

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F606132

CHARLOTTE DOWNEY

CLAIMANT

BEAVER DAM STORE

RESPONDENT

TRAVELERS INSURANCE COMPANY,
INSURANCE CARRIER

RESPONDENT

OPINION FILED SEPTEMBER 10, 2008

Hearing before ADMINISTRATIVE LAW JUDGE MICHAEL L. ELLIG in Springdale, Washington County, Arkansas.

Claimant represented by EVELYN BROOKS, Attorney, Fayetteville, Arkansas.

Respondents represented by PHILLIP CUFFMAN, Attorney, Little Rock, Arkansas.

STATEMENT OF THE CASE

A hearing was held on in the above styled claim on June 16, 2008, in Springdale, Arkansas. The deposition of Dr. Kelly Danks, which was taken on October 24, 2006, was again admitted as Claimant's Exhibit No. 3, and incorporated by reference in the transcript of the current proceeding.

A pre-hearing order was entered in this case on May 6, 2008. This pre-hearing order purported to set out the stipulations offered by the parties and outlined the issues to be litigated and resolved at the present time. Prior to the commencement of the hearing, and by agreement of the parties, the additional issue of whether any of the claimant's chiropractic treatment represents "unauthorized" medical services was added. A copy of the pre-hearing order with this amendment noted thereon was made Commission's Exhibit No. 1 to the hearing.

The following stipulation was offered by the parties and is hereby accepted:

1. The Full Commission's Opinion of February 11, 2008 became final and is res judicata of all issues raised and resolved therein.

By agreement of the parties, the issues to be litigated and resolved at the present time were limited to the following:

1. The claimant's entitlement to medical services in the form of chiropractic treatment.
2. Whether any of the chiropractic treatment represents "unauthorized" medical services under Ark. Code Ann. §11-9-514.

In regard to these issues, the claimant contends:

"Claimant was injured on November 1, 2004. Her lower back was injured when she was stocking crates of soda."

In regard to these issues, the respondents deny that the claimant is entitled to any chiropractic services other than those previously paid, and that such services would be "unauthorized" under Ark. Code Ann. §11-9-514.

DISCUSSION

_____The central issue in this claim concerns liability for various expenses, which the claimant has incurred for chiropractic treatment. The burden rests entirely upon the claimant to show that these services represent "reasonably necessary medical services" for her compensable lumbar injury under Ark. Code Ann. §11-9-508. In order to meet this burden, the claimant must establish that these services were necessitated by or were connected with her compensable lumbar injury of November 1, 2004. She must also prove that these services had, at the time they were rendered, a reasonable expectation of accomplishing their intended purpose or goal.

In the prior Opinion of the Full Commission, dated February 11, 2008, it was held that the claimant's compensable lumbar injury was in the form of a bulge or protrusion of the L3-4 intervertebral disc. Based upon the stipulations made by the parties at the prior hearing, it was also held that, with the exception of medical services provided to the claimant by Dr. Unruh, all medical expenses related to the compensable injury had been paid through the initial visit with Dr. Raben on August 28, 2006. Finally, it was held in this Opinion that the medical services provided to the claimant by Dr. Unruh represented "unauthorized medical services", under Ark. Code Ann. §11-9-514. Pursuant to the

provisions of this subsection, the respondents were found not to be liable for the expense of these services.

The Full Commission Opinion of February 11, 2008, has become final and is res judicata of the foregoing issues. Thus, the claimant would be barred from relitigating her entitlement to the payment of expenses incurred for treatment provided her by Dr. Unruh, prior to August 28, 2006, as her entitlement to these benefits was specifically addressed and resolved in the prior Opinion.

The same is true for any medical expenses, including chiropractic expenses, that were incurred prior to the initial visit with Dr. Raben on August 28, 2006. Based upon the stipulations, a finding was made in the prior Opinion that all medical expenses related to the compensable injury had been paid through that date. This finding would prohibit the claimant from now litigating her entitlement to the payment of any medical expenses, including chiropractic expenses that were incurred prior to that date.

Therefore, this Opinion will only address the claimant's entitlement to the payment of expenses that were incurred for chiropractic treatment which was provided after August 28, 2006. Since August 28, 2006, the claimant has apparently received chiropractic treatment from a number of different chiropractic physicians. According to the claimant's testimony, these chiropractic physicians include Dr. John Unruh, Dr. Charles McNeal, and Dr. Scott Rubin. However, it appears that the vast majority of the claimant's treatment was provided by a John Ermatinger, a physical therapist for Dr. Rubin.

The medical evidence shows that, in addition to her compensable injury to the L3-4 intervertebral disc, the claimant was also suffering from degenerative disc disease at multiple levels of her spine. This common degenerative and arthritic condition is progressive in nature and is recognized as a part of the aging process. After extensive testing and evaluations, both the claimant's initial treating physician (Dr. Kelly Danks) and her subsequent authorized treating physician (Dr. Cyril Raben) have continually maintained

that the claimant's compensable injury was not sufficient to require surgical intervention or any other aggressive treatment modalities. Rather, it has been their consistent recommendation that the claimant receive only conservative treatment modalities, in the form of oral medications and various physical therapy techniques. Both Dr. Danks, a neurosurgeon, and Dr. Raben, an orthopaedic surgeon, have considerable experience in the diagnosis and treatment of spinal injuries and conditions. Their expert opinions are entitled to significant weight.

Clearly, chiropractic treatment is a widely recognized conservative treatment modality for spinal injuries, such as the claimant's compensable injury to the L3-4 intervertebral disc. In fact, in his reports and records, Dr. Raben has recognized this and referred the claimant back to Dr. McNeal for chiropractic treatment (report of September 11, 2006, November 5, 2006, and November 15, 2006).

However, from the chiropractic reports and records that have been introduced into evidence it appears that the claimant's various treating chiropractic physicians have attempted to treat not only the claimant's compensable lumbar injury at L3-4, but also various other difficulties that involve other levels of the claimant's spine and other portions of her body. These difficulties have not been proven to be related to the claimant's compensable injury to the L3-4 intervertebral disc. In fact, the most likely cause of these difficulties is shown to be the natural progression of the documented degenerative or arthritic changes to various other components of the claimant's spine (i.e. her cervicothoracic spine, other areas of her lumbar spine, and her sacroiliac joints). Thus, chiropractic services for these difficulties would not be necessitated by or connected with the claimant's compensable injury.

After consideration of all the evidence presented, it is my opinion that the claimant has proven by the greater weight of the credible evidence that the chiropractic services she has received, since August 28, 2006, that were directed toward the treatment of her

difficulties and complaints involving the L3-4 intervertebral disc were necessitated by or connected with her compensable injury of November 1, 2004. However, any chiropractic treatment directed toward any other portions of her anatomy would not be necessitated by or connected with the claimant's compensable injury, and the respondents cannot be held liable for the expense of this treatment.

After consideration of the evidence presented, it is my further opinion that the greater weight of the evidence shows that chiropractic treatment directed toward the L3-4 intervertebral disc also had a reasonable expectation of accomplishing the purpose or goal for which these services were intended. In reaching this decision, I recognize that it has been a considerable period of time since the claimant's compensable injury. However, the medical evidence shows that the claimant's compensable injury to the L3-4 intervertebral disc was permanent in nature. Thus, this injury will never completely or entirely resolve and some degree of persistent or chronic symptoms, as well as periodic flare ups or exacerbations of these symptoms are to be reasonably expected. Conservative treatment modalities, including chiropractic adjustment and accompanying physical therapy, are generally recognized as a medically appropriate remedy for both the chronic symptoms and periodic flare ups or exacerbations. In fact, the evidence reveals that the chiropractic treatment the claimant has received for this purpose has been successful in reducing the claimant's chronic pain and other symptoms, as well as alleviating any flare ups or exacerbations of these symptoms.

In summary, I find that chiropractic treatment for the claimant's symptoms and difficulties that was provided after August 28, 2006, and were directed toward her compensable injury to the L3-4 intervertebral disc represents "reasonably necessary medical services." under Ark. Code Ann. §11-9-508. However, I also find that any chiropractic services rendered to the claimant for difficulties involving any other portions of her body would not represent "reasonably necessary medical services" under the

provisions of this subsection, as such services would not be necessitated by or connected with the claimant's compensable injury. Pursuant to the provisions of Ark. Code Ann. §11-9-508, the respondents would only be liable for the chiropractic services provided to the claimant, after August 28, 2006, for treatment attributable to the difficulties that resulted from the permanent injury to her L3-4 intervertebral disc.

The only remaining matter to be discussed is whether any of the forgoing "reasonably necessary" chiropractic services would be "unauthorized" under Ark. Code Ann. §11-9-514. After consideration of all the evidence presented, it is my opinion that they do not. Thus, the provisions of Ark. Code Ann. §11-9-514 would not act to relieve the respondents of liability for the expense of these services.

First and foremost, at the previous hearing, the respondents contended that the claimant did not require any further medical services for her compensable injury, after the initial visit with Dr. Raben on August 28, 2006, and denied the claimant's entitlement to any additional medical services by or at the direction of Dr. Raben or any other physician. At that point, the claimant no longer had any "authorized" physician to treat her compensable injury, and the provisions of Ark. Code Ann. §11-9-514 no longer applied. The claimant was free to seek appropriate medical services from any physician, subject only to the provisions of Ark. Code Ann. §11-9-508 (i.e. that the claimant show such medical services were "reasonably necessary" for her compensable injury).

Secondly, the record reveals that the respondents had previously "authorized" Dr. Rubin to provide the claimant with appropriate medical or chiropractic services for her compensable injury. Once authorized, Dr. Rubin could not be unilaterally "unauthorized" by the respondents. The medical evidence further shows that Dr. Raben, an "authorized" treating physician, referred the claimant for chiropractic care to Dr. McNeal. Thus, both Dr. Rubin and Dr. McNeal were "authorized" to provide the claimant with appropriate

medical services for her compensable injury, within the meaning of Ark. Code Ann. §11-9-514.

FINDINGS OF FACT & CONCLUSIONS OF LAW

1. The Arkansas Workers' Compensation Commission has jurisdiction of this claim.
2. On November 1, 2004, the relationship of employee-employer-carrier existed between the parties.
3. On November 1, 2004, the claimant sustained a compensable injury to her lower back or lumbar spine, which was in the form of a bulge or protrusion of the L3-4 intervertebral disc.
4. All appropriate medical expenses incurred by the claimant for her compensable injury were paid through the initial visit with Dr. Raben, on August 28, 2006. Liability for the expenses incurred as the result of medical services provided to the claimant for her compensable injury by and at the direction of Dr. Raben and Dr. Unruh, were resolved in the prior Opinion of February 11, 2008, and have been rendered res judicata by this Opinion.
5. The chiropractic treatment provided to the claimant for her compensable L3-4 disc bulge or protrusion by and at the direction of Dr. Scott Rubin and Dr. Charles McNeal, after August 28, 2006, represents reasonably necessary medical services for the claimant's compensable injury, under Ark. Code Ann. §11-9-508. Pursuant to the provisions of this subsection, the respondents are liable for the expense of these services, subject to the medical fee schedule established by this Commission. However, any chiropractic services provided to the claimant by and the direction of these physicians for difficulties involving any other portions of her anatomy (i.e. other than the disc bulge or protrusion at L3-4) have not been shown to be necessitated by or connected with her compensable injury. Thus, these services would not meet the requirements for "reasonably necessary medical services", under Ark. Code Ann. §11-9-508, and liability for the expense of the services cannot be imposed on the respondents herein.

6. After August 28, 2006, the claimant no longer had an “authorized” physician to provide her with treatment for her compensable injury. Thus, Ark. Code Ann. §11-9-514 no longer applies to this claim.

7. After August 28, 2006, neither Dr. McNeal nor Dr. Rubin were “unauthorized” physicians, within the meaning of Ark. Code Ann. §11-9-514. Therefore, the respondents are not relieved of liability for any reasonably necessary medical services that has been provided to her by these two chiropractic physicians for her compensable lumbar injury, after August 28, 2006. Specifically, Dr. Rubin had previously been specifically “authorized” by the respondents to provide the claimant with appropriate medical services for her compensable injury and Dr. McNeal was in a bona fide chain of referral from a physician “authorized” by this Commission to provide the claimant with services for her compensable injury (i.e. Dr. Raben).

8. The respondents have controverted the claimant’s entitlement to any chiropractic services for her compensable injury, which were unpaid as of the date of hearing.

9. As no controverted benefits have herein been awarded to the claimant, no controverted attorney’s fee can be awarded to her attorney.

ORDER

The respondents shall be liable for the chiropractic services provided to the claimant for her compensable disc bulge or protrusion at L3-4 that were provided her by and at the direction of Dr. Charles McNeal and Dr. Scott Rubin, after August 28, 2006. This liability is subject to the medical fee schedule established by this Commission.

All benefits herein awarded, which have heretofore accrued, are payable in a lump sum without discount.

This award shall bear the maximum legal rate of interest until paid.

IT IS SO ORDERED.

MICHAEL L. ELLIG
ADMINISTRATIVE LAW JUDGE