

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F213823

MARIE HERRON,  
EMPLOYEE

CLAIMANT

MEDICALODGE PROGRESSIVE CARE,  
EMPLOYER

RESPONDENT NO. 1

TRAVELERS INSURANCE COMPANY,  
INSURANCE CARRIER

RESPONDENT NO. 1

DEATH & PERMANENT TOTAL DISABILITY  
TRUST FUND

RESPONDENT NO. 2

**OPINION FILED JULY 25, 2008**

Hearing conducted before ADMINISTRATIVE LAW JUDGE MARK  
CHURCHWELL in Texarkana, Miller County, Arkansas.

The claimant was represented by HONORABLE GREGORY R. GILES,  
Attorney at Law, Texarkana, Arkansas.

Respondents No. 1 were represented by HONORABLE PHILLIP  
CUFFMAN, Attorney at Law, Little Rock, Arkansas.

Respondent No. 2 was represented by HONORABLE CHRISTY KING,  
Attorney at Law, Little Rock, Arkansas.

**STATEMENT OF THE CASE**

A hearing was held in the above-styled claim on May 15,  
2008, in Texarkana, Arkansas. A Prehearing Order was  
entered in this case on February 25, 2008. This Prehearing  
Order outlined the issues to be litigated and resolved at  
the present time. A copy of this Prehearing Order was made  
Commission's Exhibit No. 1 to the hearing record.

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.
2. The employer/employee/carrier relationship existed at all relevant times.
3. The claimant sustained a compensable back injury on February 8, 2000.
4. The claimant was granted a change of physician by the Commission to Dr. Andrew Prychodko on March 6, 2003.
5. The claimant's TTD rate is \$194.00 and PPD rate is \$154.00.
6. The prior Opinions filed in this case are res judicata on the issues decided therein.
7. Respondents No. 1 have made payments toward a 20% permanent anatomical impairment rating as well as 50% wage loss disability.
8. The claimant originally reached maximum medical improvement on May 12, 2004.

The issues to be litigated and resolved at the present time are limited to the following:

- a. The claimant's entitlement to additional medical treatment.
- b. Whether there are unpaid medical expenses which the respondents should be ordered to pay for.
- c. Whether the claimant's condition has changed since the September 9, 2004, hearing such that she is now totally and permanently disabled.
- d. Appropriate attorney's fees.
- e. When did permanent and total disability benefits begin to accrue if the claimant is found permanently and totally disabled.
- f. End of healing period.

The record consists of three volumes: (1) the two-volume May 15, 2008, hearing transcript and the exhibits contained therein, and (2) Joint Exhibit No. 2, which is the one-volume transcript and documentary evidence from a prior hearing conducted on September 9, 2004, retained in the Commission file under separate cover.

#### **DISCUSSION**

The claimant, Marie Herron, sustained a compensable back injury while working for the respondent employer as a certified nurse's assistant giving a patient a bath on February 8, 2000. In an opinion filed on October 26, 2004,

Administrative Law Judge J. Mark White found in part that Ms. Herron's healing period for her injury ended on May 12, 2004. ALJ White also found that Ms. Herron sustained a 20% permanent partial disability as a result of her injury and a 50% wage loss over and above her permanent anatomical impairment. ALJ White found that Ms. Herron failed to prove that she is permanently and totally disabled. ALJ White's findings were affirmed by the Full Commission in an opinion filed on July 7, 2005. The Commission's findings regarding permanent partial disability and the extent of wage loss were affirmed by the Arkansas Court of Appeals in an unpublished decision filed on April 19, 2006. (Jt. Exh. 1)

At a subsequent hearing conducted by me on May 15, 2008, Ms. Herron presented testimony and documentary evidence in an attempt to establish that she has experienced a change in condition since the hearing on May 12, 2004, such that she is now permanently and totally disabled. Ms. Herron also seeks payment or reimbursement for unpaid medical expenses allegedly related to her injury, as well as future treatment from her current pain management physician, Dr. Burleson, in Texarkana, Texas. The respondents contend that all appropriate benefits have been paid for Ms. Herron's injury and that payment of medical benefits ended

in January of 2007. (Comm. Exh. 1 p. 3) Mr. Cuffman had no specific knowledge, however, why any bills incurred before January of 2007 were not paid. (T. 11) The Death and Permanent Total Disability Trust Fund contends that if the claimant is determined to now be permanently and totally disabled, the employer is not entitled to credit for payment of permanent and total disability until the date upon which the claimant is found to now be permanently and totally disabled. (Comm. Exh. 1 p. 3) The claimant contends that she became permanently and totally disabled on March 3, 2008. (T. 6)

**1. Change In Physical Condition/Functional Disability**

Arkansas Code Annotated § 11-9-522(d) provides:

(d) In accordance with this section, the commission may reconsider the question of functional disability and change a previously awarded disability rating based on facts occurring since the original disability determination if any party makes application for reconsideration within one (1) year after the occurrence of the facts.

Arkansas Code Annotated § 11-9-713(a) and (e) provide:

(a) (1) Except where a joint petition settlement has been approved, the Workers' Compensation Commission may review any compensation order, award, or decision. (2) This may be done at any time within six (6) months of termination of the compensation period fixed in the original compensation order or award, upon the commission's own motion or upon the application of any party in interest, on the ground of a change in physical

condition or upon proof of erroneous wage rate.  
(3) Upon the review, the commission may make an order or award terminating, continuing, decreasing, or increasing for the future the compensation previously awarded, subject to the maximum limits provided for in this chapter.

(e) Aging and the effects of aging on a compensable injury are not to be considered in determining whether there has been a change in physical condition. Nor shall aging or the effect of aging on a compensable injury be considered in determining permanent disability pursuant to this section or any other section in this chapter. The purpose and intent of this section is to annul any and all case law inconsistent herewith, including *International Paper Co. v. Tuberville*, 302 Ark. 22, 786 S.W.2d 830 (1990).

When making a determination of the degree of permanent disability sustained by an injured worker with an unscheduled injury, the Commission must consider evidence demonstrating the degree to which the worker's anatomical disabilities impair the worker's earning capacity, as well as other factors such as the worker's age, education, work experience, and other matters which may reasonably be expected to affect the worker's future earning capacity.

Such other matters may include, but are not limited to, motivation, post-injury income, credibility, and demeanor.

Glass v. Edens, 233 Ark. 786, 346 S.W.2d 685 (1961); City of Fayetteville v. Guess, 10 Ark. App. 313, 663 S.W.2d 946

(1984). Curry v. Franklin Electric, 32 Ark. App. 168, 798 S.W.2d 130 (1990).

In the present case, Ms. Herron contends that she experienced a change in condition and ultimately became permanently and totally disabled on or about March 3, 2008.

In this regard, I note that Ms. Herron presented to her family physician, Dr. Jerry Stringfellow, on March 3, 2008. Dr. Stringfellow's report indicates Ms. Herron presented that day with many complaints that were all addressed. His report indicates Ms. Herron had hit her head on a table and was still having dizziness, loss of balance and falling, atypical chest pain, and pain in her left ankle after twisting it two weeks before. (C. Exh. 1 p. 270E) Dr. Stringfellow wrote Ms. Herron a prescription for a four-wheeled walker on March 3, 2008. (C. Exh. 1 p. 270I)

Ms. Herron has also presented into evidence a "(Physical) Residual Functional Capacity Evaluation" completed by Dr. Burleson, her pain management physician, on April 1, 2008. In that evaluation, Dr. Burleson opined that Ms. Herron requires complete freedom to rest frequently without restriction with regard to standing, walking and sitting. (C. Exh. 1 p. 273) Dr. Burleson opined that Ms. Herron is incapable of any lifting, carrying, repetitive

hand use or foot use, stooping, crawling, climbing, balancing, kneeling or reaching above shoulder level. Dr. Burleson opined that Ms. Herron is restricted from working with heights, moving machinery, chemicals, noise, humidity, dust, temperature extremes, fumes and vibrations. Dr. Burleson opined that Ms. Herron's pain is severe and that she displays objective signs of pain including swelling, muscle spasm and spinal deformity. (C. Exh. 1 p. 273-276)

In a separate letter addressed to no one in particular dated April 3, 2008, Dr. Burleson stated Ms. Herron was having great difficulty just walking into his office when she first presented on January 10, 2007. Dr. Burleson concluded, "It is apparent to me that this unfortunate lady will continue to have some great difficulties with regard to her pain and its underlying causes. I expect to continue treating her with potent medications in an effort to alleviate as much of her pain as possible." (C. Exh. 1 p. 271-272)

With regard to her claim for a change in condition, Ms. Herron testified that her doctor started insisting on a walker after she fell so much. (T. 36) Ms. Herron testified that she falls because she loses her balance. (T. 37) Ms.

Herron testified that she does not know why she loses her balance. (T. 38)

With regard to her medications, Ms. Herron testified that her current medications do *better* as compared to her 2004 medications, and her current side-effects are not as bad as when she used the Duragesic Patch.

(T. 40)

Ms. Herron testified that she has stopped driving since a wreck in 2007. (T. 41-42) Ms. Herron testified that she is unable to dress herself. (T. 42) Ms. Herron testified that in 2004 she was able to put a potpie in the microwave or put a chicken on to cook, but she can now no longer do that because she cannot stand up that long. (T. 45) Ms. Herron testified that she could do simple house work in 2004, but she can no longer clean because it is too much to bear. In this regard, Ms. Herron testified that inflammation has set up in her joints, particularly her knees and ankles. (T. 46) Ms. Herron testified that she had basically stopped paying the family's bills before the hearing in September of 2004. (T. 47) Ms. Herron testified that back in 2004 her husband assisted her to go to the store or he went by himself. (T. 53)

Grady Herron, the claimant's husband, testified that between the time of the first and second hearing, his wife's memory is worse, she can no longer do housework, and her medications make her sleepy all of the time. (T. 75-76) Mr. Herron testified that his wife had a cane she used every now and then in 2004, but she could walk around a little bit. (T. 79) Mr. Herron testified that his wife now uses a walker because her balance is off and she falls. (T. 79) Mr. Herron testified that he had been giving his wife her medication for about three years at the time of the 2008 hearing. (T. 81) Mr. Herron testified that his wife has not been able to dress herself or bathe herself since 2006. (T. 83) Mr. Herron summarized that his wife's changes since the 2004 hearing include her memory, her balance, and her inability to stand for very long. (T. 86)

After reviewing the entire record, however, I find that Ms. Herron has failed to establish that she has experienced either a change in physical condition or a change in functional disability causally related to her compensable back injury since the hearing held on September 9, 2004.

With regard to physical changes, I first note that I do not detect from the report of Ms. Herron's March 13, 2007, lumbar MRI any additional abnormality as compared to MRIs in

the record from the hearing on September 9, 2004, and Ms. Herron has not undergone any additional discogram or other diagnostic test documenting any further disc disruption or other deterioration in her back condition.

To the extent that Ms. Herron attributes her perceived change in physical condition and/or functional disability to poor balance causing her to now use a four-wheeled walker beginning in March of 2008, I note that the functional capacity evaluation examiner before the *first* hearing was reportedly unable to assess Ms. Herron's mobility on August 12, 2004, because "she was unable to move about without hand on assistance from her husband and or the examiner." (Jt. Exh. 2, p. 168) In his findings summary, the evaluator also stated that Ms. Herron "consistently needed manual assistance to help control balance while walking." (Jt. Exh. 2 p. 179) The documentary evidence presented at the first hearing persuades me that ALJ White and the Commission had before it evidence of Ms. Herron's reportedly dysfunctional balance when the claimant was previously assigned a 20% impairment and a 50% wage loss.

To the extent that Ms. Herron asserts that she now experiences greater loss of balance causing her to now use a four-wheeled walker, Ms. Herron has failed to establish by a

preponderance of the credible evidence that any increased imbalance she may experience at this time is caused by either her compensable back injury or medications for that injury. In this regard, I note that Dr. Stringfellow indicated that Ms. Herron "continues to fall" in a report on September 28, 2006, when he hospitalized her for hypoglycemia. (C. Ech. 1 p. 157-158) Ms. Herron has not presented any evidence indicating that her hypoglycemia was caused by either her back injury or her back medications. In fact, Ms. Herron's attorney has acknowledged that the respondents are not liable for her hospitalization in September of 2006 for hypoglycemia. (T. 11) In addition, Ms. Herron has not presented any test results indicating what physical ailment, if any, is causing her to lose her balance. Ms. Herron has also not presented any medical opinion attributing her purported loss of balance to her back injury or her medications for that injury.

Finally, to the extent that Ms. Herron contends that she has experienced an increased functional disability based on her decreased activities of daily living, including cooking, cleaning, driving, bathing and taking her own medications, I first note that Ms. Herron testified at the *prior* hearing that she no longer cooked. (Jt. Exh. 2 p. 42

and 47) By that time (i.e., the first hearing) she testified was also no longer performing housework. (Jt. Exh. 2 p. 41) If she got out of bed, she would sit on the porch or sit and watch her grandchildren if they came over. (Jt. Exh. 2 p. 44)

With regard to Ms. Herron's purported memory loss and decreased functional abilities, I note that Ms. Herron has undergone an evaluation by one psychologist in the record, Alda Moore, of the Arkansas Pain Centers, on November 20, 2006. At that time, the claimant's treating pain management physician was Dr. Butchaiah Garlapati, also with Arkansas Pain Centers.

The report from that psychological evaluation on November 20, 2006, indicates that Ms. Herron in fact had the ability to concentrate because she never lost her place in her story and that her memory appeared very much intact because she recalls dates, times, and person's names without hesitation. Alda Moore also reported, however, "I have never seen a patient with this much observable pain behaviors to include the amount of crying, body shaking, posture and moaning." In addition, the report concludes in part, "The results of this examination would indicate that the patient is exhibiting a moderate to intense level of

psychological and/or functional overlay." Alda Moore recommended outpatient psychotherapy. (C. Exh. 1 p. 193-194)

After hearing the live testimony and observing the demeanor of the witnesses at the May 15, 2008, hearing and after reviewing the written record of both hearings, I accord great weight to the conclusion of Alda Moore that Ms. Herron exhibits moderate to intense psychological and/or functional overlay. Because I find that Ms. Herron exhibits moderate to intense psychological and/or functional overlay, I do not find persuasive Dr. Burleson's April 3, 2008, letter or his April 1, 2008, Residual Functional Capacity Evaluation indicating that Ms. Herron is essentially physically incapable of any activities.

In light of the overlay, the similarity between Ms. Herron's lack of activity in 2004 and 2008, and the lack of evidence establishing that Ms. Herron's balance problems are related to her 2000 injury, I find that Ms. Herron has failed to establish by a preponderance of the credible evidence that she has experienced a change in physical condition or a change in functional disability causally related to her compensable back injury since the first hearing held on May 12, 2004.

Because I find that Ms. Herron has failed to establish a change in physical condition or a change in functional disability, I find moot the issues of (1) when the alleged change occurred or (2) whether respondent no. 1 is entitled to credit their previous permanent disability payments against alleged liability for permanent and total disability compensation.

## **2. Additional Medical Treatment**

The 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 must prove by a preponderance of the evidence that she is entitled to additional medical treatment. Wal-Mart Stores, Inc. v. Brown, 82 Ark. App. 600, 120 S.W.3d 153 (2003). What constitutes reasonably necessary medical treatment is a question of fact for the Commission. Dalton v. Allen Eng'g Co., 66 Ark. App. 201, 989 S.W.2d 543 (1999).

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), citing Hydroponics, Inc. v. Pippin, 8 Ark. App. 200, 649 S.W.2d 845 (1983).

**a. Dr. Burleson's Treatment Beginning In January 2007  
And Unpaid Prescription Medications Beginning In  
November 2006.**

Mr. Cuffman confirmed at the hearing that the respondents refused to pay for Br. Burleson's treatment and refused to pay for additional prescriptions beginning in November of 2006. (T. 11 and 15)

I find that Ms. Herron's treatment by Dr. Burleson, a pain specialist, and Ms. Herron's continuing prescriptions by Dr. Burleson have been reasonably necessary for treatment of Ms. Herron's compensable back injury.

In reaching this conclusion, I recognize again that Alda Moore performed a psychological evaluation on November 20, 2006, concluding that Ms. Herron exhibited moderate to intense psychological and/or functional overlay. (C. Exh. 1 p. 193-194) I also recognize that Dr. Garlapati, a pain specialist, terminated Ms. Herron's care in November of 2006 in part because Ms. Herron refused to consider psychological counseling recommended by Alda Moore. (C. Exh. 1 p. 242) I recognize that Dr. Bud Dickson, an orthopedic specialist, evaluated Ms. Herron on October 26, 2006, and concluded that her numerous problems are not related at all to her low back. (C. Exh. 1 p. 180)

However, I also note that when Dr. Garlapati terminated Ms. Herron's care on November 27, 2006, he did not opine that she should no longer receive medication or that she should no longer be followed by a pain physician. Instead he requested that she find another physician willing to write her prescriptions and advised where to find a list of other local pain physicians. (C. Exh 1. p. 195) Dr. Burleson's correspondence in the record indicates that he is a pain specialist and that he is prescribing to Ms. Herron medications for back pain. (C. Exh 1. p. 195) The respondents have not presented any medical evidence addressing Dr. Burleson's credentials or indicating that his prescriptions are inappropriate or excessive for the condition he is treating.

I also note that the claimant was previously provided prescription pain medication by physicians for years before Dr. Burleson took over her care. See, e.g. Jt. Exh. 2, Jt. Exh. 1, p. 41 - Darvocet 2002 Dr. Pappas, p. 43 - Vicodin 2002 Dr. Pappas, p. 44 - same, p. 69 - Talwin 2003 Dr. Pappas, p. 71 - Talwin 2003 Dr. Prychodko, p. 76 - Talwin 2003 Dr. Prychodko, p. 87 - Norco 2003 Dr. Prychodko, p. 90 - Norco 2003 Dr. Goldsmith, p. 145 - Norco 2004 Dr. Prychodko; C. Exh. 1, p. 10 - Hydrocodone 2004 Dr. Hart, p. 64 - Oxycontin 2005 discussed by Dr. Reynolds, p. 129 Morphine 2006 Dr. Garlapati. Under the circumstances, I find that the claimant has established by a preponderance of the

evidence that Dr. Burleson's ongoing prescriptions and follow-up to date have been reasonably necessary to treat Ms. Herron's back injury.

**b. Hospitalization On January 11, 2005.**

Ms. Herron became hospitalized at Wadley Hospital on January 11, 2005, and was released on January 15, 2005. Mr. Giles indicated at the hearing that the respondents paid for all but a few of the bills for that hospitalization, and Mr. Giles contended that the respondents should be liable for that hospitalization based on a notation of Oxycontin withdrawal in the hospital records. My review of the medical bills submitted by the claimant indicates that Alabama Blue Cross, not the respondents, paid the expenses for that hospitalization. In addition, I note that on January 11, 2005, Dr. Timothy Reynolds indicated upon intake that he was not sure whether Ms. Herron's abdominal complaints were acute onset abdominal type pain or instead if she may have some withdrawal from Oxycontin. (Jt. Exh. 1. p. 64) Ms. Herron underwent diagnostic tests during her hospitalization, and I cannot find any final diagnosis or medical conclusion in the record indicating what condition physicians ultimately concluded had caused Ms. Herron's abdominal pain. (Jt. Exh 1. 61-78) I find that Ms. Herron has failed to establish by a preponderance of the evidence that the abdominal pain which sent her to the hospital on January 11, 2005, was causally related to her compensable

back injury or her prescriptions for that injury. I find that Ms. Herron has failed to establish that any of the treatment she received during the hospitalization was reasonably necessary for treatment of her compensable injury.

**c. Hospitalization On May 15, 2006.**

On May 15, 2006, Dr. Garlapati, Ms. Herron's treating pain physician, hospitalized Ms. Herron for severe back pain and treated the pain with a morphine pump. Dr. Garlapati released Mr. Herron from the hospital on May 20, 2006. (C. Exh. 1 p. 128-135) The respondents have failed to present any medical evidence indicating that Dr. Garlapati's treatment was excessive or otherwise inappropriate for the back pain being treated. I find that all of Ms. Herron's treatment at issue between May 15, 2006, and May 20, 2006, was reasonably necessary to treat her compensable back injury.

**d. Treatment At Wadley Regional Medical Center On March 23, 2000.**

Claimant's Exhibit 2 indicates that Ms. Herron has an outstanding bill for treatment at Wadley Regional Medical Center for March 23, 2000. I find that the lumbar MRI performed on March 23, 2000 (Jt. Exh. 2, Jt. Exh. 1 p. 4), was reasonably necessary for and causally related to the claimant's compensable back injury sustained on February 8, 2000.

**e. Treatment At Wadley Regional Medical Center On February 21, 2001.**

Ms. Herron underwent additional diagnostic testing on February 21, 2001, including a pelvic MRI, a pelvic x-ray, another lumbar MRI and a lumbar x-ray. Dr. Pappas ordered the testing during the course of his treatment of Ms. Herron's work injury. (Jt. Exh. 1, Jt. Exh. 2 p. 25-31) I find the additional diagnostic testing reasonably necessary to evaluate and treat Ms. Herron's compensable injury.

**f. Treatment At The Texas Back Institute From May 13, 2002, Through December 18, 2002.**

Claimant's Exhibit 2 indicates that the claimant has a balance of \$157.79 owed for her treatment at the Texas Back Institute. As I understand the history of this case, Dr. Pappas referred Ms. Herron to the Texas Back Institute for evaluation. (Jt. Exh. I p. 7) I find the treatment provided by Dr. Patel and the Texas Back Institute documented in the September 9, 2004, hearing record reasonably necessary for treatment of the claimant's compensable injury.

**g. Treatment By LabCorp on February 20, 2004.**

An August 8, 2004, LabCorp invoice charged to Ms. Herron and included in Claimant's Exhibit 2 indicates that Occupational Health (i.e., Dr. Prychodko's office) ordered three tests performed by LabCorp on February 20, 2004. Dr. Prychodko's February 23, 2004, office note likewise discusses various test results. (Jt. Exh. 2, Jt. Exh 1 p. 135) At that time, Dr. Prychodko was following Ms. Herron

for her work injury and related medications. I find the lab tests ordered by Dr. Prychodko and performed by LabCorp reasonably necessary for treatment of Ms. Herron's work-related injury.

**h. Treatment Provided By Dr. Hart in 2004.**

Claimant's Exhibit 2 indicates that Ms. Herron paid \$41.65 toward Dr. Hart's treatment in 2004. The respondents controverted Dr. Hart's treatment. However, the Commission has previously determined that Dr. Hart's controverted treatment in 2004 was reasonably necessary for treatment of Ms. Herron's compensable injury. (Jt. Ex. 1 p. 4)

**i. Treatment Provided By And Through St. Michael Hospital on May 24, 2004.**

Ms. Herron presented to the emergency department of St. Michael Hospital on May 24, 2004, complaining of wrist and back pain after a fall in the morning. (C. Exh. 3) I do not find any of the treatment that she received causally related to her work-related back injury. In this regard, I note that Ms. Herron received at the hospital diagnostic x-rays to the left shoulder, left hip and left wrist. In addition, she received a CT scan of the head and brain. Ms. Herron has failed to establish that her compensable injury caused the fall which led to diagnostic testing, and she has failed to establish that her back injury in 2000 in any way combined with her fall in 2004 to necessitate a trip to the emergency room.

In reaching this conclusion, I am aware that the second page of Claimant's Exhibit 3 appears to include a diagnosis of acute psychosis secondary to medication withdrawal. The fifth page of Claimant's Exhibit 3 identifies Ms. Herron's chief complaint as being agitated and having missed some of her medications that day. The medical reports in Claimant's Exhibit 3 do not indicate which medications Ms. Herron may have missed that day and fail to persuade me that her agitation and any missed medications were attributable to her 2000 back injury.

**j. Treatment At Wadley Regional Medical Center On November 15, 2000; December 3, 2002; April 13-14, 2006; and September 29, 2006.**

Mr. Giles indicated during the hearing on May 15, 2008, that Ms. Herron does not seek payment or reimbursement for medical expenses incurred on these dates. (T. 10-11)

**3. Attorney's Fees**

Since the claimant's injury occurred before July 1, 2001, the claimant's attorney's fee is governed by the provisions of Ark. Code Ann. § 11-9-715 (1996) as it existed prior to the amendments of Act 1281 of 2001. I find that Mr. Giles is entitled to a 10% attorney's fee on all medical benefits awarded herein, one-half of which is to be paid by the claimant and one-half to be paid by the respondents in accordance with Ark. Code Ann. § 11-9-715 (Repl. 1996); and Death & Permanent Total Disability Trust Fund v. Brewer, 76 Ark. App. 348, 65 S.W.3d 463 (2002).

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

1. The Arkansas Workers' Compensation Commission has jurisdiction.
2. The employer/employee/carrier relationship existed at all relevant times.
3. The claimant sustained a compensable back injury on February 8, 2000.
4. The claimant was granted a change of physician by the Commission to Dr. Andrew Prychodko on March 6, 2003.
5. The claimant's TTD rate is \$194.00 and her PPD rate is \$154.00.
6. The prior Opinions filed in this case are res judicata on the issues decided therein.
7. Respondents No. 1 have made payments toward a 20% permanent anatomical impairment rating as well as 50% wage loss disability.
8. The claimant originally reached maximum medical improvement on May 12, 2004.
9. The claimant has failed to establish by a preponderance of the credible evidence that she has experienced either a change in physical condition or a change in functional disability causally related to her compensable back injury after the hearing held on September 9, 2004.

10. The claimant has established by a preponderance of the evidence that her treatment by Dr. Burlison, a pain specialist, and her continuing prescriptions by Dr. Burlison since November of 2006 have been reasonably necessary for treatment of the claimant's compensable back injury.
11. The claimant has failed to establish by a preponderance of the evidence that any of the treatment that she received during a hospitalization between January 11, 2005, and January 15, 2005, was reasonably necessary for treatment of her compensable injury.
12. The claimant has established by a preponderance of the evidence that her hospitalization and treatment by Dr. Garlapati between May 15, 2006, and May 20, 2006, was reasonably necessary to treat her compensable injury.
13. The claimant has established by a preponderance of the evidence that the lumbar MRI performed on March 23, 2000, was reasonably necessary for and causally related to her compensable back injury sustained on April 8, 2000.
14. The claimant has established by a preponderance of the evidence that the additional diagnostic testing which she received on February 21, 2001, including a pelvic MRI, a pelvic x-ray, another

lumbar MRI, and a lumbar x-ray were reasonably necessary to evaluate and treat the claimant's compensable injury.

15. The claimant has established by a preponderance of the evidence that the treatment provided by Dr. Patel and the Texas Back Institute documented in the September 9, 2004, hearing record was reasonably necessary for treatment of the claimant's compensable injury.
16. The claimant has established by a preponderance of the evidence that the lab tests ordered by Dr. Prychodko and performed by LabCorp were reasonably necessary for treatment of the claimant's compensable injury.
17. The Commission has previously determined that Dr. Hart's controverted treatment in 2004 was reasonably necessary for treatment of the claimant's compensable injury.
18. The claimant has failed to establish by a preponderance of the evidence that any of the treatment that she received by and through St. Michael Hospital on May 24, 2004, was causally related to her compensable back injury.
19. The claimant has withdrawn any request for reimbursement or payment of treatment at Wadley Regional Medical Center on November 15, 2000;

December 3, 2002; April 13-14, 2006; and September 29, 2006.

20. The claimant's attorney is entitled to a 10% attorney's fee on all medical benefits found herein to be reasonably necessary and not previously paid by Respondent No. 1.

**AWARD**

The respondents are directed to pay additional benefits for medical treatment and medication consistent with the findings of fact set forth herein. All accrued sums shall be paid in a lump sum without discount and this award shall earn interest at the legal rate until paid, pursuant to A.C.A. §11-9-809, and Couch v. First State Bank of Newport, 49 Ark. App. 102, 898 S.W.2d 57 (1995), and Burlington Industries, et al v. Pickett, 64 Ark. App 67, 983 S.W.2d 126 (1998); reversed on other grounds 336 Ark. 515, 988 S.W.2d 3 (1999).

IT IS SO ORDERED.

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MARK CHURCHWELL  
Administrative Law Judge