

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. E502382/E709020/F003389

SANDRA HAWKINS, EMPLOYEE	CLAIMANT
JEFFERSON REGIONAL MEDICAL CENTER, SELF-INSURED EMPLOYER	RESPONDENT NO. 1
SODEXHO MARRIOTT, EMPLOYER	RESPONDENT NO. 2
INSURANCE COMPANY STATE OF PENNSYLVANIA, INSURANCE CARRIER	RESPONDENT NO. 2

OPINION FILED AUGUST 12, 2003

Upon review before the FULL COMMISSION in Little Rock,
Pulaski County, Arkansas.

Claimant represented by HONORABLE GARY DAVIS, Attorney at
Law, Little Rock, Arkansas.

Respondent No. 1 represented by HONORABLE WILLIAM M.
BRIDGFORTH, Attorney at Law, Pine Bluff, Arkansas.

Respondents No. 2 represented by HONORABLE CAROL L. WORLEY,
Attorney at Law, Little Rock, Arkansas.

Decision of the Administrative Law Judge: Reversed.

OPINION AND ORDER

The above-styled matter comes back to the Commission
from the Arkansas Court of Appeals. The Court of Appeals
has held that the claimant sustained a recurrence of her
compensable injury. Therefore, after again reviewing the
entire record *de novo*, the Full Commission finds that
incident occurring in May 1999 was a recurrence of the
claimant's compensable injury which she sustained while

employed with Respondent No. 1, Jefferson Regional Medical Center. We find that the claimant proved she was entitled to reasonably necessary medical treatment provided in connection with the recurrence, including the treatment provided by Dr. Kenneth Martin. We also find that the claimant proved she was entitled to temporary total disability compensation from October 5, 1999 through April 4, 2000.

I. HISTORY

The parties stipulated that Sandra Hawkins, age 45, sustained a compensable injury on November 17, 1994 while employed with Jefferson Regional Medical Center, Respondent No. 1. Dr. John O. Lytle performed an "Arthroscopic debridement of the rotator cuff and open full thickness cuff repair with acromioplasty" in February 1995. The parties stipulated that Respondent No. 1 paid a 4% anatomical impairment rating assessed by Dr. Lytle. Dr. Kenneth A. Martin saw the claimant in April 1997 and assessed "Status post rotator cuff tear with continued pain."

An Administrative Law Judge (ALJ) filed an opinion on March 19, 1998. The ALJ found that the claimant sustained injuries arising out of and in the course of her employment on November 17, 1994 and December 24, 1995. The ALJ found,

"The claimant has failed to establish that there is a compelling reason or circumstance to justify a change of treating physician relative to her compensable injuries of November 17, 1994, and December 1995." The ALJ also found, "The respondent shall pay all reasonable hospital and medical expenses arising out of the injury of November 17, 1994/December 24, 1995."

There was no appeal of the Administrative Law Judge's March 19, 1998 opinion.

The claimant became employed with Sodexo Marriott, Respondent No. 2, in January 1999. The parties stipulated that an employment relationship existed with Respondent No. 2 on May 4, 1999. The claimant testified that a box fell and hit her left shoulder. The impression of Dr. Charles A. Clark on May 18, 1999 was "L shoulder impingement and secondary contusion."

The claimant returned to Dr. Kenneth Martin on July 28, 1999. Dr. Martin wrote, "Because of her continued pain with failure of her rotator cuff repair, I think she is a candidate for repeat arthroscopy." Respondent No. 2 controverted treatment from Dr. Martin and apparently controverted all additional medical treatment after September 15, 1999.

Dr. Martin performed a left shoulder arthroscopy and debridement on October 5, 1999. Dr. Martin reported on April 4, 2000, "Ms. Hawkins is released today. She will not be able to do any work that requires repetitive lifting or any overhead work."

Ms. Hawkins claimed entitlement to additional workers' compensation. The claimant contended that she re-injured her left shoulder on May 4, 1999, and that treatment from Dr. Martin was reasonably necessary. The claimant contended that she was entitled to temporary total disability compensation from October 5, 1999 through April 4, 2000. Respondent No. 1, Jefferson Regional Medical Center, contended that the claimant sustained a new injury or aggravation for which Respondent No. 2 was liable. Respondent No. 2, Sodexho Marriott, contended that the claimant sustained a recurrence for which Respondent No. 1 was liable.

An Administrative Law Judge filed an opinion on July 13, 2001. The ALJ found, "The claimant's May 4, 1999 injury, diagnosed by Dr. Clark as a contusion, was a temporary aggravation of a preexisting condition which resolved without permanent impairment. Sodexho has paid all appropriate benefits." The ALJ found, "The claimant's

treatment by Drs. Martin and Tanner for chronic pain associated with the November 17, 1994 and December 24, 1995, JRMC injuries, was unreasonable and unnecessary based on the opinions of Drs. Lytle, Clark, Ligon, Collins, and Safman."

The Full Commission filed an opinion on July 31, 2002. The Full Commission found that "the claimant sustained a compensable aggravation of a pre-existing condition, and that Respondent No. 2 is liable for benefits related to the aggravation. The Full Commission finds that the claimant proved she was entitled to reasonably necessary medical treatment provided in connection with her compensable aggravation, including treatment from Dr. Martin. We find that the claimant proved she was entitled to temporary total disability compensation from October 5, 1999 through April 4, 2000."

Respondent No. 2 appealed to the Arkansas Court of Appeals. The Court of Appeals agreed with Respondent No 2 that substantial evidence did not support the Full Commission's finding "that the need for a second surgery was caused by an aggravation, rather than a recurrence of the original injury." Marriott v. Hawkins, CA 02-1226 (June 4, 2003). The Court determined:

Ms. Hawkins offered substantial proof that her shoulder condition was the major cause of her disability and need for treatment. However, we agree with the appellant that there is no substantial evidence that Ms. Hawkins suffered a new rotator-cuff injury in the form of an aggravation that resulted in the need for the second surgery. The opinion of Dr. Martin does not support the finding that an aggravation occurred. In his July 28, 1999 report, he references persistent pain and no improvement since the original 1994 injury. The report makes no mention of any aggravation, but rather attributes the need for surgery to post-surgical changes and failure of the first rotator cuff repair. Moreover, the testimony of Ms. Hawkins, who the Commission found to be credible, indicates a recurrence rather than an aggravation. While Ms. Hawkins testified that the May 4, 1999 incident increased her pain, she further testified that she blamed "everything" on the 1994 incident, and that further medical treatment would have been necessary even had the accident not occurred. There is simply no substantial evidence of record demonstrating the existence of a compensable aggravation to justify the Commission's award against appellant....

Finally, appellee JRMC argues that, if we accept appellant's argument that Ms. Hawkins's need for treatment in 1999 related back to her November 1994, injury, JRMC is shielded from additional liability for medical bills. In support of this contention, JRMC cites an ALJ opinion dated March 19, 1998, where the ALJ refused to authorize Ms. Hawkins's request for a change in physician to Dr. Martin. However, because the Commission made no finding on this issue, we decline to address it.

The Court therefore reversed our findings and remanded the case to the Commission.

II. ADJUDICATION

Based on the record before us, and in accordance with the remand from the Court of Appeals, the Full Commission finds that the claimant sustained a compensable recurrence in May 1999, for which Respondent No. 1, Jefferson Regional Medical Center, is liable. We find that all of the treatment provided the claimant by Dr. Martin was reasonably necessary in connection with the claimant's compensable recurrence, pursuant to Ark. Code Ann. §11-9-508(a). This reasonably necessary medical treatment includes any referrals provided by Dr. Martin. We note Respondent No. 1's contention that the claimant's treatment from Dr. Martin in July 1999 and following was not authorized. This contention was based on the Administrative Law Judge's March 19, 1998 finding that the claimant failed to justify a change of treating physician. However, Respondent No. 1 has controverted the claimant's entitlement to any benefits as a result of the claimant's compensable recurrence. The Commission has found that the change of physician rules do not apply during a controverted period. Kenney v. Siloam Springs School District, Workers' Compensation Commission E907076 (Aug. 31, 2001); Barnett v. Daniel, Workers' Compensation Commission E600078 (May 25, 2001); Clements v.

Shoney's, Workers' Compensation Commission E604632 (Feb. 12, 1998).

Based on our *de novo* review of the entire record, the Full Commission reverses the Administrative Law Judge's opinion filed July 13, 2001. The Full Commission finds that the May 4, 1999 incident constituted a recurrence of the claimant's compensable injuries which she sustained while employed with Respondent No. 1. We find that the claimant proved she was entitled to reasonably necessary medical treatment provided in connection with the compensable recurrence, including all treatment and referrals provided by Dr. Martin. We find that the claimant proved she remained within her healing period and totally incapacitated from earning wages from October 5, 1999 through April 4, 2000. The claimant therefore proved that she was entitled to temporary total disability compensation from October 5, 1999 through April 4, 2000. Respondent No. 1 is liable for the claimant's reasonably necessary medical treatment and temporary total disability compensation.

All accrued benefits shall be paid in a lump sum without discount and with interest thereon at the lawful rate from the date of the Administrative Law Judge's decision in accordance with Ark. Code Ann. § 11-9-809 (Repl.

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2002). For prevailing on this appeal before the Full Commission, claimant's attorney is hereby awarded an additional attorney's fee in the amount of \$250.00 in accordance with Ark. Code Ann. § 11-9-715 (Repl. 1996).

IT IS SO ORDERED.

OLAN W. REEVES, Chairman

SHELBY W. TURNER, Commissioner

Commissioner Yates dissents.