

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F202946

CHERYL JONES,
EMPLOYEE

CLAIMANT

YELL COUNTY SHERIFF'S DEPARTMENT,
EMPLOYER

RESPONDENT

AAC RISK MANAGEMENT SERVICES,
INSURANCE CARRIER

RESPONDENT

OPINION FILED NOVEMBER 7, 2003

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

Claimant represented by HONORABLE PHILIP WILSON, Attorney at
Law, Little Rock, Arkansas.

Respondents represented by HONORABLE BRUCE D. ANIBLE,
Attorney at Law, Little Rock, Arkansas.

Decision of the Administrative Law Judge: Remanded.

OPINION AND ORDER

The respondents appeal an Administrative Law Judge's
opinion filed April 2, 2003. The Administrative Law Judge
found that the claimant could select a physician of her own
choosing "so long as that physician comports to the
provisions of Ark. Code Ann. § 11-9-514(a)(3)(A)(ii)."
After reviewing the entire record *de novo*, the Full
Commission remands this matter to the Administrative Law
Judge. We direct the Administrative Law Judge to designate
a new treating physician for the claimant consistent with
the relevant provisions of Act 796 of 1993.

Act 796, as codified at Ark. Code Ann. § 11-9-514(a), provides:

(3) Following establishment of an Arkansas managed care system as provided in §11-9-508, subdivisions (a)(1) and (2) of this section shall become null and void, and thereafter:

(A)(i) The employer shall have the right to select the initial primary care physician from among those associated with managed care entities certified by the commission as provided in §11-9-508.

(ii) Where the employer has contracted with a managed care organization certified by the commission, the claimant employee, however, shall be allowed to change physicians by petitioning the commission one (1) time only for a change of physician to a physician who must either be associated with the managed care entity chosen by the employer or be the regular treating physician of the employee who maintains the employee's medical records and with whom the employee has a bona fide doctor-patient relationship demonstrated by a history of regular treatment prior to the onset of the compensable injury but only if the primary care physician agrees to refer the employee to the managed care entity chosen by the employer for any specialized treatment, including physical therapy, and only if the primary care physician agrees to comply with all the rules, terms, and conditions regarding services performed by the managed care entity chosen by the employer.

In the present matter, the respondents argue that the Commission must select the new physician once a petition for a change of physicians has been granted. The respondents cite for authority Rogers v. Chrisman Ready Mix, Inc., Workers' Compensation Commission F100985 (Nov. 20, 2002).

In Rogers, a *pro se* claimant moved the Full Commission to remand to an Administrative Law Judge, after the Administrative Law Judge designated a change to a physician other than the physician requested by the claimant in her petition for a change of physician. We granted the claimant's motion and directed the Administrative Law Judge to choose one of the physicians requested by the claimant or otherwise set forth her reasons for choosing another physician. The respondents also cite Allison v. GES/Food Giant Stores, Workers' Compensation Commission F006203 (Jan. 9, 2002), where the Full Commission reversed and remanded to the Administrative Law Judge after the Administrative Law Judge applied the wrong legal standard in a request for a change of physician.

It has been held that Act 796, as codified at Ark. Code Ann. § 11-9-514(a)(3), established an absolute, statutory right to a one-time change of physician. See, Collins v. Lennox Industries, Inc., 77 Ark. App. 303, 75 S.W.3d 204 (2002). The Commission may approve a change of physician with or without a hearing. Sharp v. Lewis Ford, Inc., 78 Ark. App. 164, 78 S.W.3d 746 (2002). An injured worker and her employer can even agree to a change of physician without intervention from the Commission. Hood v. Southwest

Airlines Co., Workers' Compensation Commission F011021 (March 6, 2003), citing Welch v. Tri-County Shirt Co., 49 Ark. App. 112, 897 S.W.2d 575 (1995). See also, Magic Mart, Inc. v. Little, 12 Ark. App. 325, 676 S.W.2d 756 (1984).

In the present matter, the Administrative Law Judge found that the claimant could select a physician of her own choosing "so long as that physician comports to the provisions of Ark. Code Ann. § 11-9-514(a)(3)(A)(ii)." However, the claimant on appeal does not identify a physician to whom she wants to change. The Full Commission therefore remands this matter to the Administrative Law Judge, and we direct the Administrative Law Judge to designate a physician for the claimant, consistent with the provisions of Ark. Code Ann. § 11-9-514(a)(3).

IT IS SO ORDERED.

OLAN W. REEVES, Chairman

KAREN H. MCKINNEY, Commissioner

Commissioner Turner concurs.

CONCURRING OPINION

_____ I concur in all respects with the decision of the majority opinion, which remands this case to the Administrative Law Judge for purpose of selecting the

claimant's new physician. I write separately to express my belief, in light of prior Full Commission case law, that the claimant's choice of physician must be given deference by the Administrative Law Judge when he selects the claimant's physician, and therefore that the claimant's choice should be granted unless it does not comport with the statutory requirements of Ark. Code Ann. § 11-9-514(a)(3)(A)(ii).

As noted by the majority, the Full Commission has previously held that the claimant's choice of physician cannot be ignored by the Full Commission, and that if the claimant's choice is not respected, the reason for not doing so must be set forth. Rogers v. Chrisman Ready Mix, Inc., Full Commission Opinion of November 20, 2002 (F100985). In my opinion, the holding of this case is that the claimant's choice of physician must be granted unless it does not comport with statutory requirements.

Therefore, it is my opinion that on remand, the Administrative Law Judge must give the claimant the opportunity to designate the treating physician to whom she wishes to change, and that the claimant's choice must be granted unless it does not comport with the requirements of Ark. Code Ann. § 11-9-514(a)(3)(A)(ii).

SHELBY W. TURNER, Commissioner