

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F107992

BECKY MAYFIELD,
EMPLOYEE

CLAIMANT

WESTERN SIZZLIN,
EMPLOYER

RESPONDENT

STONEVILLE CLAIMS SERVICE,
INSURANCE CARRIER

RESPONDENT

OPINION FILED JULY 27, 2004

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

Claimant represented by HONORABLE JAY TOLLEY, Attorney at
Law, Fayetteville, Arkansas.

Respondents represented by HONORABLE CURTIS NEBBEN, Attorney
at Law, Fayetteville, Arkansas.

Decision of the Administrative Law Judge: Reversed.

OPINION AND ORDER

The respondents appeal an administrative law judge's
opinion filed July 23, 2003. The administrative law judge
found, "The medical services provided the claimant by and at
the direction of Dr. Beemer on March 12, 2001; March 14,
2001; March 22, 2001; March 27, 2001; March 29, 2001; and
March 30, 2001, in the form of manual therapy, electrical
stimulation, ultrasound, and hot packs represent reasonably
necessary medical services for the claimant's compensable
right hand/wrist injury." After reviewing the entire record
de novo, the Full Commission reverses the opinion of the

administrative law judge. We find that the claimant failed to prove that Dr. Beemer's treatment was reasonably necessary in connection with the claimant's compensable injury.

I. HISTORY

The parties stipulated that the claimant sustained a compensable injury to her right hand and wrist on February 16, 2001. The claimant initially treated with Dr. Robert B. Wilson, who reported on February 17, 2001, "Hurt right hand at work last night. Slipped in water." Dr. Wilson's examination revealed, "Minimal if any soft tissue swelling on the ulnar side of the right wrist. No deformity. SMC's normal. X-ray is normal." Dr. Wilson diagnosed "Sprain or contusion left (sic) wrist" and estimated "that the patient will take 1 week to heal."

According to notes prepared (on May 1, 2001) by Dr. Cindy S. Beemer, D.C., the claimant presented to Dr. Beemer on February 28, 2001:

The patient complained of upper back pain/
stiffness. The patient complained of neck pain.
The patient complained of low back pain/stiffness.

The examination revealed subluxated cervical
thoracic sacroiliac joints.

Patient care initiated this date Chiropractic
manipulative procedure was administered.

Dr. Beemer's details of visits occurring March 5, 2001 and March 7, 2001 described treatment rendered in connection with "cervical" and "thoracic."

Dr. Randall Oates reported on March 9, 2001, "Fell at work on 2-17-01. Injured right wrist and hand. Says hurt right shoulder and neck at the same time, but no notes were written. Asks for referral to chiropractor visits that started 2-21-01." An additional note from Dr. Oates' office dated March 9, 2001 indicated, "I have no objection to Chiropractor doing range of motion, ultrasonic (or deep heat therapy) to right wrist/arm/shoulder for another week or two until the pain subsides....I expect this to be completely resolved within another two weeks."

The claimant returned to Dr. Beemer on March 12, 2001:
Patient reporting good improvement cervical thoracic

The examination revealed subluxated hypertonicity
cervical

Standard procedures were used and, in my clinical opinion, conservative chiropractic management should be continued. The overall assessment of response to date is improving.

Chiropractic manipulative procedure was administered. Fomentation was administered. Deep manual muscle stimulation was applied.

On March 14, 2001, the claimant complained to Dr. Beemer of headaches and neck pain. The claimant was "having problems thoracic" on March 22, 2001; Dr. Beemer wrote, "The

examination revealed subluxated hypertonicity cervical thoracic arm." The claimant reported "good improvement arm" on March 27, 2001; Dr. Beemer wrote, "The examination revealed subluxated hypertonicity cervical arm." Dr. Beemer also reported "subluxated hypertonicity cervical arm" on March 29, 2001. Finally, Dr. Beemer wrote with regard to a March 30, 2001 visit:

Patient reporting good improvement

The examination revealed subluxated hypertonicity thoracic cervical

BECKY was released Chiropractic manipulative procedure was administered. Deep manual muscle stimulation was applied.

Dr. Beemer wrote to the claimant's attorney on July 25, 2001:

Ms. Mayfield presented February 28, 2001, with neck and back pain, headaches, and left arm, wrist, shoulder pain. She reports that these pains began as a result of a slip and fall at her job as a waitress. On March 9, 2001, she was seen at Northwest Family Clinic and consulted with Paul Price, APN. He diagnosed Ms. Mayfield with left trapezius muscle pain and a sprained wrist and recommended that I continue the adjustments and therapy for another two weeks.

Ms. Mayfield presented with decreased cervical and thoracic range of motion. Some left hand bruising with soreness was also present. Palpation revealed muscle spasms in the cervical muscles and left trapezius muscle. X-rays were taken and showed spinal biomechanics suggestive of thoracic and cervical muscle spasms.

Ms. Mayfield has finished her treatment in this office and in my opinion has reached maximum medical improvement.

A pre-hearing order was filed with the Commission on September 18, 2001. The claimant contended that she had injured her "wrists, neck, shoulder, and upper back." The claimant appears to have contended that she was entitled to reasonably necessary medical treatment provided by Dr. Beemer. The respondents contended that they had provided all authorized and reasonably necessary medical treatment. The respondents controverted the chiropractic treatment provided by Dr. Beemer.

The respondents' attorney queried the claimant at a deposition taken January 22, 2002:

Q. For what purpose did you seek treatment from Dr. Beemer?

A. Left shoulder - no. I'm sorry. Right shoulder.

After a hearing before the Commission, the administrative law judge filed an opinion on April 30, 2002.

The administrative law judge found, in pertinent part:

4. On February 16, 2001, the claimant sustained a compensable injury to her right hand/wrist.

5. The claimant has failed to prove by the greater weight of the credible evidence presented that she also sustained compensable injuries to her shoulders, neck, upper back, and left wrist on February 16, 2001. Thus, the claimant would be entitled to no benefits under the Act attributable

to difficulties involving these portions of her anatomy.

6. There is no dispute over the payment of medical expenses incurred for treatment of the claimant's compensable right hand/wrist injury by and at the direction of Dr. Robert B. Wilson and Dr. Randall Oates.

7. Any treatment provided the claimant by and at the direction of Dr. Cindy S. Beemer for the claimant's compensable right hand/wrist injury does not constitute "unauthorized medical services" under the provisions of Ark. Code Ann. §11-9-514.

The administrative law judge ordered, "The respondents shall be liable for any reasonably necessary medical services provided the claimant for her compensable right wrist/hand injury by and at the direction of Dr. Cindy S. Beemer....Any claims for benefits attributable to difficulties or conditions involving the claimant's shoulders, neck, upper back, and left wrist should be and hereby are denied and dismissed for the reasons heretofore set forth in this Opinion."

Neither party appealed the administrative law judge's April 30, 2002 opinion. The parties subsequently stipulated, "The Opinion of April 30, 2002, has become final and is *res judicata* of all issues raised and addressed therein."

On December 4, 2002, another document was prepared bearing the letterhead "Beemer Back Center", "Cindy Beemer,

D.C." This report covered various dates of chiropractic treatment from February 28, 2001 through March 30, 2001. Basically, the outlined dates of treatment on this report contained revised accounts of the claimant's anatomical complaints. For example, whereas the report produced by Dr. Beemer on May 1, 2001 described upper back pain/stiffness and neck pain, with no right upper extremity complaints, the new report stated, "The patient complained of right hand". It was now asserted that the claimant had complained of "right hand" problems on each and every visit to Dr. Beemer.

Another pre-hearing order was filed with the Commission on January 13, 2003. The claimant appears to have contended that she was entitled to treatment from Dr. Beemer. The respondents essentially contended that Dr. Beemer's treatment was not reasonably necessary.

The record contains another document from Beemer Back Center dated April 16, 2003. There are 37 "Service Descriptions," but none of these descriptions explicitly mention complaints related to the claimant's right upper extremity.

Another hearing was held before the Commission on April 28, 2003. The claimant testified:

Q. What was it basically that Dr. Beemer did for you?

A. She treated my hand with -

Q. Just tell me in your own words.

A. - electric, electrical -

Q. All right. Was there any portion of whenever you saw her that she did anything just to your hand or your wrist in comparison with any other part?

A. Yes, sir.

Q. Did she likewise, at the same time she treated your hand and your wrist, also treat you back up into the shoulder?

A. Yes, sir....

Q. Now, at that time, do you recall what you saw her for, what was bothering you?

A. My hand and my wrist....

The respondents' attorney cross-examined the claimant:

Q. But when you first went in to Dr. Beemer, where did Dr. Beemer treat you?

A. Focusing more on the hand and the wrist.

Q. And when Dr. Beemer would focus on the hand and the wrist, what would she do for you?

A. Electrical devices for the nerves.

Q. And where would she place these devices?

A. On the wrist and the hand.

Q. And did she do that every time you saw her?

A. Yes, sir.

The respondents deposed Dr. Beemer on May 20, 2003.

The respondents' attorney examined Dr. Beemer:

Q. What type of treatment did you provide for Ms. Mayfield?

A. Chiropractic adjustments, exam and physical therapy....

Q. So when you first saw Ms. Mayfield, what specific treatment did you provide her on that day? And when I say specific, I mean which areas did you adjust and to what parts of her body did you provide physical therapy to.

A. Well, I did a range of motion test on her neck and thoracic spine, her cervical and thoracic spine, and I adjusted her that day, too.

Q. Okay. When you adjusted her, where did you adjust her?

A. The right wrist, hand, and then the thoracic spine and cervical spine.

Q. And what are we talking about on this first visit, ma'am?

A. 02-28-01....

Q. I'm looking at your bill and it says - I assume that entry is spinal manipulation.

A. Right.

Q. 1-2 regions.

A. Right.

Q. Can you explain to me what the 1-2 means?

A. Well, it's a new administrative thing in chiropractic billing where we divide the spine by regions, so cervical spine is one region, thoracic spine is another, and lumbar and pelvic region, blah, blah, blah, so that equals two regions.

Q. Which would be the ...

A. Cervical and thoracic....

Q. There's nothing you billed for on the 28th then reflecting any treatment to her hand and wrist, is there?

A. No.

Q. But you're saying you treated the hand and wrist on the 28th?

A. Right.

Q. But you just didn't bill for it?

A. Right. She was paying for it at this time....

Q. Going through this bill, is there anywhere that you can show us on the bill itself which reflects a charge directly to the hand and arm?

A. That's not how billing works in our profession....

Q. I guess, is there anywhere here where it shows that your spinal manipulations are to the hand and arm?

A. Not according to the bill.

Q. Is there anywhere that shows any of your therapy, whether it be ultrasound, electrical stimulation, hot pack or cold pack that was to the hand or arm?

A. Only in my notes....

Q. Did you ever provide electrical stimulation to her wrist?

A. The ultrasound was done on the elbow and the E-stim was done on the arm 03-05.

Q. From the records you're looking at, what therapy did you provide for her specifically to the hand, arm or upper extremity? Let's put it that way.

A. The EMS, the ultrasound, and the myofascial release.

Q. On what dates?

A. 03-05, 03-22, 03-12, and 03-14....And 03-27....

Q. Do you have a course in record keeping or medical records keeping when you go to chiropractic school?

A. Do we have a course in it?

Q. Yes.

A. Yes....

Q. Essentially, if you didn't put it down, you didn't treat it. Isn't that correct?

A. That's right.

Q. Or at least that's the assumption?

A. That's the assumption.

Q. That's the assumption. Okay. Have you authored more than one set of medical records in this case?

A. Have I authored more than one?

Q. Yeah.

A. I don't understand what you're saying.

Q. Have you authored or written more than one set of medical records in this case?

A. There are two. There's a set that we do that's like a computer generated that I don't feel comfortable sometimes because it's not as detailed, so in addition I do handwritten ones....

Q. Well, here's my point. We had one hearing back in February 25 of 2002 and my client and myself offered your medical records, and we have records here of February 28th....This is the Respondent's for the record, Respondent's Exhibit 1, page six. On February 28, is there any mention in the February 28 notation of any problems to the arm or wrist?

A. Not there, but on my exam notes there are.

Q. On March 5, is there any mention of the arm and wrist?

A. No....

Q. Now, let's go to the second hearing on April 28, 2003. It would be Claimant's Exhibit 1, page one of Claimant's Exhibit 1. What type of records are these? Are they any different than you normally keep?

A. I don't know what happened here.

Q. Would you agree with me that we have essentially two sets of medical records?

A. They're different, yes. Yes....

Q. Well, who would have authored these?

A. I don't know....

Q. So you admit to me that there are two sets of records?

A. That's what it appears.

Q. Are you saying you didn't author two sets of records?

A. I don't author two sets of records.

Q. Do you have any explanation of how this showed up?

A. I don't. I'm embarrassed to say I don't....

Q. And you're denying that you authored a second set of medical records to include the right hand so that you could get your bill paid?

A. Oh, yes. I'm denying it. Although, I will say it is handwritten here and those were done on a daily basis....

Q. When specifically looking at your bill, is there anything that you can point to today that states specifically a treatment for the hand or arm? Just by looking at solely the bill?

A. No.

The administrative law judge filed another opinion on July 23, 2003, and found, "The medical services provided the claimant by and at the direction of Dr. Beemer on March 12, 2001; March 14, 2001; March 22, 2001; March 27, 2001; March 29, 2001; and March 30, 2001, in the form of manual therapy, electrical stimulation, ultrasound, and hot packs represent reasonably necessary medical services for the claimant's compensable right hand/wrist injury. Pursuant to the prior Opinion, the respondents are liable for the expense of these services, subject to the medical fee schedule established by this Commission."

The respondents appeal to the Full Commission.

II. ADJUDICATION

The employer must promptly provide for the injured employee such medical treatment as may be reasonably necessary in connection with the injury received by the employee. Ark. Code Ann. §11-9-508(a). The claimant must prove by a preponderance of the evidence that she is entitled to such medical treatment. Dalton v. Allen Eng'g Co., 66 Ark. App. 201, 989 S.W.2d 543 (1999). What constitutes reasonably necessary medical treatment is a

question of fact for the Commission. Wright Contracting Co. v. Randall, 12 Ark. App. 358, 676 S.W.2d 857 (1987).

In the present matter, the Full Commission reverses the administrative law judge's finding that the medical services provided by Dr. Beemer were reasonably necessary. We find that the claimant failed to prove that Dr. Beemer's treatment was reasonably necessary in connection with the claimant's compensable injury. The parties stipulated that the claimant sustained a compensable injury to her right hand and wrist on February 16, 2001. Dr. Wilson's examination on February 17, 2001 showed minimal if any soft tissue swelling and no bony injury. Dr. Wilson diagnosed "sprain or contusion" and estimated that the claimant would heal in one week. According to her initial notes prepared on May 1, 2001, Dr. Beemer began treating the claimant on February 28, 2001. Dr. Beemer reported "upper back pain/stiffness." There was no mention or indication of right hand or wrist complaints. Dr. Beemer described "cervical" and "thoracic" treatment in subsequent follow-up visits.

On March 9, 2001, Dr. Oates voiced no objection to chiropractic treatment for "right wrist/arm/shoulder" for another two weeks. On March 12, 2001, Dr. Beemer again described "cervical thoracic" treatment but did not report

treatment related to the claimant's right hand or wrist. The record does show that, generally from March 14, 2001 through March 29, 2001, Dr. Beemer wrote, "The examination revealed subluxated hypertonicity cervical thoracic arm." First, the claimant did not injure her arm. But if we did find this language to describe wrist and hand treatment, the Commission is entitled to attach appropriate weight to Dr. Beemer's reports. The Commission has the authority to accept or reject a medical opinion and the authority to determine its probative force. Poulan Weed Eater v. Marshall, 79 Ark. App. 129, 84 S.W.3d 878 (2002). In the present matter, there is no proof that the claimant sustained "subluxated hypertonicity" in her wrist or hand in March 2001 and beyond as a result of the compensable injury in February 2001. The Full Commission also notes that by March 30, 2001, Dr. Beemer was not reporting anything that could possibly be construed as treatment for the claimant's hand or wrist.

On July 25, 2001, Dr. Beemer informed the claimant's attorney that she had seen bruising and soreness in the claimant's *left* hand. This report is entitled to no weight. It is apparent that Dr. Beemer was relying on Dr. Wilson's initial report that mistakenly mentioned the claimant's left hand rather than her right. We also note the claimant's

deposition testimony, where she indicated that she presented to Dr. Beemer for right shoulder treatment, not treatment for her right hand or wrist. On April 30, 2002, the administrative law judge essentially found that the claimant was entitled to reasonably necessary medical treatment from Dr. Beemer rendered in connection with the claimant's right wrist and hand. The administrative law judge expressly found that the claimant failed to prove she had sustained compensable injuries to her shoulders, neck, upper back, or left wrist. The parties agree that the administrative law judge's opinion is now *res judicata*. The record then shows a new document from Dr. Beemer's office prepared in December 2002. According to this new document, it is now purportedly more fully shown that Dr. Beemer was indeed treating the claimant's "right hand." Dr. Beemer testified that she did not know there were two sets of medical records. The Full Commission does not find Dr. Beemer's testimony on this point to be credible, in that the new document with the revised information was prepared with Dr. Beemer's letterhead and containing an unsigned signature line. In any event, Dr. Beemer agreed on cross-examination that there was no explicit reference anywhere in her records to right hand or wrist treatment for the claimant.

Based on our *de novo* review of the entire record, the Full Commission finds that the claimant failed to prove that Dr. Beemer's chiropractic treatment was reasonably necessary in connection with the claimant's compensable injury to her right hand and wrist. We therefore reverse the opinion of the administrative law judge, and we hereby dismiss this claim.

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 none of Dr. Beemer's treatment was reasonably necessary in connection with the compensable injury.

This case boils down to concerns arising from discrepancies between Dr. Beemer's handwritten office notes and the transcribed notes or computer generated billing records. Claimant was initially a "cash" patient and Dr. Beemer readily admitted that her notes are not as detailed with these patients as opposed to patients suffering from a work-related injury. Dr. Beemer's handwritten notes are

apparently much more detailed than what gets transcribed. The parties had considerable trouble separating out work-related and nonwork-related treatments performed during the same visit. Dr. Beemer provided additional explanation for the services rendered by referring to her handwritten notes. Dr. Beemer has now certainly realized that her records in this case were less than perfect or ideal. Dr. Beemer has initiated corrections or modifications of office procedures to hopefully avoid these problems in the future.

Dr. Beemer and claimant testified that treatment in the form of manual therapy, electric stimulation, ultrasound, and hot packs was rendered for the compensable injuries to claimant's right wrist and hand. These particular forms of treatment were documented for the visits on March 12, March 14, March 22, March 27, March 29, and March 30, 2001.

The only real question in this case is whether treatment was actually rendered for the injuries to claimant's wrist and hand. There are no allegations that the particular treatments were not reasonably necessary. Based on the credible testimony of claimant and Dr. Beemer, I find that the treatment rendered on the dates noted above was reasonable necessary in connection with the compensable

Mayfield - F107992

19

injury. Accordingly, the opinion of the Administrative Law Judge should be affirmed.

SHELBY W. TURNER, Commissioner