

**BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION**

**CLAIM NO. F711102**

TONYA HACKNEY, EMPLOYEE	CLAIMANT
ATLIS IN HOME CARE, INC., EMPLOYER	RESPONDENT
COMMERCE & INDUSTRY INSURANCE, CARRIER/AIG DOMESTIC CLAIMS, INC./TPA	RESPONDENT

**OPINION FILED SEPTEMBER 24, 2008**

A hearing was held before ADMINISTRATIVE LAW JUDGE CHANDRA HICKS, in Harrison, Boone County, Arkansas.

The claimant was represented by The Honorable Adrienne K. Murphy, Attorney at Law, Fayetteville, Arkansas.

Respondents were represented by The Honorable Melissa Wood, Attorney at Law, Little Rock, Arkansas.

**STATEMENT OF THE CASE**

A hearing was held in the above-styled claim on September 10, 2008, in Harrison, Arkansas. A prehearing telephone conference was conducted in this case on July 7, 2008. A Prehearing Order was entered in this claim on that same date. This Prehearing Order set forth the stipulations offered by the parties, the issues to be litigated, and their respective contentions.

The following stipulations were submitted by the parties, either in the Prehearing Order or at the start of the hearing,

and are hereby accepted:

1. The Arkansas Workers' Compensation Commission has jurisdiction of the within claim.

2. The employee-employer-carrier relationship existed at all relevant times, including August 30, 2007.

3. The claimant's average weekly wage at the time of her injury was \$218.00, which entitles her to a weekly temporary total disability rate and permanent partial disability rate of \$145.00.

4. The claimant sustained a compensable injury to her back while working for the employer/respondent.

5. Some medical benefits have been paid on this claim.

By agreement of the parties, the issues to be presented at the hearing were as follows:

1. Whether there is an independent intervening cause.

2. Temporary total disability compensation from October 23, 2007, until a date yet to be determined. At the time of the hearing, the claimant modified her request for temporary total disability compensation. Specifically, the claimant alleged that she is entitled to temporary total disability compensation from April 18, 2008, and continuing until August 1, 2008.

3. Additional Medical benefits.

4. Attorney's fees.

The claimant contends that she sustained an injury to her

lumbar spine on August 30, 2007 while in the course and scope of her employment. Specifically, the claimant will testify that she was working in her position as a certified nursing assistant when she lifted an approximately 240 pound patient and immediately felt pain in her back. She reported the incident and received medical care. An MRI and discogram were subsequently performed at the claimant's expense which revealed a herniated disc at L4-5, providing objective findings of her compensable injury. She underwent a microdiscectomy on April 18, 2008. Therefore, the claimant contends she is entitled to reimbursement for reasonable and necessary medical treatment already rendered and additional reasonable and necessary treatment. The claimant also contends that she is entitled to temporary total disability benefits from October 23, 2007 to a date yet to be determined, as she is still in her healing period(see above modification).

The claimant reserves her right to any and all additional benefits associated with this claim, including, but not limited to, an anatomical impairment rating, permanent disability benefits, and/or wage loss.

The respondents contend that while this claim was initially accepted as compensable and while some medical was paid, claimant sustained an independent intervening cause while performing household duties in November of 2007. (This contention was modified at the time of the hearing). Further, respondents contend

that claimant's diagnostic tests revealed only degenerative changes, so additional medical care was not reasonable and necessary.

The documentary evidence submitted in this case consists of the Commission's Prehearing Order of July 7, 2008, the claimant's Response to the Prehearing Filing, and the respondents' Response to the Prehearing Filing, as these were all marked as Commission's Exhibit No. 1. The parties filed post-hearing briefs, these have been blue-backed and marked as Commission's Exhibit No. 2. The claimant's Medical Packet was marked as Claimant's Exhibit No. 1. The respondents' Medical Packet was marked as Respondents' Exhibit No. 1. The respondents' Non-Medical Packet was marked as Respondents' Exhibit No. 2.

The following witness testified at the hearing: the claimant.

#### **DISCUSSION**

At the time of the claimant's admittedly compensable back injury, she was thirty-four years old. When the claimant's back injury occurred, she was working for the respondent-employer as a certified nursing aide. Subsequently, the claimant quit her employment with Atlis, to accept other employment.

The claimant testified that her duties as a CNA entailed patient care, meal preparation, feeding, light cleaning, and personal care services. According to the claimant, her injury occurred while attempting to transfer a heavy patient. She essentially testified that she experienced an immediate onset of

pain as a result of this incident. The claimant admitted to treating with several doctors, including, but not limited to Drs. Langston, Raben and Hawk.

Specifically, she further admitted to having treated with Dr. Raben, in the form of physical therapy, injections, an MRI, discogram, and ultimately surgery on April 18, 2008. According to the claimant, after the respondents controverted her entitlement to continued medical care, she had to borrow money from her relatives to pay for her medical treatment.

The claimant admitted that she received some relief from the surgery, but continues in pain. Therefore, Dr. Rabin referred her for pain management, under the care and direction of Dr. Hawk.

She admitted to quitting her job with the respondent-employer to go to work for North Arkansas Regional Medical Center. According to the claimant, she worked for this employer from September 6, 2007, until October 22, 2007. She essentially testified that her employment with this employer was terminated due to excessive absenteeism, which resulted from ongoing problems with her compensable back injury. The claimant admitted to working for her sister's salon two days a week, beginning on January 21, 2008, and continuing until the date of her surgery. According to the claimant, she did not receive any pay for her services, instead, her sister provided salon services for her family. She admitted to returning to work for her sister's salon in August of 2008, as of the date of the hearing, she continued to work there. The claimant also admitted to being in school.

The claimant essentially testified that the incident involving her back occurred while performing "aggressive household chores," some time in November of 2007. At that time, she denied being under any specific physical restrictions or limitations from a doctor. She described "aggressive cleaning" as being mopping and vacuuming.

A review of the medical evidence of record demonstrates that the claimant was seen by Dr. Tom Langston on August 30, 2007 for an injury resulting in low back pain. He assessed the claimant as having "low back pain, acute," and he noted that her major problem was a sprain of the lumbar region. Dr. Langston prescribed medication for the claimant's injury, directed her to take off work until September 3, (2007), and directed her not to do any lifting, pushing, pulling, or bending. He also directed her to return to see him in one week.

She returned for follow-up treatment with Dr. Langston on September 7, 2007. Dr. Langston reported that the claimant was improving with bed rest. At that time, he noted that the claimant's muscle spasms had resolved, but she had spinal tenderness over the right lower thoraco-lumbar. However, he noted that the claimant reported spasms if she missed a dose of her carisoprodol.

It appears that on October 23, 2007, the claimant sought treatment from the Mediquick, in Harrison due to a chief complaint of back pain. However, the substance of these notes is illegible.

On November 2, 2007, the claimant underwent initial evaluation with Dr. Cyril Raben due to thoracic and low back pain. His assessment was, "L-spine pain, L-spine strain, and accident from over-exertion." Therefore, he prescribed medications, ordered physical therapy treatment and evaluation. Dr. Langston also directed the claimant to return for follow-up care with him in three weeks.

In a medical note dated November 19, 2007, physical therapist, Neely Richardson, reported the following:

Pt was initially evaluated on 11-06-07 and seen for a total of 6 visits with her last visit being on 11-19-07. Upon her last visit, Pt was treated with US at 100%, 1.5 W/on2, x10 minutes to her low back followed by IFC with MH. She was independent with the HEP of lower extremity stabilization exercises consisting of pelvic tilts, SKC, pinformis stretches, abdominal bracing with lower extremity, and hamstrings stretches. Upon her last visit, she continued to report very little improvement in her pain level. Upon her last visit, she reported she had done some pretty aggressive cleaning in her house and was complaining of increased pain after that activity. She continues with limited ROM having full forward flexion with 50% lumbar extension and rotation as well as lateral flexion. She continued to deny BLE symptoms but reports most of her pain was in her low back. Upon her last visit, she reported her pain level to be a 3 to 4 out of 10 constantly which raised with activity. After her 11-19-07 visit, she canceled her appointment because she thought the worker's comp. was going to deny her physical therapy and she wanted to be discharged to an independent HEP. She did not have functional lumbar ROM, pain levels had not decreased down to a 1 to 2 out of 10, and she was independent with the HEP. At this time, we will discharge her to an independent HEP secondary to Pt's concerns about billing.

An MRI of the lumbar spine without contrast was performed on December 7, 2007, with the following impression:

T1- and T2-weighted images are obtained. There is mild disc space narrowing at L4-L5 and L5-S1 levels. There is some mild disc desiccation at these levels. The L2-L3 level is essentially normal. The L3-L4 level reveals no marked abnormalities. The L4-L5 level reveals some mild flattening of the thecal sac secondary to the disc bulge, but this is minimal. The L5-S1 level reveals some very minimal disc bulging. I see no frankly herniated nucleus pulposus, and no severe central canal or neuroforaminal stenosis is noted. No compression fractures are noted.

On January 8, 2008, the claimant returned to see Dr. Raben.

Specifically, he reported, in pertinent part:

Tonya returns today with persistent back pain. Her MRI scan reveals subtle disc space desiccation at the L4-L5 interval. She may very well have some disk space disruption here. The only way to be sure would be with CT diskography.

His assessment was "lumbar spine disc degeneration and lumbar spine disc herniation."

On March 18, 2008, the claimant underwent an IR diskography lumbar, with the following impression:

Annular tear at L4/5 which will be further described on the lumbar spine CT.

The claimant underwent a "CT Spine of the Lumbar with contrast," on March 18, 2008, with the following impression:

1. GRADE 5 ANNULAR TEAR IN THE RIGHT FORAMINAL TO EXTRAFORAMINAL LOCATION AT L4/5.
2. NORMAL DISCOGRAMS AT L3/4 AND L5/S1.

She returned to see Dr. Raben on March 21, 2008, for follow-up after the CT discogram. At that time, the claimant's chief complaint was low back and right hip pain. Dr. Raben reported, in pertinent part:

**Comprehensive Interval History Form was reviewed and is as follows:**

Tonya presented back after her discography which showed concordant pain at the L4-5 interspace. We went over various details in the three types of procedures that she has available to her she plans to look these up on the Internet and get back with us. In the meantime will set her up from neuroforaminal block at the L4-5 interspace on the right.

His assessment was "L-spine disc degeneration" for which he recommended a neuroforaminal block at L4-5, right. Dr. Raben in fact performed this procedure on March 24, 2008 due to L-Spine disc deg. and L-Spine herniation.

On April 7, 2008 the claimant presented to Dr. Raben for follow-up after the neuroforaminal injection. The claimant reported that she had two days worth of relief, but after that she began to get active and the pain returned. Dr. Raben wrote:

Tonya had enough relief after the injection that I think probably a large part of the pain complaint she's experiencing is coming from the nerve root irritation. We will go ahead and set her up for an arthroscopically assisted microdiscectomy with intradiskal electrothermal therapy at L4-5 on the right.

Dr. Raben performed decompressive arthroscopically-assisted microdiscectomy at L4-L5 on the right. The claimant's preoperative diagnosis was "lumbar radiculitis with some annular herniation, neural foraminal stenosis at L4-5, on the right." Her postoperative diagnosis was the same.

The claimant presented to Dr. Raben on May 5, 2008, for follow-up after her back surgery. He reported that the claimant continued to do very well postop, although she had taken a slight

slip and fall. However, the claimant reported that she felt that this had not disrupted her back.

In a letter dated May 13, 2008, to the claimant's attorney, Dr. Raben wrote:

Thank you for your kind visit with regard to my patient, your client, Tonya Hackney. As per our conversation time, she was injured the first time while lifting a patient last August. She was tough enough to continue to work and try to simply avoid the medical treatment and to simply ignore the pain. Her initial workup [sic] was for an MRI scan that showed some questionable desiccation of one of the discs. Further workup [sic] showed, indeed, that she had a new onset injury directly related to her on-the-job injury. This included the CT diskography. Within a reasonable degree of medical certainty, the acute and proximate cause, need for medical treatment, and probable need for further treatment, at some point distant from now, is a direct result of this on-the-job injury. As I'm sure you're well aware of your client's progress since she has had an arthroscopically assisted microdiskectomy with intradiskal electrothermal therapy and is doing well postoperatively from that. The longevity of this procedure is suspect however and I'm reticent to believe that she will not require an arthroplasty or arthrodesis at some point in the future. This, again, is within a reasonable degree of medical certainty.

You questioned whether or not this single episode of lifting the large patient, sustaining a lifting twisting injury, and then being able to work for some time later is concordant with the patient's history. The progression for disc derangement and some annular herniation is just as this patient listed, that is, there will be an injury at some point in time and it will progressively decrease the patient's level of function to the point where they seek medical attention. This may be weeks to months later and, in her case, was from August until November for my case. This is very representative of this particular type of injury and indeed the fact that she had minimal changes on MRI scan that then showed an annular herniation with disc derangement by diskography validate her injury and, in fact, the onset of that injury being the single lifting episode

described. This of course is predicated by history and as stated this is the only historical event that I have that could have caused these radiographic findings. She had no other supervisory reported episode of injury besides that listed.

On June 2, 2008, Dr. Raben saw the claimant for follow-up care after surgery at L4-L5. At that time, the claimant reported that she was getting better, but still has some pain in her hip and back. He noted that the claimant had not made an appointment for pain management, although a referral had been made for that. According to these medical notes, the claimant had not made this appointment because her son had required surgery on his ankle during the day of her appointment.

The claimant saw Dr. James Hawk on July 7, 2008 for pain management. He recommended, among other things, a medication regimen, topical heat, home exercises, and that she move toward strengthening her body and getting rid of some of the things that prevented her from being healthy. He also requested that the claimant return to see him in one month.

Dr. Michael Calhoun reported in a letter dated August 26, 2008, the following to respondents' attorney:

I received the file on Mrs. Hackney. From what I understand, she suffered a work injury on August 30, 2007, when she was picking up a patient. She was initially seen by Dr. Tom Langston and then referred to Dr. Tony Raben. Initially an MRI was performed which from the radiologist's interpretation appears to have been typical for a lady who is 35 years of age. A CT discogram was then performed on March 18, 2008. This showed a grade V annular tear in the right foraminal to extraforaminal location at L4-L5. During the discogram

the patient was noted to have concordant pain down her back and into her right leg.

She subsequently underwent a neural foraminal block on the right at L4-L5 which helped her pain for several days. With this in mind, Dr. Raben took her to surgery and performed an arthroscopically assisted decompressive microdiscectomy at L4-L5 with epidural steroid injection and provocative discography on April 18, 2008.

From the records, the patient was last seen on July 2, 2008. At that time he stated that she was still doing better than she had postoperatively. He then referred her Dr. Hock for pain management. Dr. Hock [sic] saw her initially on July 7, 2008. She was tentatively scheduled to see Dr. Hock [sic] back in one month.

With regard to your specific questions, I personally do not believe in arthroscopically guided microdiscectomies for a positive discogram. It appears that the patient had continued pain requiring her to be evaluated by a pain management physician postoperatively. Thus, it would be difficult for me to say that an arthroscopically guided microdiscectomy for a grade V annular tear is reasonable and necessary.

Usually, with microdiscectomies done through a minimally invasive retractor system, the healing period is 2-3 months.

Personally I would not have suggested anything surgical for Ms. Hackney. Unfortunately, it is doubtful that she will ever return to her pre-injury status and will continue to have pain since her injury was in August of 2007, and she is still undergoing pain management today.

The claimant's sister, Mary Cantwell wrote the following in an undated letter:

Tonya Hackney is not an actual employee at Salon 7. She is sister to the owner, and helps out occasionally as a reception. She helped the months of January 21, 2008 to April 17, 2008. Also, Aug., [sic] 2008 to current. Tonya Hackney and her family received free Haircare [sic] in trade for her helping out at the Salon.

## ADJUDICATION

### A. Independent Intervening Cause

The respondents have essentially asserted that the claimant is not entitled to any additional benefits because the claimant sustained an independent intervening cause in November of 2007, while performing household duties.

Under the Arkansas Workers' Compensation Act, benefits are not payable for a condition which results from a nonwork-related independent intervening cause following a compensable injury which causes or prolongs disability or a need for treatment. A nonwork-related independent intervening cause does not require negligence or recklessness on the part of a claimant. Ark. Code Ann. § 11-9-102(4) (F) (iii).

If there is a causal connection between the primary and the subsequent disability, there is no independent intervening cause unless the subsequent disability is triggered by activity on the part of the claimant which is unreasonable under the circumstances. Guidry v. J & R Eads Const. Co., 11 Ark. App. 219, 669 S.W.2d 483 (1984), Georgia-Pacific Corp. v. Carter, 62 Ark. App. 162, 969 S.W.2d 677 (1998), Davis v. Old Dominion Freight Line, Inc. 341 Ark. 751, 20 S.W.3d 326 (2000).

In the present matter, the claimant essentially admitted to an incident involving her back while performing "aggressive household cleaning chores," which entailed mopping and vacuuming,

in November of 2007. Her testimony is corroborated by the physical therapist's clinical note (described above) of November 19, 2007. Based on the medical evidence presented, the testimony elicited from the claimant at the hearing, the absence of testimony from Atlis In Home Care controverting the same, I find that the preponderance of the credible evidence presented in this matter clearly demonstrates that the claimant was simply performing household duties, of mopping and vacuuming during the November 2007 incident. It my opinion that under the foregoing circumstances, it would require pure conjecture and speculation to conclude that the claimant was performing some other more aggressive-type cleaning activities.

Here, there is absolutely no evidence to support a finding that the claimant's activity of performing household chores was unreasonable under the circumstances. I note that there are no medical reports from Dr. Raben or any physician indicating that the claimant should have refrained from performing such tasks. In addition to this, the claimant's testimony demonstrates that no treating physician had recommended that she not engage in such activities. Moreover, no evidence has been presented to support a finding that the performance of these duties exceeded any physical limitations or medical restrictions.

As such, I therefore find that the claimant's performance of household duties in November of 2007 was not unreasonable under

the circumstances. I further find that this incident does not constitute an independent intervening cause, so as to absolve the respondents of any further possible liability in this matter subsequent to this incident.

B. Temporary Total Disability Compensation

The claimant contends that she is entitled to temporary total disability compensation from April 18, 2008 to August 1, 2008. The claimant's compensable injury to her back is unscheduled.

An injured employee who suffers an unscheduled injury is entitled to temporary total disability compensation during the time that she is within her healing period and totally incapacitated to earn wages. Arkansas State Highway and Transportation Department v. Breshears, 272 Ark. 244, 613 S.W. 2d 392 (1981). The healing period ends when the underlying condition causing the disability has become stable and nothing further in the way of treatment will improve that condition. Mad Buther, Inc. v. Parker, 4 Ark. App. 124, 628 S.W. 2d 582 (1982). Temporary disability cannot be awarded after the claimant's healing period has ended. Trader v. Single Source Transportation, Workers' Compensation Commission E507484 (Feb. 12, 1999).

Dr. Raben performed an arthroscopically assisted decompressive microdiscectomy at L4-L5, with intradiscal electrothermal therapy, epidural steroid injection, and provocative discography on April 18, 2008. Thereafter, the claimant continued under follow-up care with Dr. Raben as a result of the above-

referenced procedures. The claimant's last visit of record with Dr. Raben occurred on June 2, 2008, with no further follow-up visits with him having been scheduled, and the claimant subsequently began pain management treatment with Dr. Hawk. Dr. Calhoun opined in his letter dated August 26, 2008, that the healing period for microdiskectomies is two to three months.

Based on the evidence presented in this case, I find that the claimant remained within her healing period and that she suffered a total incapacity to earn wages beginning at least on April 18, 2008, and continuing until July 18, 2008. As a result, I further find that the claimant proved by a preponderance of the evidence her entitlement to temporary total disability compensation from April 18, 2008 to July 18, 2008.

C. Additional Reasonable and Necessary Medical Treatment

The respondents accepted the claimant's back injury as compensable and paid some medicals benefits until on or about November 2, 2007, which was after the claimant's visit with Dr. Raben. The respondents have since controverted the claimant's entitlement to additional medical treatment. Therefore, the claimant now asserts that she is entitled to additional reasonable and necessary medical treatment for her compensable injury.

An employer shall promptly provide for an injured employee such medical treatment as may be reasonably necessary in connection with the injury received by the employee. Ark. Code Ann. § 11-9-508(a). The claimant bears the burden of proving that he or

she is entitled to additional medical treatment. Dalton v. Allen Eng'g Co., 91 Ark. App. 260, 209 S.W. 3d 445 (2005). What constitutes reasonably necessary medical treatment is a question of fact to be determined by the Commission. White Consolidated Industries v. Galloway, 74 Ark. App. 13, 45 S.W. 3d 396 (2001).

Injured employees must prove that medical services are reasonably necessary by a preponderance of the evidence; **however, those services may include that necessary to accurately diagnose the nature and extent of the compensable injury; to reduce or alleviate symptoms resulting from 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, Workers' Compensation Commission Opinion filed February 14, 2004 (E906565).

The claimant sustained an admittedly compensable back injury on August 30, 2007. Her back injury occurred during an episode of lifting a heavy patient while working for the respondent-employer as a CNA. The claimant was initially seen by Dr. Langston for her compensable back injury. She was subsequently referred to Dr. Raben, who referred her for physical therapy treatment and ordered an MRI. At which point, the claim for additional medical benefits was controverted. An MRI of the lumbar spine was performed on December 7, 2007. In medical notes dated January 8, 2008, Dr. Raben, opined that the claimant's MRI scan had revealed subtle disc space desiccation at the L4-L5 interval, and that she might have

disc space disruption at said interval. However, he further opined that the only way to be sure would be with a CT discography. This diagnostic testing revealed a Grade 5 annular tear in the right foraminal to extraformaminal location at L4/5. As a result, Dr. Raben performed surgery on April 18, 2008.

On the basis of the record as a whole, and after reviewing the evidence in this case impartially, without giving the benefit of the doubt to either party, I find that the claimant's ongoing difficulties with her back are causally related to her compensable back injury of August 30, 2007. I therefore further find that the the claimant sustained her burden of proving by a preponderance of the evidence that all of the additional medical treatment of record is reasonably necessary in connection with the back injury she received.

The medical evidence and the testimony elicited from the claimant during hearing demonstrate that the claimant has experienced persistent and continual complaints with the same area of the lumbar spine since her compensable injury. Before this incident, the claimant had not experienced any prior back problems. In fact, all of the medical evidence presented in this matter attributes the claimant's ongoing pain and related symptoms to objective findings, namely, in the form of a Grade 5 annular tear in the right foraminal to extraforaminal location at L4/5 level of her lumbar spine. This objective finding clearly originated with the compensable injury of August 30, 2007. Although diagnostic testings seemingly suggest that the claimant's injury has

progressed, there is absolutely no evidence that this progression in physical damage to the L4/5 level area of the claimant's back resulted from any subsequent trauma or new injury (independent intervening cause). Instead, the evidence shows that this progression in physical injury to the L4/5 level of the claimant's spine was set off by the initial trauma of her admittedly compensable injury (see discussion in Dr. Raben's May 13, 2008, expert opinion). Therefore, I find that the respondents are liable for all the medical treatment of record for the claimant's ongoing back pain and related symptoms resulting from the damage to the L4/5 area of her lumbar spine.

Specifically, I further find that all the medical treatment of record was reasonable and necessary to accurately diagnose the nature and extent of the claimant's admittedly compensable back injury, and to reduce and/or alleviate symptoms resulting from said injury. This treatment includes, but is not limited to the medication regimen, physical therapy treatment, MRI, CT discogram, surgery, and pain management. Although the claimant confirmed that she still had some pain and problems after the surgery, she also testified that her back had improved by twenty percent. While I recognized that the claimant's back pain and symptoms were not eradicated by the surgery, the surgery reduced and/or lessened symptoms resulting from her compensable injury. In addition to this, Dr. Raben specifically opined within a reasonable degree of medical certainty in a letter dated May 13, 2008, that the medical

treatment, which included, but was not limited to the CT discography, and arthroscopically assisted microdiscectomy with intradiskal electrathermal therapy was needed as a direct result of the claimant's on-the-job injury. I am persuaded by this opinion considering that Dr. Raben is the claimant's treating physician, in light of the persistent nature of the claimant's symptoms since her compensable injury, and the fact that the claimant had experienced no prior symptoms with her back despite her preexisting degenerative disc disease.

While I realize that Dr. Calhoun has stated that he does not believe in arthroscopically guided microdiscectomies for a positive discogram, minimal weight has been attached to this opinion, as he has not provided any medical basis for this belief, nor has he suggested what might have been a more viable option of treatment for reducing and/or alleviating the claimant's back symptoms.

With respect to future treatment, although the claimant's healing period for her compensable back injury was found herein to have ended on July, 18, 2008, I find that the claimant is entitled to ongoing medical treatment in the form of pain management. It is well-settled that a claimant may be entitled to ongoing medical treatment after the healing period has ended, if the medical treatment is geared toward management of the claimant's injury. Patchell v. Wal-Mart, Stores, Inc., 86 Ark. App. 230, 184 S.W.3d 31 (2004).

In this regard, it is noted that Dr. Raben, the claimant's treating surgeon, referred her for pain management, and Dr. Calhoun

opined in a letter dated August 26, 2008, that he is doubtful that the claimant will ever return to her pre-injury status and that she will continue in pain. In addition to this, the claimant essentially testified that she continues with severe pain and related symptoms, and is in need of additional medical treatment. I also note Dr. Raben's opinion of May 13, 2008, wherein he states the possibility of the need for future surgery.

To summarize, the preponderance of the evidence demonstrates that continued pain management as recommended by Dr. Hawk is reasonably necessary in connection with the claimant's compensable back injury of August 30 2007.

D. Attorney's Fee

It is undisputed that the respondents have controverted this claim for additional benefits in its entirety. Therefore, the claimant's attorney is entitled to a controverted attorney's fee on all indemnity benefits awarded herein to the claimant, pursuant to Ark. Code Ann. § 11-9-715.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

1. The Arkansas Workers' Compensation Commission has jurisdiction of the within claim.
2. The employee-employer-carrier relationship existed at all relevant times, including August 30, 2007.
3. The claimant's average weekly wage at the time of her injury was \$218.00. This entitles her to a weekly temporary total disability rate and permanent partial disability rate of \$145.00.
4. The claimant sustained a compensable injury to her back while working for the employer/respondent.

5. Some medical benefits have been paid on this claim.
6. All other benefits are expressly reserved under the Act.
7. The claimant's activities of performing household duties in November of 2007 was not unreasonable under the circumstances of this case. Therefore, such action does not constitute an independent intervening cause.
8. The claimant proved by a preponderance of the evidence that she is entitled to temporary total disability compensation from April 18, 2008 to July 18, 2008.
9. The claimant proved by a preponderance of the evidence that all the additional medical treatment of record was reasonably necessary in connection with her compensable back injury. She also proved by a preponderance of the evidence her entitlement to future medical treatment in the form of pain management.
10. The claimant's attorney is entitled to a controverted attorney's fee on all indemnity benefits awarded herein, pursuant to Ark. Code Ann. § 11-9-715.

#### **AWARD**

The Respondents are directed to pay benefits in accordance with the findings of fact set forth herein this Opinion.

All accrued sums shall be paid in lump sum without discount, and this award shall earn interest at the legal rate until paid, pursuant to Ark. Code Ann. § 11-9-809.

Pursuant to Ark. Code Ann. § 11-9-715, the claimant's attorney is entitled to a 25% attorney's fee on the indemnity benefits awarded herein. This fee is to be paid one-half by the carrier and one-half by the claimant.

All issues not addressed herein are expressly reserved under

the Act.

**IT IS SO ORDERED.**

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**CHANDRA HICKS**  
**Administrative Law Judge**

**CH/ml**