

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. E912381

ALISA GOINS	CLAIMANT
PEACE LUTHERAN CHILDCARE CTR.	RESPONDENT
GUIDEONE MUTUAL INS. CO.	RESPONDENT

OPINION FILED JUNE 12, 2008

Hearing before ADMINISTRATIVE LAW JUDGE ERIC PAUL WELLS in Springdale, Washington County, Arkansas.

Claimant represented by JASON HATFIELD, Attorney, Fayetteville, Arkansas.

Respondents represented by MICHAEL RYBURN, Attorney, Little Rock, Arkansas.

STATEMENT OF THE CASE

On March 25, 2008, the above captioned claim came on for a hearing at Springdale, Arkansas. A pre-hearing conference was conducted on January 29, 2008, and a pre-hearing order was filed on January 30, 2008. A copy of the pre-hearing order has been marked Commission's Exhibit NO. 1 and made a part of the record without objection.

At the pre-hearing conference the parties agreed to the following stipulations:

1. The Arkansas workers' Compensation Commission has jurisdiction.
2. Claimant sustained a compensable injury on February 3, 1999.
3. The compensation rate is \$112.

At the pre-hearing conference the parties agreed to litigate the following issues:

1. Statute of limitations.
2. Additional medical.
3. Attorney's fees.

The claimant contends:

“Entitlement to additional medical treatment pertaining to splints and splints adjustment. Claimant contends that Ark. Code Ann. §11-9-702 allows for prosthesis to be excluded from the statute of limitations.”

The respondents contend:

“That benefits were last paid in 2001. Respondents contend that all benefits to which the claimant is entitled have been paid. Any additional benefits the claimant is requesting are barred by the statute of limitations.”

DISCUSSION

_____The central issue in this matter is whether the claimant is entitled to additional medical treatment pertaining to oral splints and splint adjustments. The claimant suffered an admittedly compensable injury on February 3, 1999. The claimant began splint therapy for her temporomandibular dysfunction on March 1, 1999. She then received TMJ surgery in October 1999 at which time splint therapy was continued as stated in a report by Richard D. Roblee, D.D.S. on June 15, 2001.

On January 30, 2008, claimant's attorney, Jason Hatfield, sent a series of questions to Richard D. Roblee, D.D.S. regarding the claimant's oral splint. Dr. Roblee responded as follows:

1. Is Ms. Goins required to wear a splint as a result of her workers' compensation injury in 1999?

Response. Yes.

2. Has Ms. Goins been required to wear that splint ever since her workers' compensation injury in 1999?

Response. Yes.

3. Does the splint wear out over time and need to be replaced periodically.

Response. Yes

4. Is your opinion that the splint is an apparatus permanently or indefinitely required as a result of Ms. Goins' workers' compensation injury.

Response. Yes.

5. Is it necessary for Ms. Goins to see you from time to time to adjust her splints?

Response. Yes.

6. Are your answers to the above questions made within a reasonable degree of medical certainty?

Response. Yes.

The above questions and responses was signed by Dr. Richard Roblee on February 28, 2008.

Ark. Code Ann. §11-9-702(b)(2) states; "The time limitations of this subsection shall not apply to claims for replacement of medicine, crutches, ambulatory devises, artificial limbs, eye glasses, contact lenses, hearing aids, and other apparatus permanently or indefinitely required as a result of a compensable injury, where the employer or carrier previously furnished such medical supplies, replacement of such items shall not constitute payment of compensation so as to toll the running of the statute of

limitations.” The current situation with the claimant appears to be exactly what Ark. Code Ann. §11-9-702(b)(2) was intended to exclude from the running of the statute of limitations. The oral splint and its adjustments are an apparatus permanently or indefinitely required as a result of the claimant’s admittedly compensable workers’ compensation injury. The claimant is entitled to additional medical as it relates to the replacement of splints and the adjustments associated with the oral splints.

STATUTE OF LIMITATIONS

As to the question of the statute of limitations barring any additional benefits in this matter I find it is unnecessary. In that the only benefits requested at this hearing were those excluded from the statute of limitations.

ATTORNEY’S FEES

The injury in this matter occurred on February 3, 1999. Attorney’s fees were payable on medical expenses under Ark. Code Ann. §11-9-715. The respondents have clearly controverted the claimant’s entitlement to any additional benefits. The appropriate fee for the claimant’s attorney would be the maximum statutory attorney’s fees on all additional controverted benefits herein and hereafter awarded.

From my 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 conclusion of law are made in accordance with Ark. Code Ann. §11-9-704.

FINDINGS OF FACT & CONCLUSIONS OF LAW

1. The stipulations agreed to by the parties at the pre-hearing conference conducted on January 29, 2008, and contained in a pre-hearing order filed January 30, 2008, are hereby accepted as fact.

2. The claimant is entitled to additional medical benefits related to the oral splint and its adjustments.

3. The issue of the statute of limitations barring any additional medical benefits is unnecessary.

4. The claimant is entitled to have attorney's fees paid on the additional medical benefits regarding the oral splint and its adjustments related to the compensable injury as provided by Ark. Code Ann. §11-9-715 as of February 3, 1999, the date of injury.

ORDER

The claimant is entitled to additional medical benefits as related to the oral splint and its adjustments as related to the compensable injury as provided in Ark. Code Ann. §11-9-702(b)(2).

The claimant is entitled to have attorney's fees paid on additional medical benefits as related to the oral splint and its adjustments as provided by Ark. Code Ann. §11-9-715 as of February 3, 1999, the date of the injury.

IT IS SO ORDERED.

ERIC PAUL WELLS
ADMINISTRATIVE LAW JUDGE