

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F113652

LETITIA DENISE TIPTON, EMPLOYEE	CLAIMANT
SALINE MEMORIAL HOSPITAL, EMPLOYER	RESPONDENT
RECIPROCAL OF AMERICA, INSURANCE CARRIER	RESPONDENT

OPINION FILED APRIL 19, 2004

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

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

Respondent represented by HONORABLE GAIL O. MATTHEWS, Attorney at Law, Little Rock, Arkansas.

Decision of Administrative Law Judge: Reversed.

OPINION AND ORDER

The respondents appeal a decision of the Administrative Law Judge filed on August 1, 2003. The parties stipulated as to the following: The claimant suffered a compensable lower back injury on November 2, 2001; an employee-employer relationship existed between the parties at the time of the claimant's compensable injury; and, that the claimant earned an average weekly wage of \$265.03 at the time of her injury. Still disputed in this claim is the Judge's finding that the claimant is entitled to additional medical benefits for medical services rendered from November 4, 2002, to a date yet to be determined, after at least two (2) treating physicians had pronounced that the

claimant's healing period had ended and treatment for her injury was no longer medically necessary. These additional services were recommended by her most recent treating physician, Dr. Andrew Prychodko, and included physical therapy, pain/medication management treatment, and additional diagnostic testing. The respondent also disputes the claimant's entitlement to additional temporary total disability benefits.

After a carefully conducted de novo review of the entire record of this case, we find that the preponderance of the evidence shows that the claimant is not entitled to additional medical benefits, nor is she entitled to an award of additional temporary total disability benefits from November 4, 2002, to a date yet to be determined. Specifically, the record reveals that the claimant reached the end of her healing period on or about June 18, 2002, and that she has achieved maximum medical improvement. Moreover, the claimant has received all necessary and appropriate medical services for her compensable injury. Therefore, we find that the decision of the Administrative Law Judge must be reversed.

Background

The claimant was working in the housekeeping department of Saline Memorial Hospital (SMH) when on November 2, 2001, she fell from a restroom vanity that she

had climbed atop to clean a mirror. The claimant received immediate treatment from doctors at the SMH emergency room, and was then instructed by emergency room personnel to follow-up with her family doctor, Dr. Mark Albey. Her emergency room examination, which included X-rays, revealed that the claimant had "mild degenerative changes in the lower lumbar spine," with "no acute fractures or dislocations noted." Essentially, the claimant was suffering from an "acute lumbar strain." Doctor Albey examined the claimant on November 16, 2001, and again on November 27, 2001, at which time he ordered an MRI. The results of this test, which was performed on the following day, revealed a "mild lumbosacral spondylosis and very mild posterior bulging of disc material at L4-5 and L5-S1." Based upon these tests and his examinations of the claimant, Dr. Albey's overall impression was that the claimant had suffered a lumbar sprain/strain from her fall, for which he prescribed Vicodin. In a December 10, 2003, chart note, Dr. Albey stated that the claimant had completed her physical therapy, and that her back was improving but not completely healed, so he released her to return to work with a weightlifting limit of fifteen pounds. Doctor Albey continued seeing the claimant through December 13, 2001, then due to continuing complaints of lower back pain, he referred her to Dr. Hart for pain management and also to

orthopedic chiropractor, Dr. Richard Riley. In his report from his final examination of the claimant, Dr. Albey stated, "She does not have a surgical disease."

Richard Riley examined the claimant on December 18, 2001, and he planned to initiate "light manual chiropractic manipulative therapy" with her. Unknown to Dr. Albey at this time, a caseworker with the respondent's liability carrier scheduled an appointment for the claimant with an orthopedic doctor, Dr. Jerry Lorio, who in turn referred her to Dr. William E. Ackerman, III. A thorough examination (including an X-ray) of the claimant by Dr. Ackerman on January 3, 2002, confirmed a lumbar sprain/strain with secondary myofascial pain syndrome, for which he recommended that, among other things, she should be prescribed narcotics. The claimant received myofascial trigger point injections on the 3rd and 17th of January, 2002, via Dr. Ackerman, and started physical therapy with Jerry Daniel, P.T., shortly thereafter. Mr. Daniel initiated a spine stabilization program with the claimant and recommended that she may benefit from a TENS unit for her chronic pain. In his clinic notes dated February 8, 2002, Daniels stated that the claimant's "clinical presentation does appear to be indicative of mechanical back pain exacerbated by deconditioning and obesity as well as some hypermobility at L5/S1." By February 28, 2002, Dr. Ackerman

stated in a clinic note that the claimant would gradually increase her work over the following three (3) weeks, back to a full-time basis. He added that, "At the end of three weeks, there will be no reason for her to return back to this office. It is my medical opinion that at that time, she should have reached maximum medical improvement."

Despite Dr. Ackerman's well-founded optimism concerning the claimant's prognosis, the claimant continued to insist that none of her treatments, including her pain medications, had affected her pain. On March 6, 2002, the claimant was evaluated by Dr. Jim J. Moore, who recommended that she have an EMG/NCV of the back and lower extremities. The results of an electrodiagnostic examination performed by Dr. David A. Miles on March 13, 2002, showed normal outcomes with no evidence of lumbosacral nerve root irritation and no neuropathy. In a file note dated March 13, 2002, Dr. Moore recommended that a "trial for another block in the trigger" be attempted, and that a myelogram and CT scan be performed. In this note he stated the following:

I do not think a repeat MRI would be beneficial. The patient is certainly giving the impression of being convinced that there has been progressive worsening. The examination failed to confirm such a suspicion. Also the findings of the trigger in the sacroiliac would tend to confirm the fact that it is unlikely that any additional intra spinal problems have developed in the interim period of time.

Never the less giving the patient some degree of relief psychologically would be of benefit. ... I still believe that the patient's symptoms are based upon soft tissue with sacroiliac sprain/strain. I doubt that she has intra spinal disease per se.

Dr. Moore examined the claimant again on April 3, 2002, and reported slow improvement as to the claimant's symptoms of pain. Referring to his opinion that a myelogram should be deferred at that time, Dr. Moore stated, "In general, I am still inclined to think that spraining is the primary process in this patient's difficulties." On April 30, 2002, the claimant was seen at the SMH emergency room, and subsequently admitted into the hospital for cephalgia, lumbago, and dehydration. On May 7, 2002, the claimant was examined by Dr. Moore, who stated in his file note that, "in view of her relative refractory response to my recommendations I think it is now proper to obtain another opinion." The claimant was seen by Dr. Bruce L. Safman on May 5, 2002, who also assessed her as having lumbosacral and sacroiliac strain and gave her trigger point injections. In a clinic note from that visit, Dr. Safman stated that, although the claimant ultimately agreed to return to work with restrictions, "She was not very happy about the prospects of going back to work." In a clinic note dated May 15, 2002, Dr. Safman reported the following: "She

[the claimant] appears to be very angry. She ventilated that her work has increased her pain. She has mild disc bulge. I spent a great deal of time discussing the fact that no surgical pathology is present. Dr. Ackerman has done epidural steroid injections and she is still on numerous medications. She relates that she is not like our other patients. ... I have related to her that there are a limited number of additional medications that I can offer her. Beyond that, I believe that she would be at maximum medical improvement." On May 29, 2002, Dr. Safman described the claimant as being "angry at being back to work," even though she admitted that her employer was actively attempting to accommodate her. At that point Dr. Safman suggested that the claimant speak to her personnel department about alternate jobs within the hospital, but he stated that "she does not wish to do that." On June 17, 2002, Dr. Safman reported that in spite of her having been placed on numerous medications for her reportedly continuing pain, "Nothing has been of benefit. There is no objective pathology present." His concluding remarks were as follows: "As she has not responded to any treatment for her low back, I believe that she is at maximum medical improvement relative to her lower lumbar problem."

The claimant was seen by Dr. Moore on June 25, 2002, who recommended a final nerve block treatment. Doctor

Moore commented that he did not believe this procedure to be "absolutely mandatory," but stated "Certainly if the patient wishes to proceed it would be appropriate to schedule it." This procedure was performed on July 2, 2002, by Dr. Steven Dunnagan, and in a follow-up visit with Dr. Moore on July 18, 2002, Dr. Moore stated, "I do not think there is anything else that I can recommend neurosurgically on this patient. I believe her injury has been soft tissue. ... She should be at the end of a healing period for a soft tissue injury."

Pursuant to her request for another opinion, the claimant was evaluated by Dr. Andrew Prychodko, at the Center For Preventative, Occupational, and Environmental Medicine on November 4, 2002. Dr. Prychodko assessed the claimant's condition, in relevant part, as follows: "Back pain with, radiculopathy; displacement, lumbar discs w/o myelopathy; sacroiliac joint dysfunction; and, parathesia." This doctor noted that the claimant was unemployed at that time due to having quit her job. Dr. Prychodko prescribed various medications and referred the claimant to pain management and physical therapy. Dr. work from: 11/04/2002 through 12/20/2002," and added that "Full recovery is not expected." The claimant telephoned Dr. Prychodko on November 13, 2002, complaining of increased back pain and stating that she was convinced that hers was a

"musculoskeletal problem - not another condition." She further stated that she felt that her pain issue had been "progressive," and that she wished "to do something about it even if it comes out of my pocket." Dr. Prychodko instructed her to temporarily increase her pain medication. As of her next visit with Dr. Prychodko in December of 2002, he stated that her parathesia, displacement, lumbar disc, and back pain had each deteriorated. Her sacroiliac joint dysfunction, however, appeared unchanged at that time.

"Given her worsening symptoms, and the potential discography in the future," Dr. Prychodko felt that a repeat lumbar MRI was important to "guide her further medical management." By the 23rd of December, Dr. Prychodko reported that the claimant was "very motivated (pleading-- actually) to have 'something done.'" He further stated that "Toward this end, I will refer her to an interventional pain specialist, but this time I will go with a practitioner that is in a separate group from the physicians that had previously cared for her, with the hope that there will be less ambiguity and hesitation as regards getting her some medical care at a level that is more specialized than my own skill." (Emphasis added) Dr. Prychodko referred the claimant to Dr. Hart and ordered an MRI. By late January, 2003, the claimant reportedly could not walk due to her pain, and Dr. Prychodko referred her to Dr. Banken for adjustment-disorder.

Discussion

Arkansas Code Annotated § 11-9-508(a) (1996), directs that an employer shall provide "such medical ... services ... as may be reasonably necessary in connection with the injury received by the employee." What constitutes reasonable and necessary treatment under this section is a question of fact for the Commission. Georgia-Pac. Corp. v. Dickens, 58 Ark. App. 266 (1997); (citing Gansky v. Hi-Tech Eng'g, 325 Ark. 163, 924 S.W.2d 790 (1996)). As previously noted, the parties in this case stipulated to the claimant's compensable injury of November 4, 2001, for which the respondents provided all appropriate medical treatment and benefits. As outlined above, the claimant received exhaustive treatment from several competent physicians and therapists following her compensable injury. Each of these service providers conducted thorough examinations of the claimant, and all diagnosed her with lumbar sprain/strain. The claimant was prescribed numerous medications throughout the course of her treatment (too many to list here); she underwent several spinal injections; she was treated with physical therapy; and she had a battery of diagnostic tests and evaluations performed. Doctors seemingly used every appropriate medical means available to them to provide relief to this claimant, short of surgery, which was never considered in this case because the claimant's injuries were

soft tissue. In spite of all this, the claimant insisted that nothing provided her with the relief that she needed in order to return to her full-time employment.

Testimony of both the claimant and Dr. Prychodko reveals that the claimant remembered Dr. Prychodko having advised her that she suffers from a herniated disc and needs surgery. In his deposition of February 11, 2003, the doctor denies having told the claimant this. During direct examination at her hearing of May 6, 2003, the claimant made the following statement regarding her recollection of Dr. Prychodko's recommendations to her: "My understanding is that I have a herniated disc, and he [Prychodko] wanted me to get another MRI. He wants me to go through more physical therapy, and something about a diskogram, to see if we can solve the problem." Upon cross-examination, the claimant reiterated the above by stating, "My understanding was that I have a herniated disc." Upon confirming that she stated during her deposition that Dr. Prychodko had told her that he "couldn't imagine why" she had not yet been operated on for her condition, the claimant further insisted that she had not misunderstood the doctor's statement to her. The testimony reads as follows:

Q. Well, you told me in your deposition that he [Prychodko] couldn't imagine why they hadn't already operated on you?

A. Right.

Q. Well, we won't get into a discussion, but in his deposition, that's not what he said, so do you think maybe you misunderstood him?

A. No, my husband was right there also.

Q. And Dr. Prychodko, the first time you saw him, told you he was amazed that the other doctors hadn't already operated on you?

A. I can tell you the exact words.

Q. All right.

A. He pulled out my film, and I was sitting over on the other side of him, and my husband was right beside him, ... and he said, "I wonder why they haven't done anything about this." And my husband said, "What's that?" And he said, "She has a herniated disc."

Throughout her testimony, the claimant consistently denied having gotten any relief from the numerous treatments that she had received. She also denied having had any injury related depression. The claimant's husband did not testify in this matter.

In stark contradiction to the claimant's testimony, Dr. Prychodko testified by deposition that the claimant's compensable injury is "not a surgical disease..." Doctor Prychodko stated that he didn't see the claimant as a surgical candidate, nor has he seen her as such. When questioned as to whether he had ever told the claimant that he thought she had a herniated disc and was going to need

surgery, the doctor replied, "I don't believe that I would have." In response to being asked whether he would have told the claimant that it appeared she had a herniated disc, and that he wondered why it had not been repaired, Dr. Prychodko responded, "I don't think I would have editorialized that way. I typically don't unless I'm really outraged by something... . So, I doubt I would have said that anyhow because what I might have been looking at is just this area right here [referring to Dr. Safman's MRI], where you can see in the L4-5, ... a little bit of bulging in the report, Dr. Safman's report." In response to whether he would have told the claimant that her disc was herniated, Dr. Prychodko stated, " No. I would not have called it herniated. I would have said, yeah, that seems to be a bulging or a pushing back. I wouldn't have said - on this one I wouldn't have said, I'm surprised they have operated or whatever."

Doctor Prychodko described the claimant as being "stuck in the ditch"; someone who needs to get "pulled back on the road and moving forward." "You know," he stated, "she [the claimant] is in chronic pain status, sacroiliac pain can respond to manipulations and treatments." Doctor Prychodko explained that he wanted to have another MRI, "to be sure there was nothing surgical in her spine currently because she was continuing to have pain and some of the tests were older." He further stated, " beyond that, you

know, my direction for her would have been to get physical therapy." Doctor Prychodko admitted that the claimant, in his words, is "kind of stuck ... in an adjustment reaction psychological funk," and that she would benefit from some type of "behavioral support." He also admitted that the claimant had become somewhat "hysterical" about her situation. He stated that he believed that the claimant's injury was confined to the SI joint, but had diagnosed her with displacement because her MRI had shown mild disc bulging at L4-5, and "there's not a word for bulging in the diagnostic code" Dr. Prychodko spoke extensively about the current controversy within the medical community concerning the validity of discogram testing and the actual benefits of this procedure to the claimant. Dr. Prychodko described this controversial procedure as a "proactive study kind of like a dentist tapping a tooth to see which one hurts," and admitted that the test's validity depends on the individual performing the test and the proper administration thereof. Finally, given his opinion that the claimant's injury would not require surgery, Dr. Prychodko was asked why his prognosis early on for the claimant was that she would not fully recover from her compensable injury. "That refers to the totality of this person's circumstances as far as having stuck into the chronic pain mode because there is a behavioral component as well as a physical component and

perhaps that is something I shouldn't have checked because I'm always optimistic." In further testimony, Doctor Prychodko admitted that the claimant's weight problem had a bearing on her recovery, and that her weight presents self-esteem problems for the claimant as well. He also discussed the medications that he had prescribed for the claimant, as compared to those she had used during the course of her treatment with other doctors. Specifically, Dr. Prychodko stated his concerns regarding the claimant's past use of drugs such as Percodan, which he said he normally only prescribes to severely ill patients. He stated, "In the back of my mind, I was wondering if she wasn't clamoring for something that she had experienced before that was stronger."

Conclusion

As previously discussed, the employer must promptly provide for an injured employee such medical treatment as may be reasonably necessary in connection with the injury received by the employee. A.C.A. §11-9-508 (a); See also, Guerra v. Langston Gin Co., Inc., 2004 Full Commission Opinion filed January 5, 2004 (Claim No. F005245). The claimant has the burden of proving that she is entitled to requested medical treatment. Guerra, Supra; Citing, 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. Guerra, Supra; Citing, Wright Contracting Co. v. Randall, 12 Ark. App. 358, 676 S.W.2d 750 (1984).

In the present case, the Administrative Law Judge found that the medical opinions of the claimant's latest treating physician, Dr. Prychodko, are entitled to greater weight than the opposing opinions of the physicians selected by the respondents. Upon a thorough review of the evidence, specifically Dr. Prychodko's testimony, we do not find Dr. Prychodko's medical opinions to be in contradiction to those opinions of earlier treating physicians. If anything, the medical opinions of Dr. Prychodko support the opinions of prior treating physicians in this claim. During his deposition, Dr. Prychodko clarified statements he had made in the claimant's medical charts from her visits with him. The totality of the evidence shows that Dr. Prychodko believes the claimant's injuries to be primarily soft tissue and he does not see her as a surgical candidate. It is obvious from his testimony that Dr. Prychodko is trying to address the claimant's behavioral and psychological issues in this claim. Apparently he is attempting to help remove this claimant from being "stuck in the ditch." Based upon the evidence presented in this claim, the additional medical treatment that Dr. Prychodko now proposes is not necessarily expected to improve the claimant's physical condition. It

appears, instead, that Dr. Prychodko's recommendations are primarily for the purpose of reassessing pain management issues, and perhaps to placate the claimant somewhat in her insistence that, in spite of medical evidence proving otherwise, she has a herniated disc which requires surgery. Therefore, we find that the claimant has failed to prove by a preponderance of the evidence that additional medical services and benefits are reasonably necessary in connection with her compensable injury of November, 2001.

Arkansas Code Annotated §11-9-102(12) defines a claimant's healing period, in relevant part, as "that period for healing of an injury resulting from an accident." Moreover, "The healing period continues until the employee is as far restored as the permanent character of her injury will permit, and if the underlying condition causing the disability has become stable and if nothing in the way of treatment will improve that condition, the healing period has ended." Emerson Elec. v. Gaston, 75 Ark. App. 232, 58 S.W.3d 852 (2001); citing, Harvest Foods v. Washam, 52 Ark. App. 72, 914 S.W.2d 776 (1996). "The determination of when the healing period has ended is a factual determination for the Commission... ." Id.; citing, Carroll Gen. Hospital v. Green, 54 Ark. App. 102, 923 S.W.2d 878 (1996). Medical evidence in this case consistently shows that the claimant suffered a lumbar strain from her fall. In spite of months

of treatment and testing, which repeatedly showed no objective pathology, the claimant insisted that she was becoming increasingly worse. The claimant's injury occurred in November of 2001, and it was the opinion of at least two doctors, Ackerman and Safman, that by June of 2002, the claimant had reached the end of her healing period and had obtained maximum medical improvement for her soft tissue injury. During this time, doctors reported that the claimant's attitude about returning to work became increasingly negative, even though by her own admission, her employer did everything possible to accommodate the claimant. By July 18, 2002, Dr. Moore reported that the claimant had quit her job "being physically not of the idea that she could continue on with this." Clearly, claimant's healing plateaued prior to this visit to Dr. Moore.

Based upon the above and foregoing, we find that the claimant is not entitled to additional temporary total disability. Temporary disability is determined by the extent to which a compensable injury as affected the claimant's ability to earn a livelihood. An injured employee is entitled to temporary total disability compensation during the period of time that she is within her healing period and totally incapacitated to earn wages. Arkansas State Highway & Transportation Dept. V. Breshears, 272 Ark. 244, 613 S.W.2d (1981). An injured employee is entitled to temporary

partial disability compensation during the period that she is within her healing period and suffers only a decrease in her capacity to earn the wages that she was receiving at the time of the injury. Id. The "healing period" is defined as the period necessary for the healing of an injury resulting from an accident. A.C.A. § 11-9-102(13) (Supp. 1997). The healing period continues until the employee is as far restored as the permanent character of her injury will permit. When the underlying condition causing the disability becomes stable and when nothing further will improve that condition, the healing period has ended, and the claimant is no longer entitled to receive temporary total disability compensation or temporary partial disability compensation, regardless of her physical capabilities. Moreover, the persistence of pain is not sufficient in itself to extend the healing period or to find that the claimant is totally incapacitated from earning wages. Mad Butcher, Inc. v. Parker, 4 Ark. App. 124, 628 S.W.2d 582 (1982).

During her healing period, evidence reveals that the claimant received all appropriate and necessary medical services and treatment for her compensable injury from several competent practitioners. The claimant's underlying condition has become stable and she has reached the end of her healing period. Accordingly, we find that the claimant has failed to prove by a preponderance of the evidence that

she is entitled to temporary total disability subsequent to June 18, 2002, when we find that claimant's healing period has long ended.

Accordingly, for those reasons set forth herein, we find that the claimant has failed to prove entitlement to additional benefits. Therefore, we find that the decision of the Administrative Law Judge must be and hereby is reversed.

IT IS SO ORDERED.

OLAN W. REEVES, Chairman

KAREN H. MCKINNEY, Commissioner

Commissioner Turner dissents.

DISSENTING OPINION

I dissent from the Majority's opinion reversing the Administrative Law Judge's award of additional medical treatment and temporary total disability benefits to Claimant. For the reasons stated below, I find that the additional treatment recommended by Dr. Prychodko is reasonable and necessary treatment.

I find that Dr. Prychodko's testimony that Claimant has not yet reached maximum medial improvement and is still in her healing period significant and persuasive.

Dr. Prychodko has recommended that Claimant undergo treatment to her sacroiliac joint including physical therapy by a therapist who has a positive reputation in the medical community for the treatment of sacroiliac issues, pain management and medication from Dr. Thomas Hart, and a discogram at L4-5. Claimant has not yet received sacroiliac joint therapy nor has she undergone a discogram to address pain associated with the disc bulge at L4-5. While Dr. Moore and Dr. Safman have stated that Claimant reached MMI at the conclusion of their treatment, both opinions were with respect to soft tissue injury and neither physician treated Claimant's sacroiliac joint or lumbar disc problems. I, therefore, find that Dr. Prychodko's recommended treatment plan is reasonable and necessary treatment and is not duplicative treatment.

I find that Claimant credibly testified that she continues to suffer from knots in her back, constant right leg pain and burning, and difficulty sleeping due to pain. The medical records also show that Claimant's numerous attempts to return to work were unsuccessful. Claimant is motivated to, and desires to, return to work in order to support her family. In addition, I find that Claimant's friend credibly testified that Claimant continues to have debilitating pain since her fall at work.

For the foregoing reasons, I find that Claimant is entitled to additional medical treatment and, therefore, would affirm the Administrative Law Judge's opinion and order.

SHELBY W. TURNER, Commissioner