \$12,000 per year in a work incentive program. The claimant began to work about two months before her work-related accident where she was employed as a bus driver. The claimant testified that she was injured on October 2, 2006, when she was driving her bus and was yielding at a railroad

track when a driver behind her hit the back door of the bus.

The claimant testified that she first went to Concentra and then she requested a change of physician and she was approved by the Commission to see Dr. Harold Chakales. The claimant first saw Dr. Chakales on February 7, 2007, and he ordered an x-ray of the back. The doctor recommended light-duty work and trigger point injections, physical therapy, muscle relaxers and pain pills. Dr. Chakales also ordered a MRI. The claimant testified that she returned to work light duty as a dispatcher and returned to bus driving in May 2007. The claimant testified that she continues to treat with Dr. Chakales and pays for this care with her health insurance. The claimant sees Dr. Chakales about every six weeks and gets refills of her prescriptions, particularly her pain medication, Hydrocodone.

Under cross examination, the claimant confirmed that she had low back problems, neck problems, anxiety and depression problems and bilateral feet problems before the October 2006 bus incident. The claimant confirmed that she had a MRI of her back in 2004, which revealed degenerative disc disease. The claimant continued to treat after the MRI with Dr. Peebles.

The claimant verified that she was driving a 62-passenger bus and while stopped at a railroad crossing, she was hit by a Jeep. The claimant testified that the back door was bent and the tailpipe came off but she continued to drive the bus.

The claimant confirmed that she had a MRI of her back in 2004 and again in March 2007. She verified that nothing had happened to her between March and October 2007. In fact, she said her back had improved some with the trigger point injections. In October 2007, Dr. Chakales requested another MRI of the claimant's low

back. The claimant returned to work regular duty in April 2007 and has continued to work in that capacity.

The claimant was questioned about another incident that happened in December 2007, where the claimant contends she hurt her back when she was securing a wheelchair on the bus and she sought medical treatment for that incident. The claimant testified that she does not want the December 2007, incident involved in the current claim because that was just a strained muscle that she resolved herself. She contends she is back at work regular duty.

ADJUDICATION

Employers must promptly provide medical services which are reasonably necessary for treatment of compensable injuries. Ark. Code Ann. §11-9-508(a)(Repl. 2005). However, injured employees have the burden of proving by a preponderance of the evidence that medical treatment is reasonable and necessary. *Wal-Mart Stores, Inc. v. Brown*, 82 Ark. App. 600, 120 S.W.3d 153 (2003). In assessing whether a given medical procedure is reasonably necessary for treatment of the compensable injury, we analyze both the proposed procedure and the condition it is sought to remedy. *Deborah Jones v. Seba, Inc.*, Full Workers' Compensation Commission Opinion filed December 13, 1989 (Claim No. D511255). Also, respondents are only responsible for medical services which are causally related to the compensable injury.

In the present case, the claimant sustained a compensable injury and respondents paid medical treatment with Concentra and then with the claimant's change of physician doctor, Dr. Harold Chakales. Respondents controverted the claim

after April 9, 2007, contending all reasonable and necessary treatment had been provided. Respondents paid for a lumbar MRI ordered by Dr. Chakales on March 14, 2007 and the Impression from that diagnostic test was, as follows:

IMPRESSION:

1. Spondyloarthropathic changes involving the lower three lumbar disc levels that although extensive appear to be secondary to sterile discitis.
2. Asymmetric left foraminal narrowing at L5-S1.
3. Rightward discopathy at L3-4. (Cl. Exh. No. 1, p. 7.)

The claimant had an April 28, 2004, MRI of the lumbar spine and the Impression from this test was as follows:

IMPRESSION:

1. Asymmetric broad based bulge to the right at the L3-4 level with mild central stenosis. Mild to moderate right lateral recess narrowing is seen. (Resp. Exh. No. 1, p. 1.)

It is quite obvious the claimant had pre-existing back problems before the bus accident on October 2, 2006. The claimant was provided reasonable and necessary medical care by Concentra and Dr. Chakales for the aggravation of her back condition. The claimant returned to work regular duty on April 10, 2007 and continued to work in that capacity until a recent December 2007 incident. The claimant testified that the trigger point injections helped her back. After considering the claimant's testimony and the medical records, I find the claimant has failed to prove by a preponderance of the evidence that additional medical treatment, to include another MRI, is reasonable and necessary and related to the claimant's compensable injury. The claimant had pre-existing back problems and her bus being rear-ended caused a temporary aggravation of her back condition. The claimant has been working regular duty since April 2007 and

has followed up with Dr. Chakales with his office notes indicating that he mainly prescribed pain pills and muscle relaxers. Dr. Chakales' medical records did not provide a reasonable basis for an additional MRI just months after the previous MRI with substantially no new symptoms.

ORDER

The claimant has failed to prove by a preponderance of the evidence that additional treatment with Dr. Harold Chakales was reasonable and necessary and related to her October 2, 2006, incident. The claim for benefits is respectfully denied and dismissed.

IT IS SO ORDERED.

**LINDA K. MARSHALL
ADMINISTRATIVE LAW JUDGE**