

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F101517

LONNIE WILLIAMS,  
EMPLOYEE

CLAIMANT

KLAASMEYER CONSTRUCTION,  
EMPLOYER

RESPONDENT

AMERICAN EMPLOYERS INS. CO.,  
INSURANCE CARRIER

RESPONDENT

OPINION FILED AUGUST 15, 2005

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

Claimant represented by the HONORABLE JAMES STANLEY,  
Attorney at Law, North Little Rock, Arkansas.

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

Decision of Administrative Law Judge: Reversed.

OPINION AND ORDER

The respondents appeal an administrative law judge's opinion filed January 10, 2005. The administrative law judge directed the respondents to "pay all reasonably necessary medical, nursing, chiropractic, and other apparatus expenses growing out to (sic) the claimant's compensable injury of December 30, 2000, to include medical related milage (sic)." After reviewing the entire record *de novo*, the Full Commission finds that the claimant did not

prove he was entitled to additional medical or chiropractic treatment after his initial visit with Dr. Thrash on January 13, 2003. The Full Commission finds that the chiropractic treatment provided by Dr. Thrash after January 13, 2003 was not reasonably necessary in connection with the claimant's compensable injury.

I. HISTORY

The parties stipulated that Lonnie L. Williams, age 52, sustained a compensable injury on December 30, 2000. The record indicates that the claimant treated with Dr. Guy J. L'Heureux in January 2001:

This 47 year old was seen in this office from February 18, 1999 to October 23, 2000 for a fracture of his left tibia and fibula. The patient says there has been no change in his medical history since then and that he is still having some discomfort in his left lower extremity at times. He is here for a new problem.

He sustained a new injury at work on December 30, 2000. He says that they were doing some work in Glenwood and as they were cleaning up he was asked to take cables off a pole. He moved the first cable and it hit his mid-abdominal area throwing him backward to the ground....He was complaining of neck pain, low back pain and he also has developed headaches since then.

Dr. L'Heureux diagnosed "Sprain grade I cervical spine and sprain grade I lumbar spine." The claimant was treated conservatively.

An MR of the cervical spine without contrast was taken on March 21, 2001, with the conclusion, "No central neural axis pathology, disc hernias or peripheral neural impingements seen. Spasm or soft tissue injury remains possible." An MR of the brain was also taken on March 21, 2001, with the conclusion, "No significant active intracranial pathology identified."

The respondents initially controverted additional medical treatment after March 30, 2001.

The record indicates that the claimant presented to Thrash Chiropractic Clinic on July 13, 2001, and that the claimant began a series of regular appointments at the Chiropractic Clinic. The claimant signed a letter dated July 13, 2001, stating, "I, Lonnie Williams, wish to change physicians ... to Dr. David Thrash, chiropractor, effective July 13, 2001."

The claimant testified that he treated with Dr. Thrash until December 27, 2001.

A pre-hearing order was filed on March 27, 2002. The claimant contended that he was entitled to additional medical benefits and wished to change physicians to a chiropractor. The claimant contended that chiropractic bills he had accrued were the responsibility of the respondents. The respondents contended that the chiropractic treatment was unauthorized, so that the accrued bills were not the respondents' responsibility. The respondents contended that the additional chiropractic treatment was not reasonably necessary.

A hearing was held before the Commission on May 2, 2002. The claimant testified, "my head don't hurt no more, but it puts pressure in there on my neck. And my, when I get up in the morning, I have to watch how I do and don't hurt my neck back in the back. And my back, I got to watch what I do. When I sit down for a long time, sit down, I have to be careful how I get up. And I can't hold my neck in one place too long."

An administrative law judge filed an opinion on June 25, 2002. The administrative law judge found, in relevant part: "3. The claimant has failed to prove by a

preponderance of the evidence that the medical treatment he has pursued since July 2001 with Dr. David Thrash was authorized and reasonable and necessary. 4. The respondents are not responsible for medical treatment with Dr. Thrash between July and December 2001. 5. The claimant is entitled to a change of physician to Dr. Thrash, effective May 2, 2002."

The record includes a series of billing statements from Thrash Chiropractic Clinic. The billing statements contain charges for assorted "Treatment Descriptions" beginning in January 13, 2003.

An adjuster wrote to Dr. Thrash on July 8, 2003:

Please be advised that we will not honor any further expenses for services rendered to Mr. Williams as a result of the above-referenced claim after date of service 06/09/2003. We attach the last bill that we have received for service date 06/23/02003. We are also advising Mr. Williams of our decision by copy of this letter.

A pre-hearing order was filed on August 17, 2004. The claimant contended that "a decision of the Commission awarded benefits to him and that respondents have failed to pay all of the benefits and failed to pay mileage benefits, as well, so that he should have adjudication of the

arrearrages owed to the doctor herein, as well as award of benefits for mileage for attorney's fees." The respondents contended that the claimant "requested a change of physicians at the previous hearing and the chiropractor was approved. He has many health problems that are not related to the 12-30-00 accident. Further treatment by the chiropractor is not reasonable or necessary or related to the 12-30-00 injury."

The administrative law judge listed the following areas for litigation: "unpaid awarded benefits, to include medical milage (sic); statute of limitation; reasonable and necessary medical treatment; and controverted attorney fees[.]"

Dr. L'Heureux performed an Independent Medical Evaluation of the claimant on September 2, 2004:

This 51-year-old black male had sustained injuries in a work related accident on December 30, 2000. A cable hit him in the mid-abdominal area. I saw him first on January 16. The patient was evaluated and a diagnosis of sprain, grade I, cervical spine and sprain, grade I, lumbar spine was established. The patient was treated with physical therapy and I proceeded to MRI of the cervical spine, which didn't show any evidence of central neural axis pathology, no disc herniation or peripheral neural impingement. MRI of the

brain did not show any significant active intracranial pathology. The patient was returned to light duty on Monday, January 29, but was dismissed. At the time, I noticed that his history was changing from visit to visit. At physical evaluation, there were no positive findings....I saw the patient on March 29, 2001. He had reached maximum medical improvement and I discharged him from my care. There was no partial permanent impairment related to this accident....

It is my opinion that the condition of Mr. Williams has not deteriorated between March 2001 and now. There are a few signs of increasing symptoms, but overall the patient seems to be describing symptoms of mild intensity, but there are no objective findings that support his symptoms.

My final opinion is that there is no change in my evaluation of March 2001 and that the patient had reached maximum medical improvement on that day, March 29, and today I determine that there is no partial permanent impairment related to this accident of December 30, 2000.

A hearing was held on November 12, 2004. The claimant testified:

Q. With regard to your injury, and we've been through that, what kind of pains were you having, what kind of problems have you had since the injury?

A. Well, the problem I have is almost the same problem I've been having. My low back tightened up and it hurt. If I don't go to the chiropractor, I can't get up out of the bed the next day, you know, move around. It hurts me. And my neck, it hurts almost constantly all the time. And if I

let it go too long it comes up the back of my neck and goes to my head. And I can't stand nobody to be around me. It puts tension on me. I just get upset a lot.

Q. Had you had those problems before this injury?

A. No, sir....

Q. And as far as since that time when you understand you had the authorization to go to the doctor again, has Dr. Thrash's treatments been beneficial to you?

A. Yes, sir.

Q. And do you - can you describe for us what he does for you, the particular treatments that you're experiencing there?

A. Well, when my lower back hurts, he pops my lower back. And my neck and shoulder, he pops my neck and shoulders and stuff.

Q. Does he put other things on there?

A. He puts kind of like shock treatment on my back and neck.

Q. Okay. Do all those seem to help.

A. Yeah....

Q. And are you asking His Honor to allow you to continue going to Dr. Thrash?

A. Yes, sir.

Q. To get treated.

A. Yes, sir.

The administrative law judge found, in relevant part:

4. On December 30, 2000, the claimant sustained an injuries (sic) to his head, neck and back arising out of and in the course of his employment.

5. Effective May 2, 2002, Dr. David P. Thrash, D.C., of Thrash Chiropractic Clinic, was designated the claimant's authorized treating physician relative to the December 30, 2000, compensable injury. Expenses incurred by the claimant under the care of Dr. Thrash prior to May 2, 2002, were unauthorized expenses for which respondents are no (sic) liable.

6. Chiropractic treatment rendered to the claimant subsequent to September 20, 2004, is not reasonably necessary treatment relative to the December 30, 2000, compensable injury and respondents are not liable for the payment of same.

7. The respondent shall pay all reasonable hospital, medical and chiropractic expenses arising out of the injury of December 30, 2000.

The respondents appeal to the Full Commission.

## II. ADJUDICATION

Ark. Code Ann. §11-9-508 provides:

(a) The employer shall promptly provide for an injured employee such medical, surgical, hospital, chiropractic, optometric, podiatric, and nursing services and medicine, crutches, ambulatory devices, artificial limbs, eyeglasses, contact lenses, hearing aids, and other apparatus as may be reasonably necessary in connection with the injury received by the employee.

The claimant must prove by a preponderance of the evidence that he is entitled to additional benefits pursuant to Ark. Code Ann. §11-9-508(a). What constitutes reasonably necessary treatment is a question of fact for the Commission. Dalton v. Allen Eng'g Co., 66 Ark. App. 201, 989 S.W.2d 543 (1999).

In the present matter, the Full Commission finds that the claimant did not prove he was entitled to additional chiropractic treatment after January 13, 2003. The parties stipulated that the claimant sustained a compensable injury on December 30, 2000. In January 2001, Dr. L'Heureux diagnosed a Grade I sprain in the claimant's cervical spine and lumbar spine. The record does not show that the claimant sustained a disc injury or would otherwise require surgical treatment. An MR of the claimant's cervical spine in March 2001 showed no pathology, hernias, or impingements. An MR of the brain taken in March 2001 showed no significant intracranial pathology. The respondents initially controverted additional treatment after March 30, 2001.

The claimant began treating at Thrash Chiropractic Clinic on July 13, 2001, and the claimant testified that he

treated with Dr. Thrash until December 27, 2001. On June 25, 2002, an administrative law judge essentially found that the claimant did not prove he was entitled to treatment from Dr. Thrash from July 2001 through December 2001. However, the administrative law judge found that the claimant was "entitled to a change of physician to Dr. Thrash, effective May 2, 2002." The record indicates that the claimant did not seek treatment with Dr. Thrash until January 13, 2003. The Full Commission finds that the claimant would be entitled to at least an initial visit with Dr. Thrash pursuant to the administrative law judge's June 25, 2002 change-of-physician order. See, Wal-Mart Stores, Inc. v. Brown, 82 Ark. App. 600, 120 S.W.3d 153 (2003). The claimant resumed a regular series of visits with Dr. Thrash, and the record indicates that the respondents paid for this treatment until June 9, 2003.

The respondents state on appeal, "The administrative law judge held that the claimant was entitled to the chiropractic treatment beginning in January of 2003 and ending on September 20, 2004." The Full Commission finds that the claimant did not prove he was entitled to

additional treatment from Dr. Thrash after the claimant's initial visit on January 13, 2003. The preponderance of evidence does not demonstrate that, as of January 13, 2003, the claimant still suffered from the effects of the cervical and lumbar strain diagnosed in January 2001. The Full Commission places significant weight on the opinion of Dr. L'Heureux, the claimant's initial treating physician. Dr. L'Heureux opined in September 2004 that the claimant had reached maximum medical improvement as of March 29, 2001. Dr. L'Heureux opined that the claimant's physical condition had not deteriorated between March 2001 and September 2004. Although the record does contain a number of billing reports from Thrash Chiropractic Clinic, there is no explanation of record from Dr. Thrash as to why the claimant continued to require chiropractic care after the end of the claimant's healing period on March 29, 2001. Nor does the evidence demonstrate that treatment from Dr. Thrash after January 13, 2003 was reasonably necessary to treat chronic pain as a result of the claimant's December 2000 cervical and lumbar sprain.

Based on our *de novo* review of the entire record, the Full Commission finds that the claimant did not prove he was entitled to additional medical or chiropractic treatment after his initial visit with Dr. Thrash on January 13, 2003. Although the administrative law judge did not explicitly find that the claimant was entitled to additional treatment from Dr. Thrash, the Full Commission reverses any implicit determination, based on the administrative law judge's opinion, that the respondents are liable for additional treatment from Dr. Thrash after January 13, 2003. This claim is denied and dismissed.

IT IS SO ORDERED.

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OLAN W. REEVES, Chairman

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KAREN H. MCKINNEY, Commissioner

Commissioner Turner dissents.

DISSENTING OPINION

The Majority finds that the claimant's treatment from Dr. Thrash was not reasonably necessary to treat his

compensable injury. I find that the claimant's treatment was reasonably necessary to treat his condition and that he should be entitled to treatment by Dr. Thrash. For these reasons, I respectfully dissent.

Injured employees must prove that medical services are reasonably necessary by a preponderance of the evidence; however, those services may include that treatment necessary to accurately diagnose the nature and extent of the compensable injury; to reduce or alleviate symptoms resulting from the compensable injury; to maintain the level of healing achieved; or to prevent further deterioration of the damage produced by the compensable injury. Ark. Code Ann. § 11-9-705(a)(3) (Repl. 2002); Jordan v. Tyson Foods, Inc., 51 Ark. App. 100, 911 S.W.2d 593 (1995).

Additionally, treatment intended to reduce or enable a claimant to deal with pain due to a compensable injury may constitute reasonably necessary medical treatment. See Maynard v. Belden Wire & Cable Company, Full Workers' Compensation Commission, Opinion Filed April 28, 1998, (Claim No. E502002), citing Billy Chronister v. Lavaca Vault, Full Workers' Compensation Commission, Opinion Filed

June 20, 1991 (Claim No. D704562). Furthermore the claimant does not have to support a continuing need for medical treatment with objective medical findings. Chamber Door Industries, Inc. v. Graham, 59 Ark. App. 224, 956 S.W.2d 196 (1997).

In this instance the Majority relies on the fact that the claimant had reached maximum medical improvement in order to disqualify him from receiving treatment from Dr. Thrash. However, this conclusion fails to recognize that even if the claimant had reached maximum medical improvement he would be entitled to receive treatment designed to maintain his condition or to alleviate his pain. I find that the claimant credibly testified that the chiropractic treatments alleviated his pain and accordingly I would have awarded benefits.

The Majority relies on Dr. Guy L'Heureux's opinion that the claimant's condition did not deteriorate from 2001 to 2004 in supporting their decision. However, I note that Dr. L'Heureux's report from September 2, 2004, recognizes that the claimant was taking Lortab and Nabumetone and that the claimant continued to suffer from pain in his back and

neck. However, despite these notations and the conclusion that the claimant had reached maximum medical improvement, Dr. L'Heureux in no way indicates that the claimant's medication should be changed. Instead, Dr. L'Heureux's report, only indicates that the claimant's condition had not deteriorated any, indicating that the claimant did need continuing treatment. As the test for awarding reasonably necessary treatment is not that the claimant continue to show objective signs of their injury or that the claimant's condition need to be cured by the treatment, and the claimant testified that receiving chiropractic treatment alleviates his symptoms to at least some degree, I find that the treatment is reasonably necessary.

Lastly, I note that the claimant is seeking chiropractic treatment. When considered in light of the fact that the claimant testified that he does not want to continue taking the medication because it does not work in conjunction with his testimony that the chiropractic treatment eases his pain, I find that the claimant should be awarded benefits in the form of treatment from Dr. Thrash.

Ultimately, I find that the claimant is seeking a conservative treatment for a physical condition that has already deemed to be compensable. He gave credible testimony that the treatment alleviates his symptoms and that he is seeking such treatment because he does not want to rely on what appears to be potentially addictive pain medication which does not work. For these reasons, I respectfully dissent.

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SHELBY W. TURNER, Commissioner