

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION
WCC NO. E700160**

BEN GARNER, EMPLOYEE

CLAIMANT

OUACHITA COUNTY, EMPLOYER

RESPONDENT

**ARK. PUBLIC ENTITIES IC WC TRUST,
GALLAGHER BASSETT SERVICES,
INSURANCE CARRIER/TPA**

RESPONDENT

OPINION FILED JUNE 6, 2008

Hearing conducted before Administrative Law Judge S. Dale Douthit in Little Rock, Pulaski County, Arkansas.

The claimant was represented by Mr. Gary Davis, Attorney at Law, Little Rock, Arkansas.

The respondents were represented by Mr. William C. Frye, Attorney at Law, North Little Rock, Arkansas.

STATEMENT OF THE CASE

On May 13, 2008, the above captioned claim came on for a hearing in Little Rock, Arkansas. A Pre-Hearing Conference was held in this matter on January 29, 2008, and a Pre-Hearing Order was entered on that same date. The Pre-Hearing Order was introduced into the record as "Commission Exhibit 1" without objection. At the full hearing, the parties agreed to the following stipulations:

- 1) The Arkansas Workers' Compensation Commission has jurisdiction of this claim.
- 2) The employee-employer relationship existed at all relevant times, including January 2, 1997.
- 3) That the parties agree to applicable compensation rates of \$348.00 and \$261.00 for TTD and PPD respectively.
- 4) That the claimant sustained a compensable injury on January 2, 1997, and the respondents accepted a 59% rating to the body as a whole, assigned by Dr. Moore.

As agreed to by the parties, the issues to be presented for determination are as

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follows:

- 1) Whether unpaid medical expenses are the responsibility of the respondents.
- 2) Controversion.

This matter was originally set for hearing on April 3, 2008. However, the parties noted that Aetna, which was the group health carrier, was not a party to the hearing. It is important to note that Aetna has never intervened or made an appearance in this matter. However, the Commission and the parties decided, in an abundance of caution, to provide them with notice of the hearing. A letter was sent by the Commission on April 3, 2008, to Ms. Michelle Griggs, 3500 E. Coliseum Blvd, Fort Wayne, IN 46805-1667, by certified mail (CX1). This letter provided Aetna with all of the relevant information concerning this claim including the hearing date and time. The certified mail receipt shows Aetna received the letter notice on April 7, 2008 (CX2). Despite these efforts, Aetna has taken no action to perfect or protect its lien.

The claimant in this matter was injured on January 2, 1997. At the time of his injury, he was the sheriff of Ouachita County. On that date, the claimant stepped off of a bridge falling over forty feet and suffered very serious injuries. The claimant has submitted medical bills from Arkansas Heart Hospital, Ouachita County Medical Center, Dr. Bruce Murphy, Dr. Mark Crump, St. Vincents Doctor's Hospital, Little Rock Surgery Center and KCI, USA, Inc. A copy of these bills that go from February 3, 2003, through February 8, 2005, were made a part of the record in this matter. The exhibit reflects that the plan sponsor was Lockheed Martin Corporation whose insurance carrier was Aetna. The exhibit reflects the following:

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A.	Submitted:	\$367,119.69
B.	Allowed:	\$90,135.60
C.	Deductible:	\$1,703.86
D.	Co-Insurance:	\$5,485.57
E.	Aetna Paid:	\$83,383.74

This exhibit was introduced by claimant's counsel, asking for reimbursement of the listed amounts.

After the exhibit was submitted, a review was performed by Victoria Powell of VP Medical Consulting. Nurse Powell was the only witness called at the hearing. She provided the Commission with a comprehensive notebook and review of all of the medical records in question. She also provided her opinion as to whether or not said treatments were related to Mr. Garner's initial injury of January 2, 1997.

Nurse Powell provided a breakdown of the medical that she opined was related to Mr. Garner's injury. I find her testimony to be credible as far as what benefits are due Mr. Garner and Aetna. Nurse Powell testified that the following bills were related:

A.	Submitted:	\$90,618.85
B.	Allowed:	\$34,822.33
C.	Deductible:	\$382.60
D.	Co-Insurance:	\$1,670.83
E.	Aetna Paid:	\$32,571.79

FINDINGS AND CONCLUSIONS

Employers must promptly provide medical services which are “reasonably necessary in connection with” the compensable injuries. Ark. Code Ann. § 11-9-508 (a). However, injured employees have the burden of proving by a preponderance of the evidence that medical treatment is reasonably necessary. Patchell v. Wal-Mart Stores, Inc., 86 Ark. App. 230, 184, S.W.3d 31 (2004). What constitutes reasonable and necessary medical treatment is a fact question for the Commission, and the resolution of this issue depends on sufficiency of the evidence. Gansky v. Hi-Tech Engineering, 325 Ark.163, 924 S.W. 2d 790 (1996). Reasonably necessary medical services “may include that necessary to accurately diagnose the nature and extent of the compensable injury’ to maintain the level of healing achieved; or to prevent further deterioration of the damage produced by the compensable injury.” Greer v. Phillip Mitchell Construction, Full Commission Opinion, February 14, 2003 (E906565). In assessing whether a given medical procedure is reasonably necessary for treatment of the compensable injury, it is necessary to analyze both the proposed procedure and the condition it is sought to remedy. Deborah Jones v. Seba, Inc., Full Workers’ Compensation Commission, December 13, 1989 (Claim No. D511255).

FINDINGS OF FACT AND CONCLUSIONS OF LAW

From a review of the record of the 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 hereby made in accordance with A.C.A. § 11-9-704:

- 1) The Arkansas Workers’ Compensation Commission has jurisdiction of this claim.

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- 2) The stipulations agreed to by the parties on the record at the full hearing are hereby accepted as fact.
- 3) The claimant has proven by a preponderance of the evidence that he is entitled to reimbursement for deductibles and co-insurance in the amount of \$2,053.43 from Respondent No. 1.
- 4) The claimant has proven by a preponderance of the evidence that his group health carrier, Aetna, has paid \$32,571.79 in medical that is causally related to the claimant's compensable injury and Aetna is entitled to reimbursement in said amount from Respondent No. 1.
- 5) The remaining medical expenses that were submitted by the claimant including payments by Aetna, deductibles and co-payments are not related to the claimant's compensable injury and are not the responsibility of the Respondents.
- 6) The Respondents shall continue to provide appropriate reasonable and necessary medical treatment to the claimant for his injury of January 2, 1997.
- 7) The claimant is entitled to the maximum attorney's fees allowed by Arkansas Law consistent with the findings herein.

AWARD

Respondents No. 1 are ordered to carry out the findings of fact and conclusions of law herein. Respondents No. 1 are also ordered to continue to provide appropriate reasonable and necessary medical treatment to the claimant for his injury of January 2, 1997. Further, maximum attorney's fees are herein awarded to the claimant's attorney, the Honorable Gary Davis, pursuant to A.C.A § 11-9-715.

IT IS SO ORDERED.

**S. DALE DOUTHIT
ADMINISTRATIVE LAW JUDGE**