

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

WCC NO. F601260

MAGGIE SIDENER, EMPLOYEE

CLAIMANT

**HEALTHCARE STAFFING ASSOCIATES, INC.,
EMPLOYER**

RESPONDENT

**COMMERCE & INDUSTRY INSURANCE CO.
c/o AIG CLAIM SERVICES (TPA),
INSURANCE CARRIER**

RESPONDENT

OPINION FILED SEPTEMBER 2, 2008

Hearing before Administrative Law Judge Barbara W. Webb on June 5, 2008, in Little Rock, Pulaski County, Arkansas.

The claimant appeared pro se.

The respondents were represented by Ms. Melissa Wood, Attorney at Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

A hearing was held on the above-styled claim on June 5, 2008, before Administrative Law Judge Barbara W. Webb. A Pre-hearing Order was entered in this case on April 15, 2008. The Pre-hearing Order set forth the stipulations offered by the parties and outlined the issues to be litigated and resolved at this hearing. A copy of the Pre-hearing Order was made Commission's Exhibit No. 1 to the hearing record.

The following stipulations as submitted by the parties in the Pre-hearing Order and as amended on the record are hereby accepted:

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

2. The employer/employee/carrier relationship existed on January 20, 2006, when the claimant sustained a compensable low back injury.
3. The claimant was awarded a change of physician from Dr. Brent Sprinkle to Dr. Patrick Chan on August 4, 2006, and the claimant was seen by Dr. Chan on September 6, 2006.
4. The claimant earned an average weekly wage of \$284.93, resulting in an applicable TTD rate of \$190.00 and a PPD rate of \$154.00.

By agreement of the parties, the issue presented at the hearing was claimant's entitlement to additional medical benefits and indemnity benefits from June 13, 2006, to the date of the hearing.

The record consists of a one volume transcript of the June 5, 2008, hearing, consisting of the testimony of Maggie Sidener and all documentary evidence consisting of Commission's Exhibit No. 1 (Pre-hearing Order); Claimant's Exhibit No. 1 (Medical); Claimant's Exhibit No. 2 (Memo); Respondents' Exhibit No. 1 (Medical); and Respondents' Exhibit No. 1 (Non-medical records).

FACTUAL BACKGROUND

_____The claimant is 50 years of age (b.d. 9/21/57). She graduated high school. She is married with two children. She began working as a nurse's aide but quit when she learned she was pregnant. She later worked as a home care giver for a brother and a sister that were incapacitated due to epilepsy and mental retardation. In 1993, she worked in a machine shop. She subsequently worked various factory work positions. In 2002-2003, she sustained a work related injury to her neck while

employed by Rosti and underwent surgery by Dr. Zack Mason. She was given a 9% rating and settled her claim. She worked as a dietary aide until November of 2004, at the Leisure Lodge in White County. She worked as a nurse's aide from November 2004 until March of 2005. She took care of her mom due to open heart surgery until May of 2005.

At the beginning of June, 2005, she went to work at Spring Creek Living Center, a nursing home. She testified that she injured her back and felt a pop in her back on January 20, 2006, while transferring a patient during baths. She reported the injury and sought medical treatment from Dr. Waterhouse at the Jacksonville Medical Clinic. She was treated conservatively with medications and physical therapy. She attempted to return to work on March 3, 2006, but began having pain in her back that rendered her incapable of performing work. She testified that she had picked up two cups of ice and "it was just like somebody stabbed me and I couldn't move, I couldn't sit down, I couldn't walk, I couldn't breathe. I don't know just – if I had just done something to pinch something or what I'd done. I just don't know." She was taken to Rebsamen Medical Center and treated by Dr. Joe Daugherty. The workers' compensation nurse referred her to Dr. Michael Calhoun. Dr. Calhoun referred her to Dr. Sprinkle for a nerve conduction study. Dr. Sprinkle ordered another MRI. On May 9, 2006, Dr. Sprinkle administered a trigger point injection. She testified that her back improved but she could not lift, bathe, dress, or work with the residents one on one. Dr. Sprinkle released her to go back to work on full duty on June 13, 2006. She explained that

she had worked light duty from the time she was injured on January 20, 2006, until June 13, 2006. She was terminated on June 14, 2006.

In July and August of 2006, her situation worsened where she had difficulty taking care of the basic activities of living. At that time, she was basically performing household chores and could not recall an incident which caused her problems to worsen. She requested a change of physician and was evaluated by Dr. Chan. Dr. Chan examined her, filled out medical records, gave her prescription medication, and scheduled her for further appointments. She tried to get a hold of her medical records from Dr. Chan, when she found out he was arrested and the clinic was closed. She explained that he wanted to do a nerve block and further testing.

She ultimately sought treatment on September 13, 2006, with Dr. Baines, a chiropractor, for chiropractic adjustments, and Dr. Richard Duke, her family physician for prescription medications for Lyrica and Tramadol.

She did not contact the Commission or seek approval for another doctor after Dr. Chan, because she didn't think it would be approved since she had already asked for one. She testified that the respondents notified her that they were no longer paying for her medical treatment in November of 2006.

She testified that she had requested a mobility chair when she saw Dr. Chan, because of her problems in her low back, feet, and legs. She did not get the chair because she could not get her records from Dr. Chan. She explained that her condition gradually improved after treatment with Dr. Baines and Dr. Duke from

November of 2006 until February of 2008. She underwent physical therapy in December of 2007. After December of 2007, she continued to treat with Dr. Duke for the purpose of getting her medications refilled. While she has been able to resume some of her daily activities, she can sit or stand for a limited amount of time and cannot lift over 20 pounds without assistance.

On cross-examination, she testified that she was in a rear-end collision in 1991 and had injuries to her left hip and lower back. She had problems with walking for a year due to the left hip joint injury. Her injuries at work were to the same body parts. She testified that she told her supervisor that the doctor had put her back to full duty but that she did not have a note and could only do light duty. She has not filled out any job applications since she was terminated.

She understood the process of requesting a change of physician and knew that workers' compensation would not pay for her treatment with Dr. Baines, Dr. Brown and Dr. Duke. She testified that Blue Cross and Blue Shield has paid for part of that treatment. She has applied for social security. On her application for social security, she listed migraines, MS, fibromyalgia, her prior neck surgery, and back injury from the motor vehicle accident and back injury at work.

She was aware that Dr. Sprinkle released her from treatment with a zero percent rating. She underwent another MRI and EMG in June and August of 2007 which had normal results. She agreed that Dr. Baine's records reflected that he was treating her for chronic problems and not trauma related conditions.

Medical records reflect that the claimant sought treatment in January of 2006 with complaints in her low back at the Jacksonville Medical Clinic and on March 3, 2006, at the Rebsamen Medical Center. She underwent a nerve study ordered by Dr. Sprinkle on April 27, 2006, which resulted in normal findings. She was evaluated by Dr. Sprinkle on May 9, 2006, and underwent an MRI of the lumbar spine. Clinic notes reflect that physical therapy has helped and that the MRI showed only degenerative changes with no evidence of nerve root impingement. His notes reflect "At this point, I have no explanation for her leg symptoms that I could relate specifically to her work injury." He diagnosed her with pre-existing lumbar degenerative disc disease and lumbar strain with myofascial pain. He administered a trigger point injection, restricted her from lifting over 30 pounds, and scheduled a return appointment in 31 days. On June 13, 2006, clinic notes reflect that the claimant returned for follow-up and was feeling quite a bit better. He did another trigger point injection to the thoracic and lumbar trigger points. He noted that she was at maximum medical improvement and could return to full duty work with a 0% impairment. Unemployment records reflect that the claimant was terminated on June 15, 2006, for falsification of medical information to administrator when she told her supervisor she was still on light duty when she was released to full duty.

DISCUSSION

The claimant contends she sustained a compensable low back injury on January 20, 2006, and is entitled to additional benefits.

The respondents contend that all appropriate benefits have been paid with regard to Ms. Sidener's workers' compensation claim. She had been treated by Dr. Sprinkle who has released her to return to work in a full duty capacity as of June 13, 2006. A 0% permanent partial impairment rating was assigned to this claim. It is respondents' position that additional medical treatment is not reasonable and necessary for the claimant's compensable injury. The respondents further contend the medical documentation does not support entitlement to additional indemnity benefits. The respondents further contend that Dr. Baines, Dr. Brown, and Dr. Richard Duke (the claimant's family doctor) are not authorized treating physicians.

Ark. Code Ann. § 11-9-508 states that employers must provide all medical treatment that is reasonably necessary for the treatment of a compensable injury. What constitutes reasonable and necessary treatment under the statute is a question of fact for the Commission. Ganksy v. Hi-Tech Engineering, 325 Ark. 163, 924 S.W.2d 790 (1996); Geo Specialty Chem., Inc. v. Clingan, 69 Ark. App. 369, 13 S.W.3d 218 (2000). Respondents are responsible only for medical services which are causally related to the compensable injury. Post-surgical improvement is a relevant consideration in determining whether surgery was reasonable and necessary. Winslow v. D & B Mech. Contractors, 69 Ark. App. 285, 13 S.W.3d 180 (2000).

An injured employee is entitled as an absolute right to a one-time change of physician. A.C.A. § 11-9-514 (Repl. 2002); Collins v. Lennox Ind., Inc. 77 Ark. App. 303, 75 S.W.3d 204 (2002); Wal-Mart Stores, Inc. v. Brown, 82 Ark. App. 600, 120

S.W.3d 153 (2003). A.C.A. § 11-9-514 (c)(1)-(3) outlines the procedure in which the employer is directed to deliver to the employee a form that explains the employee's rights and responsibilities concerning the change:

(c) (1) After being notified of an injury, the employer or insurance carrier shall deliver to the employee, in person or by certified or registered mail, return receipt requested, a copy of a notice, approved or prescribed by the Commission, which explains the employee's rights and responsibilities concerning change of physician.

(2) If, after notice of injury, the employee is not furnished a copy of the notice, the change of physician rules do not apply.

(3) Any unauthorized medical expense incurred after the employee has received a copy of the notice shall not be the responsibility of the employer.

In the instant case, the undisputed evidence demonstrates that the claimant was given a Form N in person which informed her of her rights and responsibilities concerning the change of physician. She signed the Form N on January 20, 2006, and by doing so acknowledged that she had been "provided with my rights regarding a change-of-physician". On August 4, 2006, an Order approving the Change of Physician from Dr. Brent Sprinkle to Dr. Patrick Chan was filed and mailed by certified-return receipt requested mail to the claimant. The evidence establishes that claimant sought medical treatment with Dr. Chan but was unable to have follow-up care by Dr. Chan when his clinic was closed. At that time the claimant did not seek another change of physician with the Commission but began unauthorized chiropractic treatment through Dr. Baines and other treatment with her regular family physician, Dr. Duke. The evidence further demonstrates that in June of 2006, Dr. Sprinkle determined that the claimant had reached maximum medical

improvement and released her to return to full duty work. It is undisputed that respondents paid for all authorized treatment through June of 2006, and the claimant's initial visit with Dr. Chan.

Notwithstanding Dr. Sprinkle's release, the evidence demonstrates that the claimant sought additional unauthorized medical treatment with Dr. Baines, Dr. Duke, and Dr. Brown from September of 2006 through the date of the hearing. In addition, the claimant testified that she has not worked at any job since June 15, 2006.

The claimant contends that her medical care after June 13, 2006, should be paid by respondents. A.C.A. § 9-11-514(b)(Repl. 2002) states that treatment by a physician other than the claimant's authorized physician shall be at claimant's expense. The Arkansas Court of Appeals has determined that this section is not applicable if the authorized treating physician refers the claimant to another doctor for examination or treatment. Bray v. International Wire Group, ___ Ark. App. ___, 235 S.W.3d (2006); Am. Greetings Corp. v. Garey, 61 Ark. App. 18, 963 S.W.2d 613 (1998). Whether treatment is a result of a "referral" rather than a change of physician is a factual determination for the Commission. Dept. of Parks & Tourism v. Helms, 60 Ark. App. 110, 959 S.W.2d 749 (1988); Patrick v. Ark. Oak Flooring Co., 39 Ark. App. 34, 833 S.W.2d 790 (1992). In the instant case, the claimant sought and was awarded a change of physician to Dr. Chan and pursued treatment with Dr. Chan. When he was no longer available, the claimant chose to seek treatment on her own without authorization from the respondents or the

Commission. Under the facts and circumstances of this case, I find that all of the statutory requirements were met by both the claimant and respondents in the change of physician process. Therefore, I find that all medical treatment of the claimant by Dr. Baines, Dr. Duke, and Dr. Brown beginning on June 13, 2006, and continuing through the date of the hearing was treatment by unauthorized physicians and shall be at claimant's expense.

Based on the credible medical evidence, I find that the respondents have provided claimant with all reasonable and necessary medical treatment related to her compensable injury. Dr. Sprinkle released the claimant from treatment and has opined that there is no further medical treatment that would be helpful to the claimant. The claimant has undergone multiple nerve conduction studies which resulted in normal findings and multiple MRI scans which revealed only degenerative changes which Dr. Sprinkle relied upon in reaching his diagnosis and recommendations. Although there is some evidence that Dr. Chan wanted to pursue additional treatment, the record reflects that other than the chiropractic adjustments and additional physical therapy ordered by Dr. Baines, the claimant has managed her condition by pain medications and has improved over time. Her continued complaints are subjective in nature and are unrelated with the original complaints and symptoms initially arising from the work-related activities. Based on the preponderance of the credible evidence, I find that the respondents have fulfilled the obligation of providing adequate medical treatment, diagnostic testing, and consultation with specialists as required by the Arkansas Workers' Compensation laws.

The claimant is entitled to temporary total benefits if she can satisfy a two-prong test: (1) claimant must be within her healing period; and (2) completely incapacitated from earning wages. Ark. Highway & Trans. Dept. v. Breshears, 272 Ark. 244, 613 S.W.2d 392 (1981). The healing period is defined as that period for healing the injury, which continues until claimant is as far restored as the permanent nature of the injury will allow. Nix v. Wilson World Hotel, 46 Ark. App. 303, 879 S.W.2d 459 (1994). The preponderance of the evidence demonstrates that the claimant had been released by her doctors to return to light duty work in January of 2006, and eventually her regular work duties in June of 2006. Light duty work was made available to claimant until she was terminated for misrepresenting to management that she could only work light duty when the doctor had released her to full duty. Notwithstanding the opinion of her doctors, the claimant contends that she was not able to return to work after June 13, 2006, due to continuing symptoms. Based on the preponderance of the evidence, I find that the claimant is not entitled to additional temporary total disability for the time period after June 13, 2006.

_____In the instant case, the claimant was released to light duty work and eventually full duty work after therapy and trigger point injections. Based on the preponderance of the evidence, I find that the claimant has not proven that she is entitled to additional temporary total disability benefits.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

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

2. The employer/employee/carrier relationship existed on January 20, 2006, when the claimant sustained a compensable low back injury.
3. The claimant was awarded a change of physician from Dr. Brent Sprinkle to Dr. Patrick Chan on August 4, 2006, and the claimant was seen by Dr. Chan on September 6, 2006.
4. The claimant earned an average weekly wage of \$284.93, resulting in an applicable TTD rate of \$190.00 and a PPD rate of \$154.00.
5. The claimant has failed to prove by a preponderance of the evidence that she is entitled to additional medical treatment.
6. The claimant has failed to prove by a preponderance of the evidence that the treatment by Dr. Baines, Dr. Duke, and Dr. Brown was authorized or alternatively, was reasonable and necessary medical treatment and causally related to the work-related injury.
7. The claimant has failed to prove by a preponderance of the evidence that she is entitled to additional medical benefits and indemnity benefits from June 13, 2006, to the date of the hearing.

ORDER

For the reasons discussed herein, this claim must be, and hereby is, respectfully denied.

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IT IS SO ORDERED.

BARBARA WEBB

Administrative Law Judge