

NOT DESIGNATED FOR PUBLICATION

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. E603975

HENRY HAMILTON,
EMPLOYEE

CLAIMANT

GREGORY TRUCKING,
EMPLOYER

RESPONDENT

HOUSTON GENERAL INSURANCE,
INSURANCE CARRIER

RESPONDENT

OPINION FILED APRIL 22, 2004

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

Claimant represented by HONORABLE EDDIE WALKER, JR.,
Attorney at Law, Fort Smith, Arkansas.

Respondents represented by HONORABLE DIANE GRAHAM, Attorney
at Law, Fort Smith, Arkansas.

Decision of the Administrative Law Judge: Affirmed and
adopted.

OPINION AND ORDER

The claimant appeals from a decision of the
Administrative Law Judge filed October 6, 2003. The
Administrative Law Judge entered the following findings of
fact and conclusions of law:

1. The Arkansas Workers' Compensation Commission
has jurisdiction of this claim.
2. On May 5, 1995, the relationship of employee-
employer-carrier existed between the parties.

3. On May 5, 1995, the claimant sustained a compensable injury to his low back or lumbar spine.
4. The prior opinions of December 10, 1996 and February 17, 1999 have become final and are res judicata of all issues raised and addressed therein.
5. The claimant has proven by the greater weight of the credible evidence that outstanding expenses incurred for medication in the form of Amitriptyline and Effexor constitute expenses incurred for reasonably necessary medical services pursuant to Ark. Code Ann. § 11-9-508, these expenses are the liability of the respondents herein, subject to the medical fee schedule established by this Commission.
6. The claimant has failed to prove by the greater weight of the credible evidence that any of the outstanding medical expenses for medication in the form of Oxycontin, Roxicodone, Oxyir, Cloraz Dipot, Metodopramide, and Axid constitute expenses incurred for reasonably necessary medical services, as that term is used in the Act. Therefore, the respondents are not liable for any outstanding expenses incurred for these medications.
7. The claimant is entitled to his one time change of physician, pursuant to Ark. Code Ann. § 11-9-514, to Dr. William Money, a chronic pain management specialist in Fayetteville, Arkansas. Dr. Money is a member of an MCO, certified by this Commission (i.e. TyNet).
8. The respondents are not a member of any MCO, certified by this Commission.
9. The respondents have controverted the claimant's entitlement to the payment of any

expenses incurred for medication that were outstanding and unpaid as of the date of hearing.

10. A reasonable fee for the claimant's attorney is the maximum statutory attorney's fee on any of these controverted expenses herein awarded.

We have carefully conducted a de novo review of the entire record herein, and it is our opinion that the Administrative Law Judge's decision is supported by a preponderance of the credible evidence, correctly applies the law, and should be affirmed. Specifically, we find from a preponderance of the evidence that the findings of fact made by the Administrative Law Judge are correct, and they are, therefore, adopted by the Full Commission.

Thus, we affirm and adopt the decision of the Administrative Law Judge, including all findings and conclusions therein, as the decision of the Full Commission on appeal.

IT IS SO ORDERED.

OLAN W. REEVES, Chairman

KAREN H. MCKINNEY, Commissioner

Commissioner Turner dissents.

DISSENTING OPINION

_____ I must respectfully dissent from the opinion of the majority finding that certain prescription medications are not reasonably necessary in connection with the compensable injury.

Claimant sustained an admittedly compensable lower back injury on May 5, 1995. Claimant now suffers from severe, chronic pain as a result of failed back syndrome, and has been accepted as permanently and totally disabled by the Second Injury Fund. The present claim is for outstanding expenses for prescription medications prescribed by claimant's treating physicians. Respondent paid for these narcotic pain medications for a substantial period of time. Claimant received significant relief from this treatment. These medications do not suddenly become unreasonable and unnecessary without convincing medical opinion to support this conclusion. There is insufficient evidence in the record to support a finding that these medications were not reasonably necessary at the time the treating physicians prescribed them.

The Administrative Law Judge granted claimant a change of physician to another pain management specialist. This specialist may very well determine that certain

medications are not appropriate for treatment of claimant's chronic pain. However, in my opinion, respondent is liable for the outstanding expenses of the prescription medication prescribed by claimant's previous authorized treating physician.

For the foregoing reasons, I must respectfully dissent.

SHELBY W. TURNER, Commissioner