

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

WCC NO. G009628

JO ELLEN MARTIN, Employee	CLAIMANT
CITY OF GENTRY, Employer	RESPONDENT
MUNICIPAL LEAGUE WCT, Carrier	RESPONDENT

OPINION FILED NOVEMBER 7, 2012

Hearing before ADMINISTRATIVE LAW JUDGE GREGORY K. STEWART in Springdale, Washington County, Arkansas.

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

Respondents represented by J. CHRIS BRADLEY, Attorney, No. Little Rock, Arkansas.

STATEMENT OF THE CASE

On October 16, 2012, the above captioned claim came on for a hearing at Springdale, Arkansas. A pre-hearing conference was conducted on August 22, 2012, and a pre-hearing order was filed on that same date. A copy of the pre-hearing order has been marked Commission's Exhibit #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 of the within claim.
2. The employee/employer/carrier relationship existed among the parties at all relevant times.
3. The claimant sustained a compensable injury to her knee, back, shoulder, and head on September 16, 2009.
4. The claimant was earning sufficient wages to entitle her to compensation at the maximum rates.
5. The respondent has accepted and paid permanent partial disability benefits based on an 8% rating to the left shoulder.

6. Respondent paid Dr. Blankenship through May 17, 2012.

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

1. Claimant's entitlement to additional medical treatment as recommended by Dr. Blankenship.

The claimant contends that Dr. Blankenship has recommended additional medical treatment for her neck which has been controverted by the respondents. Additionally, the respondents have failed to pay medical bills associated with this treatment.

The respondents contend they have paid all appropriate medical benefits and continue to do so.

From a 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 witness and to observe her demeanor, the following findings of fact and conclusions of law are made in accordance with A.C.A. §11-9-704:

FINDINGS OF FACT & CONCLUSIONS OF LAW

1. The stipulations agreed to by the parties at the pre-hearing conference conducted on August 22, 2012, and contained in a pre-hearing order filed that same date, are hereby accepted as fact.

2. Claimant has met her burden of proving by a preponderance of the evidence that she is entitled to additional medical treatment as recommended by Dr. Blankenship. This includes treatment from Dr. Blankenship, Dr. Cannon, and physical therapy.

FACTUAL BACKGROUND

_____ The claimant has worked for the respondent for more than eighteen years, with the last four years as City Clerk/Treasurer. The claimant suffered an admittedly compensable injury on September 16, 2009. On that date the claimant was attending a clerk's meeting

in Fayetteville and as she was entering an elevator she tripped and fell striking her knee, head, neck, and shoulder. Claimant was taken by ambulance to Washington Regional Medical Center.

After treatment at the hospital claimant came under the care of Dr. Griffey who initially treated claimant conservatively with an injection and physical therapy. When that did not improve claimant's shoulder condition Dr. Griffey recommended surgery which he performed on February 22, 2010. In a report dated November 4, 2010, Dr. Griffey noted that claimant had reached maximum medical improvement with regard to her left shoulder and he assigned her an 8% impairment rating to the body as a whole which was accepted and paid by the respondent.

After her shoulder surgery claimant continued to have complaints involving her cervical spine. Claimant was initially sent by respondent to Dr. Stinnett, her family physician, who evaluated her on July 19, 2011. Dr. Stinnett ordered a cervical MRI scan which was performed on July 25, 2011. Following that MRI scan claimant was evaluated by Dr. Kyle, neurosurgeon, on September 19, 2011. Dr. Kyle indicated that he had reviewed MRI scans of claimant's cervical spine from 2005 and the most recent scan from July 2011. In his opinion he did not feel that claimant needed any additional medical treatment and did not relate any findings on the MRI scan to claimant's fall in 2009. He did recommend that she see a neurologist for continued headaches.

Claimant subsequently requested a change of physician to Dr. Blankenship. Claimant was evaluated by Dr. Blankenship on February 20, 2012, and it was his opinion that the MRI scan revealed a posterior disc protrusion at the C6-7 level. While he noted that claimant had a pre-existing degenerative condition, it was his opinion that claimant's current complaints were causally related to an aggravation of that pre-existing condition. Dr. Blankenship indicated that there were two options available for treatment. One would include an injection and physical therapy; however, since almost two and a half years had

passed from the date of injury it was his opinion that this treatment was unlikely to provide claimant any significant relief. The second option would involve a surgical intervention. Dr. Blankenship indicated that at that time the claimant elected to undergo conservative treatment and as a result he referred her to Dr. Cannon for an injection and then aggressive physical therapy.

Respondent subsequently sent claimant to Dr. Steven Cathey for an evaluation on April 5, 2012. Dr. Cathey authored a report that date indicating that in his opinion the claimant had only suffered a soft tissue injury and she would not benefit from surgical intervention. It was his opinion that claimant had reached maximum medical improvement and that there were no findings on the MRI scan of February 6, 2012 relating to the fall in September 2009.

Claimant subsequently returned to Dr. Blankenship and he authored a report dated May 17, 2012 indicating that he had not seen the claimant since the evaluation in February 2012. He noted that at that time the claimant had elected to undergo conservative treatment but that after a discussion with her husband had decided to proceed with surgery. He noted that it was at this point that the respondent sent claimant to Dr. Cathey for an evaluation. He further noted that he disagreed with Dr. Cathey's interpretation of the findings and the readings of radiographic abnormalities. He again noted that claimant had a choice of conservative treatment or surgery and that claimant had again chosen to undergo conservative treatment. As a result, he again referred claimant to Dr. Cannon for an injection and then an aggressive program of physical therapy.

In a report dated July 19, 2012, Dr. Blankenship noted that the claimant had a 75% improvement in her pain following the injection. He also noted that she had completed physical therapy and that given her improved condition surgery was no longer needed. He indicated that claimant should transition to a home exercise program and return for an evaluation in two months.

The final report from Dr. Blankenship is dated September 13, 2012. He noted that claimant's condition had continued to improve and that she should continue with aggressive home exercises and now that she was over a bronchitis condition she should complete her physical therapy and return for an evaluation in three months.

The respondent paid for Dr. Blankenship's treatment through May 17, 2012. However, respondent did not pay for any subsequent medical treatment, injections, or physical therapy. As a result, claimant has filed this claim contending that she is entitled to the additional medical treatment as recommended by Dr. Blankenship.

ADJUDICATION

_____ Claimant has the burden of proving by a preponderance of the evidence that she is entitled to additional medical treatment and that the proposed medical treatment is reasonable and necessary. *Patchell v. Wal-Mart Stores, Inc.*, 86 Ark. App. 230, 184 S.W. 3d 32 (2004); *Dalton v. Allen Engineering Company*, 66 Ark. App. 201, 989 S.W. 2d 543 (1999). After reviewing the evidence in this case impartially, without giving the benefit of the doubt to either party, I find that claimant has met her burden of proof.

First, I believe it is important to note that much of the questioning of Dr. Cathey at his deposition involved a potential surgical procedure on the claimant's cervical spine. While Dr. Blankenship initially indicated that one option available to the claimant involved surgery, he is no longer considering surgery as an option. Instead, claimant chose to undergo conservative treatment in the form of an injection and physical therapy which according to Dr. Blankenship's medical records and the testimony of the claimant have dramatically improved her neck condition. As a result, Dr. Blankenship has recommended that claimant continue with aggressive home exercises and that she finish her physical therapy now that she is over a case of bronchitis. Respondent has not paid for any treatment recommended by Dr. Blankenship since May 17, 2012.

Significantly, even Dr. Cathey was of the opinion that this conservative treatment was reasonable and necessary for claimant's compensable injury. Although it was his opinion that claimant had only suffered a soft tissue injury, he did believe that the conservative treatment was reasonable.

I am absolutely fine with conservative treatment: physical therapy, epidural steroids, medication, whatever. It was never - - she was never a candidate for surgery.

Furthermore, Dr. Cathey testified as follows:

Q. You would - - And do you feel that it would be appropriate for her to have some medical treatment for that soft tissue injury?

A. Absolutely.

Q. And so when she was sent to Dr. Blankenship and there was recommendation for treatment of this, what you call, soft tissue with aggressive physical therapy and an injection, do you feel that that is reasonable and necessary in connection with this injury?

A. Yes.

Q. And what I am hearing is that you have no
_____ problem with that conservative treatment?

A. I do not.

Thus, while Dr. Cathey did disagree with claimant's need for surgical treatment, claimant did not undergo any surgical treatment and Dr. Blankenship has not recommended surgery at the present time. Instead, he has provided conservative treatment which has improved claimant's condition and it is the opinion of Dr. Cathey that this treatment was reasonable and necessary for claimant's compensable injury.

Given this evidence, I find that respondent is liable for payment of the conservative

medical treatment recommended by Dr. Blankenship. This includes his evaluations, the injections provided by Dr. Cannon, and the cost of physical therapy. The evidence indicates that this treatment has improved claimant's condition and it was the opinion of Dr. Blankenship that this need for treatment was causally related to her original compensable injury. Likewise, it was the opinion of Dr. Cathey that this treatment was reasonable and necessary for claimant's compensable injury.

AWARD

Claimant has met her burden of proving by a preponderance of the evidence that she is entitled to additional medical treatment as recommended by Dr. Blankenship. This includes medical treatment from Dr. Blankenship, injections provided by Dr. Cannon, and physical therapy.

Pursuant to A.C.A. §11-9-715(a)(1)(B)(ii), attorney fees are awarded "only on the amount of compensation for indemnity benefits controverted and awarded." Here, no indemnity benefits were controverted and awarded; therefore, no attorney fee has been awarded. Instead, claimant's attorney is free to voluntarily contract with the medical providers pursuant to A.C.A. §11-9-715(a)(4).

The respondents are ordered to pay the court reporter's charges for preparing the hearing transcript in the amount of \$255.00.

IT IS SO ORDERED.

GREGORY K. STEWART
ADMINISTRATIVE LAW JUDGE