

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION**

**CLAIM NO. F511909**

<b>BILLY DOTSON, EMPLOYEE</b>	<b>CLAIMANT</b>
<b>LITTLE ROCK NATIONAL AIRPORT, SELF-INSURED EMPLOYER</b>	<b>RESPONDENT #1</b>
<b>RISK MANAGEMENT RESOURCES, THIRD-PARTY ADMINISTRATOR</b>	<b>RESPONDENT #1</b>
<b>SECOND INJURY FUND</b>	<b>RESPONDENT #2</b>

**OPINION FILED APRIL 28, 2008**

Hearing before ADMINISTRATIVE LAW JUDGE ANDREW L. BLOOD, on February 21, 2008, at Little Rock, Pulaski County, Arkansas.

Claimant represented by the HONORABLE PHILIP M. WILSON, Attorney at Law, Little Rock, Arkansas.

Respondent #1 represented by the HONORABLE BETTY J. HARDY, Attorney at Law, Little Rock, Arkansas.

Respondent #2 represented by the HONORABLE DAVID L. PAKE, Attorney at Law, Little Rock, Arkansas.

**STATEMENT OF THE CASE**

A hearing was conducted in the above-style claim to determine the claimant's entitlement to additional workers' compensation benefits. On December 11, 2007, a pre-hearing conference was conducted in this claim, from which a Pre-hearing Order of the same date was filed. The Pre-hearing Order reflects stipulations entered by the parties, the issues to be addressed during the course of the hearing, and the parties' contentions relative to the issues. The Pre-hearing

Order is herein designated a part of the record as Commission Exhibit #1. Respondent #2 was excused from participating in the scheduled hearing. Further stipulations offered by the parties included the fact that the claimant earned wages sufficient to entitle him to weekly compensation benefits at the maximum applicable rate for an injury occurring in 2005, with the same being \$466.00, for total disability, that respondent have accepted the claimant as permanently and totally disabled, and that Death and Total Disability Trust Fund has issued a certificate of acceptance as well.

The testimony of Billy Dotson, Jill Johnson, and Karen Delavan, coupled with medical reports and other documents comprise the record in this claim. Respondent #1 agreed that Respondent #2, the Second Injury Fund, could be dismissed as a party to the claim in light of the acceptance of the claimant as permanent and totally disabled. Respondent #2 is herein dismissed as a party in this claim.

The remaining issues to be addressed during the course of the present hearing are the continued care and treatment of the claimant by Dr. Chakales as well as his recommendations, and whether Respondent #1 is in contempt for failing to follow the Change of Physician Order of the Commission. All other issues have either been resolved or will be held in abeyance.

### **DISCUSSION**

Billy Dotson, the claimant, with a date of birth of August 14, 1945, commenced his employment on January 7, 2003. As reflected in the stipulations above, in October 2005, the claimant sustained serious compensable injuries resulting in acknowledgment of his permanent total disability status. In describing the parts of his body injured in the October 27, 2005, accident, claimant testified:

All of these ribs on this side, multiple ribs on this side (indicating); a shattered artery in my heart; punctured lung; broken shoulder bone; five herniated discs; my knees was hurt; and my elbow. (T. 15).

Claimant also injured his diaphragm in the accident. Claimant denies having any back problems that he was aware prior to the October 27, 2005, accident.

During the course of his claim claimant received treatment under the care of a pulmonary specialist, Dr. Beaton. The testimony of the claimant reflects that his treatment under the care of Dr. Beaton was the product of a Change of Physician Order entered by the Workers' Compensation Commission.

The testimony of the claimant reflects that he was sent to Dr. Barry Baskin for care and treatment relative to his back injury growing out of the October 27, 2005, accident. Claimant's testimony reflects that he was not satisfied with Dr. Baskin's care and treatment. Claimant testified that the last time he was seen by Dr. Baskin his treatment consisted of medication - - pain pills.

Claimant obtained a change of treating physician relative to his back injury growing out of the October 27, 2005, compensable accident. Specifically, claimant requested a change of physician from Dr. Baskin to Dr. Harold Chakales. On June 28, 2007, a Change of Physician Order was entered by the Administrator of the Medical Cost Containment Department of the Arkansas Workers' Compensation Commission, which designated Dr. Chakales as the claimant's treating physician. (CM #2).

Claimant maintains while treating with Dr. Chakales he was prescribed pain medication and offered more treatment including recommending a test, however respondent refused to

authorize it. Claimant was seen by Dr. Chakales on two (2) occasions. Claimant testified that when he attempted to return to Dr. Chakales for a third visit he was not permitted to do so by respondent. Claimant's testimony reflects that he was advised by the respondent, through the claims adjuster, that he could return to see Dr. Baskin. Claimant testified that as far as actual treatment the only thing either Dr. Baskin or Dr. Chakales was doing was providing prescription medication.

Claimant testified that he does not want to continue to follow through with the care and treatment of Dr. Baskin. Claimant desires to continued the care and treatment of Dr. Chakales. Claimant noted that Dr. Chakales has recommended a test for his back and he wishes to follow through with the care and treatment of same. With respect to his current symptoms regarding his back, the testimony of the claimant reflects that he experiences constant pain as well as pain in his buttocks.

During cross-examination claimant acknowledged that he had been seen by Dr. Berry Thompson relative to his back injury growing out of the accident. Claimant's testimony reflects that on April 11, 2006, Dr. Thompson relayed that as far as his rib injuries were concern he was as good as he was going to get. Claimant denies that the afore assessment of Dr. Thompson was attributable to his other orthopedic complaints. While a July 27, 2007, report of Dr. Chakales, which is contained in the record, reflects an assessment that he did not believe that there was any active treatment indicated for the claimant at that time there is no indication in the report that the information was conveyed to the claimant.

Claimant acknowledged having a couple of other back injuries in the past. Some of the afore injuries were the product of motor vehicle accident. The testimony of the claimant reflects

that he goes to the VA Hospital or VA Clinic periodically for different kinds of treatment.

Ms. Jill Johnson, claims director with Risk Management Resources, testified that she continues to handle a few workers' compensation claims, one of which is that of the claimant which she started out handling from the beginning. With respect to the claimant's claim, Ms. Johnson testified she started out paying temporary total disability benefits, and later accepted the claimant as permanently and totally disabled. At the time of the acceptance of permanent total disability in May 2007, the claimant's indemnity benefit payments were changed from temporary total to permanent total.

In addition to paying indemnity benefits to the claimant, Ms. Johnson testified that she has been paying medical expenses in the present claim. Regarding medical expenses that have been denied by respondent, Ms. Johnson testified:

There were some hospitalizations for unrelated conditions throughout these years that have been denied, maybe on two occasions. And recently, the MRI recommended by Dr. Chakales. (T. 29).

Ms. Johnson acknowledged receiving a copy of the Change of Physician Order from the Medical Cost Containment Division of the Arkansas Workers' Compensation Commission. Following receipt of the Change of Physician Order Ms. Johnson testified that she paid for two (2) visits that the claimant had with Dr. Chakales. Ms. Johnson's testimony reflects that it was her understanding that Dr. Chakales was not recommending any treatment for the claimant. Ms. Johnson acknowledge receiving a prescription medication request from Dr. Chakales relative to the claimant:

I believe I did, and I believe I approved a couple of those, until I got Dr. Chakales's report that said he didn't have anything to offer Mr. Dotson. (T. 29).

Ms. Johnson confirmed that Dr. Chakales indicated in the report that an MRI was suggested. Ms. Johnson testified that upon receipt of the suggested MRI scan of Dr. Chakales she referred it to pre-cert. Ms. Johnson maintains that the reason she referred the recommendation regarding the MRI to pre-certification was, “because Rule 30 tells me I have to”. (T. 30). Ms. Johnson testified that the pre-certification company that she uses is one that is licensed and recognized by the Arkansas Workers’ Compensation Commission. (T. 30). Regarding the outcome of the referral of MRI scan recommendation of Dr. Chakales to the pre-certification company Ms. Johnson relayed:

Well, what happens, if it doesn’t meet the initial percification criteria at the nurse review level, they refer it for specialty based peer review. And so that’s what we did. And it was not recommended, based on the peer review. (T. 30).

Ms. Johnson testified that based of the fact that the procedure did not meet pre-certification she denied the MRI. Ms. Johnson added, that if any point the MRI met pre-certification she would have approved it.

Ms. Johnson testified that she does not feel that the respondent is in contempt for not providing the claimant’s treatment under the care of Dr. Chakales pursuant to the Change of Physician Order, explaining:

No. I mean, I don’t have a choice about referring something for pre-cert. And it didn’t pass. And that’s the Commission’s rule, you know, if it doesn’t pass, I don’t have to pay for it. (T. 31).

During cross-examination, Ms. Johnson acknowledged that following the problem with the MRI the claimant attempted to return to Dr. Chakales and the appointment was denied.

Further, Ms. Johnson concedes that on her behalf the claimant was informed by the nurse case

manager that if he had any other problems with his back he was to return to Dr. Baskin. (T. 32). Regarding the afore actions in relation to the entry of the Change of Physician Order entered by the Medical Cost Containment Division of the Arkansas Workers' Compensation Commission designating Dr. Harold Chakales as the claimant's treating physician Ms. Johnson testified:

Well, it authorized him to see him once, but that doesn't mean that he can con to a doctor that has nothing to offer him. The treatment still has to be reasonable and necessary. (T. 32).

Ms. Johnson maintains, in declining to allow the claimant to return to Dr. Chakales for an examination, that the claimant had been examined by Dr. Chakales on two (2) occasions and that Dr. Chakales did not have anything to offer him. Ms. Johnson asserts that she did not deny the claimant medical treatment by Dr. Chakales because Dr. Chackales was not offering any treatment.

Ms. Johnson concedes that while she did deny the claimant another appointment with Dr. Chakales she did authorize the claimant to return to Dr. Baskins for his back. Ms. Johnson maintains that Dr. Baskins treated the claimant for several things, "Baskins treats him for pain, period". (T. 33). Ms. Johnson's testimony reflects that Dr. Chakales "didn't offer any treatment at all" for the claimant. (T. 33). Ms. Johnson acknowledged that when the claimant went to Dr. Chakales he was prescribed pain medication, which she approved. Should the claimant require further medication for pain relative to his back Ms. Johnson authorized him to return to Dr. Baskins, but not Dr. Chakales, "I approved him to go back to Dr. Baskins for whatever he needed". (T. 34).

Ms. Johnson's testimony reflects that while the medical review company that she utilizes, Systemedic Corporation is approved through the Arkansas Workers' Compensation Commission

she does not know who they are licensed by. Ms. Johnson acknowledged that Rule 30 requires that the utilization review program be certified by the Arkansas State Board of Health. Ms. Johnson testified that she has no idea when Systemedic Corporation was certified and approved by the State Department of Health. Ms. Johnson concedes that she does not know if Systemedic Corporation is certified or approved.

Ms. Johnson testified that the claimant's case was sent to pre-certification immediately after Dr. Chakales' office provided the report requesting the MRI. Ms. Johnson acknowledged receiving a second report from Dr. Chakales following the claimant's second visit however the information was not furnished to the medical review or pre-certification company. Ms. Johnson noted that the pre-certification company requested the information from Dr. Chakales. Ms. Johnson's testimony reflects that if the claimant was having problems with his back he could return to Dr. Baskin for any treatment.

During re-direct examination, Ms. Johnson testified that the medical reports and office notes generated by both visits of the claimant to Dr. Chakales were provided to the pre-certification company. (T. 39-40). Ms. Johnson testified that Systemedic Corporation performed the pre-certification. The testimony of Ms. Johnson reflects that after the MRI request did not meet the initial review which takes place with a pre-certification request it referred by Systemedic Corporation to a peer review company, which resulted in the August 13, 2007, report. The peer review company utilized was Medical Review Institute of America, Inc. Ms. Johnson acknowledged that has no knowledge whether the afore company is approved as a pre-certification company pursuant to Rule 30.

The testimony of Ms. Johnson reflects that she is employed by a third party administrator

and the client, in this case the employer, actually contract with a company to do their bill review and medical review audit. Ms. Johnson added that the Arkansas Workers' Compensation Commission maintains a list of approved vendors for the afore services. Ms. Johnson testified that Systemedic Corporation is a provider on the list maintained by the Arkansas Workers' Compensation Commission.

Regarding any dispute as to whether or not a procedure is not approved through the pre-certification or pre-authorization, Ms. Johnson testified that is her understanding, as a claims manager, any objections or reconsideration needs to go to the Medical Cost Containment Department of the Arkansas Workers' Compensation Commission. Ms. Johnson's testimony reflects that to her knowledge neither Dr. Chakales nor the claimant had made such a request to the Medical Cost Containment Department. Ms. Johnson testified that she was not aware of the impact on the review/reconsideration process if the claim was in litigation.

The testimony of Ms. Karen Delavan reflects that she is a registered nurse case manager who has been employed by Systemedic Corporation since 2004. Ms. Delavan testified that Systemedic Corporation is a managed care organization primarily for the state of Arkansas serving employers or employer groups' insurance companies around the state. Regarding her job duties and day-to-day activities for Systemedic Corporation, Ms. Delavan testified:

Working with injured workers to coordinate their medical care; make arrangements for home equipment for physical therapy; or referral to other physicians; things like that, to facilitate their care to reach maximum medical improvement. (T. 48).

Ms. Delavan testified that Systemedic Corporation is recognized by the Medical Cost Containment Division of the Arkansas Workers' Compensation Commission. With respect to

Systemedics' involvement with bill review, per-certification and peer review issues, Ms.

Delavan's testimony reflects:

Yes. we have different divisions that - - control med does bill review and Systemedic review is involved in precertification, peer review issues when requested. (T. 48).

Ms. Delavan has performed the services as nurse case manager in the present claim since November 2005. The testimony of Ms. Delavan reflects that she is aware of Change of Physician Orders entered in the present claim by the Medical Cost Containment Division of the Arkansas Workers' Compensation Commission. One of the afore was from Dr. Baskin to Dr. Chakales and one was from Dr. Baskin to Dr. Stewart relative to the claimant's cardiac problem.

Ms. Delavan's testimony reflects that the claimant is no longer under the care of Dr.

Baskin:

When the request for a change of physician, probably July or August, when he first saw Dr. Chakales. I don't believe he has seen Dr. Baskin since then. (T. 57).

The testimony of Ms. Delavan reflects that it is her understanding that should the claimant need to see a physician for complaints relative to his back, with the Change of Physician Order, he should go to Dr. Chakales. Ms. Delavan's testimony reflects that she is aware that the respondent has denied the claimant sanctioned access to Dr. Chakales and has authorized him to return to Dr. Baskin. (T. 58). Ms. Dehavan concedes that the only physician that respondent has approved for the claimant to be seen for his back complaints is Dr. Baskin.

Ms. Delavan testified that she was aware of the recommendation of Dr. Chakales that the claimant undergo an MRI of his lumbar spine. Regarding the involvement of pre-certification with such a recommendation, Ms. Delavan's testimony reflects:

When a doctor requests something like that, it is up to the adjuster to determine whether they would like - - whether they are going to request precertification on a particular procedure under the Rules of the Commission. And then, usually, I would be the one who would send that request to the peer review department, once I understood that it was requested by the adjuster. (T. 49).

The testimony of Ms. Delavan reflects that she believes that the above took place in the present claim. The pre-authorization or pre-certification department is a division of Systemedic Corporation and retains the same approval with the Arkansas Workers' Compensation Commission as the MCO. Ms. Delavan testified that she did not receive information from the Arkansas Workers' Compensation Commission that there was a problem with the company that did the pre-authorization or peer review for determination of the MRI approval.

During cross-examination Ms. Delavan testified that she did not know the identity of the company that performed the peer review in the present claim:

Systemedic has a division that does percertainment and would request a peer review. Now, they send that outside our company to someone else to do the peer review. (T. 51).

Ms. Delavan's testimony reflects that she has no information on whether the company utilized to perform the peer review is certified pursuant to Rule 30 of the Arkansas Workers' Compensation Act or licensed by the Arkansas State Department of Health.

Ms. Delavan testified that she is still providing services for the claimant. Ms. Delavan maintains that she does not discuss the claimant's case with his doctors outside of his presence. The testimony of Ms. Delavan reflects that she was unaware that the claimant had filed a complaint with the doctor's office and the Arkansas Workers' Compensation Commission asking that she not discuss his case at all without his attorney being present.

Ms. Delavan testified that Dr. Baskin treated the claimant for pain management primarily to his back. The testimony of Ms. Delavan reflects that Dr. Baskin's medical specialty is that of physical medicine and rehabilitation. Ms. Delavan noted that in addition to his complaint of back pain, claimant also had complaints of rib pain for which Dr. Baskin provided medical treatment.

During rebuttal, the claimant testified that he did in fact see Dr. Baskin. Regarding the medical treatment rendered to him by Dr. Baskin, claimant testified:

He would rub my back, rub my knees, give me some pain pills. I told him my diaphragm was hurt a year and a half ago, and he said, "Well, it might be." (T. 62).

The evidence in the record reflects that on June 28, 2007, a Change of Physician Order was entered by the Administrator of the Medical Cost Containment Department of the Arkansas Workers' Compensation Commission pursuant to Ark. Code Ann. §11-9-514 (a)(3)(A) (ii) (Repl. 2002). The Change of Physician Order change the claimant's treating physician from Dr. Barry Baskin to Dr. Harold Chakales. (CM #2).

On July 11, 2007, the claimant was seen by Dr. Chakales in accordance with the Change of Physician Order. After reciting a history of the claimant's injury, the July 11, 2007, report of Dr. Chakales reflects the results of x-rays of the claimant's lumbar spine as well as the physical examination which was conducted. The July 11, 2007, report of the claimant's initial examination by Dr. Chakales concludes:

I will review his old medical records and have him return to see me on July 27, 2007. He complains of chronic rib pain on the right side; however, this was at the end of the visit and no x-rays were made. (CX. #1, p. 2).

The claimant was again seen by Dr. Chakales on July 27, 2007, in accordance with the July 11,

2007, directive. (CX. #1, p. 8). In a July 27, 2007, correspondence to respondent Dr. Chakales addressed the results of his examinations of the claimant, review of the claimant's medical records, diagnoses, assessment, recommendation and status. The correspondence reflects, in pertinent part:

Mr. Dotson returned to see me today and primarily complains of chronic back pain up and down his spine, with pain in his tailbone and bilateral knee pain. He denies any numbness and tingling. He states his problems are with his back, but he has trouble breathing.

Physical examination shows physical findings are unchanged. His orthopaedic diagnoses include:

1. Compression fractures, L1, L2, L3.
2. Severe trauma to the ribs with healed rib fractures.  
He continues to have pain over the right side of the ribcage.

I do not believe there is any active treatment indicated for Mr. Dotson at this time, but I feel he is unable to work and most likely is permanently totally disabled. I agree with Dr. Baskin in this regard. I would recommend scheduling him for an MRI of the lumbar spine.

Mr. Dotson will return to see me in 6 weeks. (CX. #1, p. 7).

The record reflects the presence of a August 13, 2007, correspondence/report of Medical Review Institute of America, Inc., directed to Martha Price of Systemedic Corporation regarding the claimant. The correspondence/report reflects, in pertinent part:

Phone Consult:

I called the office of the treating physician on 8/10/07 at 3:55 PM CST to obtain additional information. I left a message with the receptionist for Dr. Chakales. I called again on 8/11/07 at 2:05 PM CST. I spoke with Jeannie, who stated that the doctor is not in the office today, and would not return until after the submission deadline of this review. Therefore, no further attempts were made.

Questions for Review:

1. Please provide opinion with supporting rationale regarding medical appropriateness of proposed MRI Lumbar Spine and MRI Cervical Spine.

Explanation of Findings:

The lumbar MRI may be warranted in the future; however, for this case no physical exam findings were submitted, and it is unclear if the patient has deficits in the bilateral or unilateral lower extremities. The MRI of the cervical spine is not warranted, as there were no complaints of neck pain and no upper extremity neurologic findings. Additional information is needed to support the MRI of the lumbar spine.

Conclusion/Decision to Not Certify:

1. Please provide opinion with supporting rationale regarding medical appropriateness of proposed MRI Lumbar and MRI Cervical Spine.

The MRI of the lumbar spine and MRI of the cervical spine are not medically appropriate at this time. (CX #1, p. 10).

In correspondence of September 11, 2007, responsive to an inquiry of claimant's attorney regarding Dr. Chackales' recommended lumbar MRI, counsel for respondent relayed:

I have reviewed your inquiry regarding my client's position with respect to approval of the MRI suggested by Dr. Harold Chakales. My client will not be approving the MRI, nor will my client authorize additional treatment from Dr. Chakeles. However, my client will continue to allow the claimant to see Dr. Baskin.

My client processed the suggestion by Dr. Chakales that the claimant undergo an MRI of his lumbar spine through precertification review and also peer review. It was determined by peer review that the MRI suggested by Dr. Chakales is not medically appropriate. I have attached a copy of the peer review report. (CX. #2, p.7).

In a September 26, 2007, correspondence to respondent's attorney, the attorney for the claimant noted what he deemed inappropriate contact by the nurse case manager and set forth the position of the claimant regarding further medical treatment:

Even though the claimant is represented in [t]he above styled case it

appears the nurse case manager contacted my client and advised him that he was to return to see Dr. Baskin. Quite obviously my clients (sic) treating physician is Dr. Chakales and he is not going to return to Dr. Baskin. Please advise your client the Mr. Dotson is represented and not to be advising my client to do anything without going through this office. If there is a problem le[t] me know so I can bring this matter to the attention of an Administrative Law Judge. (CX. #2, p. 9).

In a January 21, 2008, correspondence to the claimant's attorney, Dr. Chakales addressed the appropriateness of the recommended lumbar MRI relative to the claimant's injury:

As you know, I have seen and evaluated Mr. Dotson. He has residuals from compression fractures of L1, L2 and L3. I also recently recommended he have a repeat MRI of the lumbar spine. The studies that have been done were in the past, and he is now approximately 2 ½ years post injury. He indeed may have chronic nerve root irritation.

I think it would behoove us to have current diagnostic studies, including electromyographic studies and a current MRI of the lumbar spine. By denying current studies, his condition cannot be adequately evaluated and treated. I do not believe that reports by physicians, who are giving an opinion based on review of medical records and receiving compensation for their report can give a valid opinion as to the patient's condition. If this does not meet your approval, I would suggest you have a hearing before the workers' compensation commission. (CX. #1, p. 16).

After a thorough consideration of all of the evidence in this record, to include the testimony of the witnesses, review of the medical records and other documentary evidence, application of the appropriate statutory provisions and case law, I make the following:

#### **FINDINGS**

1. The Arkansas Workers' Compensation Commission has jurisdiction of this claim.
2. On October 25, 2005, the employment relationship existed between the parties, at which time the claimant sustained compensable injuries which rendered him permanently and totally disabled.

3. On October 25, 2005, the claimant earned wages sufficient to entitle him to weekly compensation benefits at the maximum applicable rate of \$466.00, for permanent total disability.

4. Pursuant to the entry of a June 28, 2007, Change of Physician Order by the Medical Cost Containment Department of the Arkansas Workers' Compensation Commission, Dr. Harold Chakales is the claimant's authorized treating physician relative to the orthopedic injuries growing out of the October 25, 2005, compensable accident.

5. The respondent shall pay all reasonable hospital and medical expenses arising out of the claimant's October 25, 2005, injury, to include the MRI of the claimant's lumbar spine as recommended by her authorized treating orthopedic physician, Dr. Harold Chakales.

6. Respondent's refusal to authorized the claimant's continued medical treatment under the care of Dr. Harold Chakales, but rather authorized continued treatment under the care of Dr. Barry Baskin is in contravention of the June 28, 2007, Change of Physician Order entered by the Medical Cost Containment Department of the Arkansas Workers' Compensation Commission. Respondent is in contempt of the June 28, 2007, Change of Physician Order of the Arkansas Workers' Compensation Commission, and, pursuant to Ark. Code Ann. §11-9-706 (b), a fine in the amount of \$10,000.00, is herein assessed.

7. Respondent has controverted the claimant's entitlement to continued medical treatment under the care of Dr. Harold Chakales.

### **CONCLUSIONS**

The compensability of the claimant's October 25, 2005, injuries is not disputed. Indeed, the claimant has been rendered permanently and totally disabled as a result of the injuries

growing out of the October 25, 2005, accident. Several issues are before the Commission at this juncture, to include the claimant's entitlement to additional medical treatment under the care of Dr. Harold Chakles, whether respondent is in contempt of the Change of Physician Order, and controverted attorney fees. The contentions of the parties relative to the afore issues are as set forth above.

The present claim is one governed by the provisions of Act 796 of 1993, in that the claimant asserts entitlement to workers' compensation benefits as a result of injuries having been sustained subsequent to the effective date of the afore provision.

Reasonably necessary medical treatment

As noted above, the compensability of the claimant's October 25, 2005, injuries is not disputed. The evidence preponderates that the claimant sustained severe significant injuries in the October 25, 2005, accident. Pursuant to Ark. Code Ann. §11-9-508 (a), an employer must promptly provide for an injured employee such medical treatment as may be reasonably necessary in connection with the injury received by the employee. What constitute reasonably necessary medical treatment is a question of fact for the Commission. *Wright Contracting Co. v. Randall*, 12 Ark. App. 358, 676 S.W.2d 750 (1984).

In the instant claim, while the claimant was at one time treated by Dr. Barry Thompson for his orthopedic complaints/injuries growing out of the October 25, 2005, accident, on April 11, 2006, he was released from the care of same with regard to the spine fractures and the left scapular fracture. (RX. #1, p. 190-191). Following the release by Dr. Thompson the claimant continued to receive medical treatment from a number of physicians relative to his compensable injuries.

Among the physician to treat the claimant prior and subsequent to his release by Dr. Thompson was Dr. Barry Baskin, who initially evaluated the claimant on January 4, 2006. (CX. #1, p. 141-142). The April 11, 2006, clinic note of Dr. Baskin relative to the claimant reflects:

I: Billy Dotson has made some progress, but he has had a long drawn out recovery after his injury which was 10/27/05. He has had fractures in the vertebra, slow healing, pulmonary contusion, thoracotomy, laceration or evulsion of the large branch of the innominate vein and had to have intervention by Dr. Meadors. He is still having difficulty getting back to baseline. (RX. #1, p. 192).

In conjunction with his March 6, 2007, examination of the claimant Dr. Baskin concluded his clinic note:

P: I don't know that he has been rated by anybody. I think he needs some outpatient or home physical therapy to get him back up to speed and then he should be released from worker's comp follow up at that time. There is no doubt that Mr. Dodson sustained substantial injuries and has had a very slow recovery. He is totally disabled from going back to any work, in my opinion, as a Board Certified PM&R doctor. I would be happy to continue to follow Mr. Dodson for medical management. . . (RX. #1, p. 412).

Following a March 29, 2007, visit, by the claimant Dr. Baskin recorded in his clinic note:

P: I will see Billy back in follow up in about 6 to 8 weeks. I have spoke with his case manager Karen Delavin about his case today. Hopefully, he can continue to be followed by physicians because I think he is totally and permanently disabled from his work injury at his age and he will certainly need long term medical follow up. (RX. #1, p. 413-414).

On July 11, 2007, the claimant was initially seen by Dr. Harold H. Chakales, a Little Rock orthopedic surgeon, pursuant to a June 28, 2007, Change of Physician Order. Although he examined the claimant during the July 11, 2007, visit, Dr. Chakales deferred rendering a diagnosis, but instead arranged for the claimant to return on July 27, 2007, by which time he

would have had an opportunity to review the claimant's old medical records. During the July 27, 2007, visit of the claimant, Dr. Chakales relayed that he did not believe any active treatment was indicated "at this time". Nevertheless Dr. Chakales concluded his July 27, 2007, correspondence to the third party administrator for respondent-employer by recommending scheduling the claimant for an MRI of the lumbar spine. The correspondence also note plans for the claimant to return to see Dr. Chakales in six (6) weeks. (RX. #1, p. 422-423).

Respondent, through its third party administrator, refused to authorize the recommended MRI of the claimant's lumbar spine, asserting that the procedure did not pass pre-certification or pre-authorization. The assertion of respondent that referral of the recommended procedure, MRI of the lumbar spine, to pre-certification is mandated by Rule 30, is both misleading and disingenuous in light of a prior ruling by this Commission. Specifically, in *Taylor v. City of Little Rock*, Workers' Compensation Commission E914169 (March 15, 2004).

Ms. Karen Delavan, the registered nurse case manager with Systemedic Corporation - the managed care organization in the instant claim, credibly testified that when a doctor requests "something like that, it is up to the adjuster to determine whether" they are going to request pre-certification. (T. 49). Further, respondent maintains that it is required to refer recommended procedure, lumbar spine MRI, to pre-certification pursuant to Rule 30; that in doing so the claimant's file was transferred to the preauthorization or pre-certification division of Systemedic Corporation. The procedure was denied by the afore. The matter was then referred to an outside company, Medical Review Institute of America, Inc., by Systemedic Corporation for peer review. The August 13, 2007, report was generated as a result of the afore wherein the procedure was found not medically appropriate at the time. Neither Ms. Delavan nor Ms. Johnson had

knowledge as to whether the Medical Review Institute of America, Inc., is licensed by the Arkansas State Department of Health pursuant to Rule 30.

Rule 30 does not apply to a determination of whether a particular medical service is reasonably necessary, but simply states the respondents' duty to review itemized bill prior to payment of services. *Brown v. Arkansas Trucking Services, Workers' Compensation Commission E216726* (Sept. 26, 1995). Moreover, Rule 30 provides that the utilization review program, whether operated by the carrier or any entity on behalf of the carrier, shall be certified by the Arkansas State Board of Health. While there is credible evidence the Systemedic Corporation is properly certified in accordance with Rule 30, there is no such evidence relative to Medical Review Institute of America, Inc.

In the instance claim, the evidence preponderates that the MRI of the claimant's lumbar, as recommended by his authorized treating physician, Dr. Chakales, is reasonably necessary medical treatment in connection with the October 25, 2005, compensable injury pursuant to Ark. Code Ann. §11-9-508 (a). Respondent has controverted the claimant's entitlement to the afore procedure.

#### Contempt

Ark. Code Ann. §11-9-706, provides, in pertinent part:

(b) If any person or party in proceedings before the commission disobeys or resists any lawful order or process, . . . or refuses to comply with any final order of an administrative law judge or the commission, . . . then the person or party, at the discretion of the administrative law judge or the commission, may be found to be in contempt of the commission and may be subject to a fine not to exceed ten thousand dollars (\$10,000).

In the instant claim the claimant sustained severe injuries on October 25, 2005, within the course

and scope of his employment. Claimant requested and was granted a change of treating physician relative to his orthopedic injuries from Dr. Barry Baskin to Dr. Harold H. Chakales. On June 28, 2007, a Change of Physician Order was entered by the Administrator of the Medical Cost Containment Department of the Arkansas Workers' Compensation Commission, pursuant to Ark. Code Ann. §11-9-514 (a)(3)(A)(ii) (Repl. 2002), granting the claimant's one time change of physician. (CM #2).

Pursuant to the June 28, 2007, Change of Physician Order, the claimant was seen by Dr. Harold H. Chakales on two (2) separate occasions. Dr. Chakales prescribed medication for the claimant, recommended an additional/repeat diagnostic study, as well as a follow-up visit. While respondent acknowledged the claimant's need for medical treatment, in the form of prescription medication, it refused to authorize the claimant's return visit to Dr. Chakales for the treatment. Respondent's assertions that it would not authorize additional treatment of the claimant by Dr. Chakales but would "continue to allow the claimant to see Dr. Baskin" can only be characterized as a flagrant contempt of the June 28, 2007, Change of Physician Order.

It is clear from the evidence in this record that the actions of the respondent, if left in place and unchallenged, renders the June 28, 2007, Change of Physician Order of no effect and the powers of the Arkansas Workers' Compensation Commission to enforce its order similarly. Respondent, by its refusal to approve only the claimant's treatment under the care of Dr. Baskin, is again attempting to direct the claimant's medical treatment while ignoring claimant's preference as well as a bona fide Order of the Arkansas Workers' Compensation Commission. Further, the actions of this respondent in the instant claim are deliberate, intentional, and an affront to the orderly disposition of the provisions of Ark. Code Ann. §11-9-514

(a)(3)(A)(ii)(Repl. 2002) and the change of physician mechanism put in place by the Arkansas Workers' Compensation Commission through the Medical Cost Containment Department.

Respondent does not assert that further medical treatment is not reasonably necessary in connection with the claimant's October 25, 2005, compensable injury, only that it will not authorize additional treatment under the care of Dr. Chakales, while agreeing to authorize same under the care of Dr. Baskin. One is hard pressed to find a more egregious violation of a lawful order, [the June 28, 2007, Change of Physician Order] of the Arkansas Workers' Compensation Commission. The actions of respondent in the instant claim, if left in place, reduce entries of Change of Physician Orders by the Medical Cost Containment Department of the Arkansas Workers' Compensation Commission to exercises in futility - - subject to being complied with or ignored at the whim/pleasure of the respondent/adjuster. The afore is unacceptable and contrary to the orderly application of the provisions of Ark. Code Ann. §11-9-514 (a)(3)(A)(ii). Respondent is in contempt of the June 28, 2005, Change of Physician Order of the Medical Cost Containment Department of the Arkansas Workers' Compensation Commission, and is herein fined ten thousand (\$10,000.00) dollars, of which one thousand (\$1,000.00) dollars shall be paid to the claimant's attorney as attorney fees and the remaining nine thousand (\$9,000.00) dollars shall be paid into the registry of the Arkansas Workers' Compensation Commission. *Brewer v. Windsor Door*, Workers' Compensation Commission F002317 (March 5, 2003); *Holiday Inn West v. Coleman*, 31 Ark. App. 224, 792 S.W.2d 345 (1990).

**AWARD**

Respondent #1 is herein ordered and directed to pay all reasonable related medical hospital, nursing and other apparatus expenses, to include the recommended MRI of the lumbar

spine, growing out of and in connection with the October 25, 2005, compensable injury.

Respondent #1 is herein found to be in flagrant contempt of the June 28, 2007, Change of Physician Order entered by the Administrator of the Medical Cost Containment Department of the Arkansas Workers' Compensation Commission and is herein assessed a fine in the amount of \$10,000.00, pursuant to Ark. Code Ann. §11-9-706 (b). The claimant's attorney is herein awarded \$1,000.00, to be paid from the fine, pursuant to Ark. Code Ann. §11-9-715, and in accordance with *Holiday Inn West v. Coleman*, supra. The balance of the fine, \$9,000.00, shall be paid into the registry of the Arkansas Workers' Compensation Commission.

This award shall bear interest at the legal rate pursuant to Ark. Code Ann. §11-9-809, until paid.

Matters not addressed herein are expressly reserved.

**IT IS SO ORDERED.**

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**Andrew L. Blood, ADMINISTRATIVE LAW JUDGE**