

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F310274

BEULAH ROSE ROBINSON, EMPLOYEE	CLAIMANT
GREEN ACRES NURSING, A SELF-INSURED EMPLOYER	RESPONDENT
CCMSI, TPA	RESPONDENT

OPINION FILED SEPTEMBER 9, 2005

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

Claimant represented by HONORABLE R. THEODOR STRICKER,
Attorney at Law, Jonesboro, Arkansas.

Respondent represented by HONORABLE MICHAEL E. RYBURN,
Attorney at Law, Little Rock, Arkansas.

Decision of Administrative Law Judge: Reversed.

OPINION AND ORDER

Respondents appeal an opinion filed by the Administrative Law Judge finding that the treatment rendered by Chiropractor Michael Jarman was authorized medical treatment for which the respondents are liable. Based upon our de novo review of the record, we find that the claimant has failed to prove by a preponderance of the evidence that Dr. Jarman was an authorized treating physician. Therefore, we find that the decision of the Administrative Law Judge must be and hereby is reversed.

The claimant sustained an admittedly compensable injury to her low back on August 2, 2002. The claimant did not immediately seek medical attention; however when she requested treatment, respondents promptly sent the claimant to Dr. Barry Hendrix. When the claimant's symptoms persisted, Dr. Hendrix referred the claimant to Dr. Dewayne Eubanks, a neurosurgeon. Dr. Eubanks examined the claimant, reviewed her MRI films and recommended a bilateral L4-5 medical facetectomy and L5 decompression. Surgery was scheduled, but was canceled by the hospital according to the claimant. The claimant was sent to Dr. E.S. Pratt, a spine specialist in Memphis, Tennessee, for a second opinion. Dr. Pratt diagnosed the claimant with degenerative spinal stenosis and recommended conservative treatment prior to proceeding to surgery. According to Dr. Pratt, the claimant's current medical problems were not related to her traumatic workers' compensation injury. Dr. Pratt specifically recommended epidural injections. The claimant testified that driving to Memphis for injections was too far, so she sought medical treatment from Dr. Michael

Jarman, a local chiropractor. When asked about how she came to treat with Dr. Jarman, the claimant testified:

Q. And how did you find Dr. Jarman? Is that someone you chose on your own?

A. No. James, I can't think of his last name, he's the head mechanic or maintenance man at Green Acres, and he said he went to him and he really helped him a lot so I said, well, if he helped you maybe he will help me.

Q. Okay. Did you check with the insurance company to see if they would pay for Dr. Jarman?

A. No.

Q. Did you notify them in writing or any other way that you were going to change to the chiropractor?

A. No.

Q. You just started going to him, is that right?

A. Yeah.

Respondents introduced a copy of the AR-N which the claimant signed on September 10, 2002.

When a claimant desires a change of physician, she must petition the Commission for approval. Sharp v. Lewis

Ford, Inc., 78 Ark. App. 164, 78 S.W. 3d 746 (2002).

Pursuant to the provisions of Act 1167 of 1999, there is an absolute, statutory right to a one-time change fo physician. See, A.C.A. § 11-9-514(a)(3); Collins v. Lennox Industries, Inc., 77 Ark. App. 303, 75 S.W.3d 204 (2002). Treatment or services furnished or prescribed by any physician other than the ones selected according to the provisions of A.C.A. § 11-9-514(a)(3), except emergency treatment, shall be at the claimant's expense. See, A.C.A. § 11-9-514(b).

In the present matter, the parties stipulated that the claimant sustained a compensable injury on August 2, 2002. The claimant signed a form AR-N, Employee's Notice of Injury, on September 10, 2002. Therefore, we find that the claimant was notified of her rights and responsibilities with regard to change of physician rules. See, Sharp, supra. After treating with Drs. Hendrix, Eubanks, and Pratt, the claimant began treating on her own with Dr. Jarman. The claimant admitted that she did not petition the Commission for a change of physician prior to initiating treatment with Dr. Jarman. There is no evidence before the Commission that

Dr. Jarman's treatment was "emergency treatment" pursuant to A.C.A. § 11-9-514(b). Treatment provided by Dr. Jarman was therefore unauthorized and shall not be the responsibility of the respondents. See, A.C.A. § 11-9-514(c) (3).

The Administrative Law Judge found, and the claimant argues on appeal, that since Dr. Jarman contacted the respondents regarding treatment of the claimant and was advised as to where to send his bills for processing, that the treatment provided by him was authorized. However, this Commission has previously set aside a change of physician order when it was granted upon a petition from someone other than the claimant. Hamaker v. Baptist Health, Full Commission opinion filed February 10, 2005 (F311250). Accordingly, we find that Dr. Jarman's inquiry into billing matters for the claimant's treatment is not sufficient to render Dr. Jarman the claimant's authorized treating physician under the change of physician requirements of A.C.A. § 11-9-514.

Accordingly, for those reasons set forth herein, we find that the claimant has failed to prove by a

preponderance of the evidence that Dr. Jarman was an authorized treating physician. Therefore, we find that the decision of the Administrative Law Judge must be and hereby is reversed and this claim for payment of Dr. Jarman's medical treatment is hereby denied and dismissed.

IT IS SO ORDERED.

OLAN W. REEVES, Chairman

KAREN H. MCKINNEY, Commissioner

Commissioner Turner dissents.

DISSENTING OPINION

_____I respectfully dissent from the majority opinion that the claimant failed to prove by a preponderance of the evidence that Dr. Jarman was an authorized treating physician.

There is no dispute to the facts of this claim or the manner in which the claimant came to be treated by Dr. Jarman. The only issue is whether Dr. Jarman was an

authorized treating physician.

The Arkansas legislature has delegated authority to the Commission "to prescribe rules and regulations governing the representation of employees, employers, and carriers in respect to claims before the commission;" Ark. Code Ann. §11-9-207(a)(9)(2005). The rules of the Commission encourage cooperation between the employee and employer in an effort to reach an agreement in reference to treating physicians.

Employees should initially request a change of physician from the insurance carrier/employer/self-insured employer. Within five business days of the request for a change of physician, the insurance carrier/employer/self-insured employer shall notify the employee of its decision to grant or deny the change of physician.

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Commission Rule 33 Part IV. (Emphasis added.)

The record reflects that the claimant, through the chiropractor's office manager, requested authorization for treatment from the employer and the carrier on December 17, 2002. The respondent employer was aware that the claimant

was going to Dr. Jarman for treatment in relation to her compensable injury. The respondent employer gave the chiropractor's office manager the carrier's phone number and the carrier was also notified of the treatment. On January 24, 2003, the carrier made a payment for treatment service from December 17, 2002 through December 26, 2002, but denied all other claims for failure to obtain authorization.

Under Rule 33 the respondent employer had five business days to notify the claimant of its decision to grant or deny the change of physician. The claimant relied on the authorization granted by the respondent employer on the date of initial treatment with Dr. Jarman. The respondent employer did not notify the claimant of their intention to deny the treatment until January 24, 2003. This is well past five (5) business days.

The claimant justifiably relied upon the authorization for treatment from both the managed care company and the employer. The respondent employer did not notify the claimant within five business days that they

would not authorize her treatment with Dr. Jarman. Under the principles of equity, the respondent should be estopped from arguing that the claimant did not use the formal change of physician procedures for coverage of otherwise reasonable and necessary treatment when they, likewise did not follow the rules of the Commission concerning notification of denial of treatment.

For the above reasons, I respectfully dissent from the majority's finding that the claimant failed to prove by a preponderance of the evidence that Dr. Jarman was an authorized treating physician.

SHELBY W. TURNER, Commissioner